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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 22, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 240 and 249

[Release Nos. 33–9175; 34–63741; File No. S7–24–10]

RIN 3235–AK75

Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Pursuant to Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[1] we are adopting new rules related to representations and warranties in asset-backed securities offerings. The final rules require securitizers of asset-backed securities to disclose fulfilled and unfulfilled repurchase requests. Our rules also require nationally recognized statistical rating organizations to include information regarding the representations, warranties and enforcement mechanisms available to investors in an asset-backed securities offering in any report accompanying a credit rating issued in connection with such offering, including a preliminary credit rating.

DATES: Effective Date: March 28, 2011.

Compliance Dates:

Rule 15Ga–1: The initial filing required by Rule 15Ga–1(c)(1) for the three years ended December 31, 2011 is required to be filed on February 14, 2012, except that a securitizer that is any State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory or the District of Columbia, or any public instrumentality of one or more States, Territories or the District of Columbia, shall provide the initial filing required by Rule 15Ga–1(c)(1) for the three years ended December 31, 2014 and file on February 14, 2015.

Regulation AB: Any registered offering of asset-backed securities commencing with an initial bona fide offer on or after February 14, 2012 must comply with the information requirements of new Item 1104(e) of Regulation AB. For any such offering that relies on Securities Act Rule 415(a)(1)(x), a Securities Act registration statement filed after December 31, 2011 relating to such offering must be pre-effectively or post-effectively amended, as applicable, to make the prospectus included in Part I of the registration statement compliant. The information required by Item of 1121 of Regulation AB is required for all Form 10–Ds required to be filed after December 31, 2011.

Rule 17g–7: NRSROs will be required to provide the information required by the rule to be included in a report accompanying a credit rating for an offering of asset-backed securities for any such report issued on or after September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Rolaine Bancroft, Attorney-Advisor, in the Office of Rulemaking, at (202) 551–3430, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628 or, with respect to Rule 17g–7, Joseph I. Levinson, Special Counsel, at (202) 551–5598, Division of Trading and Markets, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 1104 and 1121[2] of Regulation AB[3] (a subpart of Regulation S–K) under the Securities Act of 1933 ("Securities Act")[4] and Rules 101 and 314[5] of Regulation S–T.[6] We also are adding Rules 15Ga–1[7] and 17g–7[8] and Form ABS–15G[9] under the Securities Exchange Act of 1934 ("Exchange Act")[10] and the Act.

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I. Background

On October 4, 2010, we proposed rules to implement Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") related to asset-backed securities ("ABS").[11] Section 943 of the Act requires the Commission to prescribe regulations on the use of representations

[1] Pub. L. 111–203 (July 21, 2010).

[2] 17 CFR 229.1104 and 17 CFR 229.1121.

[3] 17 CFR 229.1100 through 17 CFR 229.1123.

[4] 15 U.S.C. 77a *et seq.*

[5] 17 CFR 232.101 and 17 CFR 232.314.

[6] 17 CFR 232.10 *et seq.*

[7] 17 CFR 240.15Ga–1.

[8] 17 CFR 240.17g–7.

[9] 17 CFR 249.1400.

[10] 15 U.S.C. 78a *et seq.*

[11] *See* Release No. 33–9148 (Oct. 4, 2010) [75 FR 6278] (the "Proposing Release").

and warranties in the market for asset-backed securities:

(1) To require any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by securitizer, so that investors may identify asset originators with clear underwriting deficiencies; and

(2) to require each nationally recognized statistical rating organization ("NRSRO") to include, in any report accompanying a credit rating for an asset-backed securities offering, a description of (A) the representations, warranties and enforcement mechanisms available to investors; and (B) how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.[12]

In addition to the rules required by the Act, we also re-proposed disclosure requirements in Regulation AB in order to conform disclosures about repurchase request activity to those required by Section 943 of the Act.[13]

As we discussed in the Proposing Release, in the underlying transaction agreements for an asset securitization, sponsors or originators typically make representations and warranties relating to the pool assets and their origination, including about the quality of the pool assets. For instance, in the case of residential mortgage-backed securities, one typical representation and warranty is that each of the loans has complied with applicable federal, state and local laws, including truth-in-lending, consumer credit protection, predatory and abusive laws and disclosure laws. Another representation that may be included is that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. Upon discovery that a pool asset does not comply with the representation or warranty, under transaction covenants, an obligated party, typically the sponsor, must repurchase the asset or substitute a different asset that complies with the representations and warranties for the non-compliant asset. The effectiveness of the contractual provisions related to representations and warranties has been questioned and lack of responsiveness by sponsors to potential breaches of the representations and warranties relating to the pool assets has been the subject of investor complaint.[14]

As discussed in more detail below, we have taken into consideration the comments received on the proposed rules and are adopting new Rules 15Ga–1 and 17g–7, new Form ABS–15G and amendments to Regulation AB. The rules and form that we are adopting today implement the requirements of Section 943 of the Act, and also conform disclosure requirements for prospectuses and ongoing reports for ABS sold in registered transactions. We received over forty comment letters in response to the proposed rules. These letters came from investors, securitizers, corporations, credit rating agencies, professional and trade associations, law firms, municipal entities, and other interested parties.[15] In general, commentators supported the manner in which we proposed to implement Section 943 of the Act. Some commentators opposed some aspects of the proposed rules and suggested modifications to the proposals.

The adopted rules reflect changes made in response to many of these comments. We discuss our revisions with respect to each proposed rule in more detail throughout this release. The rules we are adopting require:

- ABS securitizers to disclose demand, repurchase and replacement history in a tabular format for an initial three-year look back period ending December 31, 2011;
- ABS securitizers to disclose, subsequent to that date, demand, repurchase and replacement activity in a tabular format on a quarterly basis;
- ABS issuers to disclose demand, repurchase and replacement history for a three-year look back period, in the same tabular format as new Rule 15Ga–1, in the body of the prospectus;
- ABS issuers to disclose demand, repurchase and replacement activity for a specific ABS, in the same tabular format, in periodic reports filed on Form 10–D; and
- NRSROs to disclose, in any report accompanying a credit rating for an ABS transaction, the representations, warranties and enforcement mechanisms available to investors and how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.

II. Discussion of Amendments

A. Disclosure Requirements for Securitizers

We proposed and are adopting new Rule 15Ga–1 to implement Section 943(2) of the Act. This new rule would require any securitizer of asset-backed securities to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by securitizer, so

[12] *See* Section 943 of the Act.

[13] In April of 2010, we proposed rules that would revise the disclosure, reporting and offering process for asset-backed securities. *See Asset Backed Securities,* SEC Release No. 33–9117 (April 7, 2010) [75 FR 23328] (the "2010 ABS Proposing Release"). Among other things, the 2010 ABS Proposing Release proposed new disclosure requirements with respect to repurchase requests. Specifically, we proposed that issuers disclose in prospectuses the repurchase demand and repurchase and replacement activity for the last three years of sponsors of asset-backed transactions or originators of underlying pool assets if they are obligated to repurchase assets pursuant to the transaction agreements. We also proposed that issuers disclose the repurchase demand and repurchase and replacement activity concerning the asset pool on an ongoing basis in periodic reports.

[14] As we noted in the Proposing Release and the 2010 ABS Proposing Release, transaction agreements typically have not included specific mechanisms to identify breaches of representations and warranties or to resolve a question as to whether a breach of the representations and warranties has occurred. Thus, these contractual agreements have frequently been ineffective because, without access to documents relating to each pool asset, it can be difficult for the trustee, which typically notifies the sponsor of an alleged breach, to determine whether or not a representation or warranty relating to a pool asset has been breached. In the 2010 ABS Proposing Release, the Commission proposed a condition to shelf eligibility that would require a provision in the pooling and servicing agreement that would require the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased. *See* Section II.A.3.b. of the 2010 ABS Proposing Release. *See also* the Committee on Capital Markets Regulation, *The Global Financial Crisis: A Plan for Regulatory Reform,* May 2009, at 135 (noting that contractual provisions have proven to be of little practical value to investors during the crisis); *see also Investors Proceeding with Countrywide Lawsuit,* Mortgage Servicing News, Feb. 1, 2009 (describing class action investor suit against Countrywide in which investors claim that language in the pooling and servicing agreements requires the seller/servicer to repurchase loans that were originated with "predatory" or abusive lending practices) and American Securitization Forum, *ASF Releases Model Representations and Warranties to Bolster Risk Retention and Transparency in Mortgage Securitizations,* (Dec. 15, 2009), available at *http://www.americansecuritization.com.* It has been reported that only large ABS investors, such as Fannie Mae and Freddie Mac, have been able to effectively exercise repurchase demands. *See* Aparajita Saha-Bubna, "Repurchased Loans Putting Banks in Hole," *Wall Street Journal* (Mar. 8, 2010) (noting that most mortgages put back to lenders are coming from Fannie Mae and Freddie Mac). *See also* Joe Adler, "Regulators See Growing Threat from Put-Backs," *American Banker* (Dec. 6, 2010) (noting that investor put-back cases face procedural hurdles and that investors are trying to unionize around repurchasing). However, recent articles report that banks have begun settlement efforts. *See e.g.,* Dawn Kopecki and Hugh Son, "Bank of America Deal on Loan-Repurchase Demands Sets 'Template' for Banks," Bloomberg (Jan. 4, 2011) available at *http://www.bloomberg.com/news/2011-01-03/banks-stocks-rise-after-bank-of-america-settles-mortgage-putback-claims.html* (noting recent settlements of repurchase claims).

[15] The public comments we received are available on our Web site at *http://sec.gov/comments/s7-24-10/s72410.shtml.*

that investors may identify asset originators with clear underwriting deficiencies. Under the new rule, a securitizer would provide the disclosure by filing new Form ABS–15G.[16]

1. Definition of Exchange Act-ABS for Purposes of Rule 15Ga–1

As we discussed in the Proposing Release, the Act amended the Exchange Act to include a definition of an "asset-backed security" and Section 943 of the Act references that definition.[17] The statutory definition of an asset-backed security ("Exchange Act-ABS") is much broader than the definition of an asset-backed security in Regulation AB ("Reg AB–ABS").[18] The definition of an Exchange Act-ABS includes securities that are typically sold in transactions that are exempt from registration under the Securities Act, such as collateralized debt obligations ("CDOs"), as well as securities issued or guaranteed by a government sponsored entity ("GSE"), such as Fannie Mae and Freddie Mac and municipal securities that otherwise come within the definition.[19] Since Section 943 uses the broader Exchange Act-ABS definition, our new Rule 15Ga–1 would require a securitizer to provide disclosures relating to all asset-backed securities that fall within the statutory definition, whether or not sold in Securities Act registered transactions. However, as we discuss further below, even if a security meets the definition of an Exchange Act-ABS, the new disclosure requirement would only be triggered if the underlying transaction agreements contain a covenant to repurchase or replace an asset.

2. Definition of Securitizer for Purposes of Rule 15Ga–1

Section 943 and new Rule 15Ga–1 impose the disclosure obligation on a "securitizer" as defined in the Exchange Act. The Act amended the Exchange Act to include the definition of a "securitizer." Under the Exchange Act, a securitizer is either:

(A) An issuer of an asset-backed security; or

(B) A person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.[20]

The definition of securitizer is not specifically limited to entities that undertake transactions that are registered under the Securities Act or conducted in reliance upon any particular exemption.[21] Consequently, it applies to any entity or person that issues or organizes an Exchange Act-ABS as specified in Section 15G(a)(3) of the Exchange Act. Further, as noted above, Section 943 and Section 15G(a)(3) do not distinguish between securitizers of Exchange Act-ABS in registered or unregistered transactions, and our new Rule 15Ga–1 would apply equally to securitizers offering ABS in registered and unregistered transactions.

With respect to registered transactions and the definitions of transaction parties in Regulation AB, sponsors and depositors[22] both fall within the statutory definition of securitizer. A sponsor typically initiates a securitization transaction by selling or pledging to a specially created issuing entity a group of financial assets that the sponsor either has originated itself or has purchased in the secondary market.[23] In some instances, the transfer of assets is a two-step process: The financial assets are transferred by the sponsor first to an intermediate entity, often a limited purpose entity created by the sponsor for a securitization program and commonly called a depositor, and then the depositor will transfer the assets to the issuing entity for the particular asset-backed transaction.[24] Because both sponsors and depositors fit within the statutory definition of securitizers, both entities would have the disclosure responsibilities under new Rule 15Ga–1. However, if a sponsor filed all disclosures required under new Rule 15Ga–1, which would include disclosures of the activity of affiliated depositors, as described below, consistent with the proposal final Rule 15Ga–1 provides that those depositors affiliated with the sponsors would not have to separately provide and file the same disclosures. We believe this is appropriate for affiliated securitizers because otherwise such disclosure would be duplicative and would not provide any additional useful information, since as noted above, the depositor usually serves as an

[16] *See also* Section II.B. for discussion of disclosures in prospectuses and periodic reports.

[17] Section 3(a)(77) of the Exchange Act, as amended by the Act, provides that the term "asset-backed security" means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including: A collateralized mortgage obligation; a collateralized debt obligation; a collateralized bond obligation; a collateralized debt obligation of asset-backed securities; a collateralized debt obligation of collateralized debt obligations; and a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

[18] In 2004, we adopted the definition of "asset-backed security" in Regulation AB. The definition and our interpretations of it are intended to establish parameters for the types of securities that are appropriate for the alternate disclosure and regulatory regime provided in Regulation AB and the related rules for Form S–3 registration of ABS. The definition does not mean that public offerings of securities outside of these parameters, such as synthetic securitizations, may not be registered with the Commission, but only that the alternate regulatory regime is not designed for those securities. The definition does mean that such securities must rely on non-ABS form eligibility for registration, including shelf registration. *See* Section III.A.2 of *Asset-Backed Securities,* SEC Release no. 33–8518 (January 7, 2005) [70 FR 1506] (the "2004 ABS Adopting Release") and Item 1101(c) of Regulation AB [17 CFR 1101(c)].

[19] Government sponsored enterprises (GSEs) such as Fannie Mae and Freddie Mac purchase mortgage loans and issue or guarantee mortgage-backed securities (MBS). MBS issued or guaranteed by these GSEs have been and continue to be exempt from registration under the Securities Act and reporting under the Exchange Act. For more information regarding GSEs, *see* Task Force on Mortgage-Backed Securities Disclosure, "Staff Report: Enhancing Disclosure in the Mortgage-Backed Securities Markets" (Jan. 2003) available at *http://www.sec.gov/news/studies/mortgagebacked.htm.*

[20] *See* Section 15G(a)(3) of the Exchange Act, as amended by the Act.

[21] We received comment letters on the application of proposed Rule 15Ga–1 to ABS offered outside the United States and to ABS sold in the United States by foreign securitizers. *See e.g.,* letters from American Bar Association (ABA), Association for Financial Markets in Europe (AFME), Center for Responsible Lending (CFRL), U.S. Senator Carl Levin (Levin), Metropolitan Life Insurance Company (Metlife) and Securities Industry and Financial Markets Association (SIFMA). Section 943 of the Act does not expressly provide for Commission exemption for particular classes of securitizers from the requirements. If securitizers of Exchange Act-ABS are subject to our jurisdiction, then securitizers are required to provide the disclosures required by Rule 15Ga–1.

[22] We interpret the term "issuer" in Section 15G(a)(3)(A) to refer to the depositor of an asset-backed security. This treatment is consistent with our historical regulatory approach to that term, including the Securities Act and the rules promulgated under the Securities Act and the Exchange Act. *See, e.g.,* Securities Act Rule 191 (17 CFR 230.191) and Exchange Act Rule 3b–19 (17 CFR 240.3b–19).

[23] A sponsor, as defined in Regulation AB, is the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity. *See* Item 1101(l) of Regulation AB [17 CFR 229.1101(l)]. Sponsors of asset-backed securities often include banks, mortgage companies, finance companies, investment banks and other entities that originate or acquire and package financial assets for resale as ABS. *See* Section II. of the 2004 ABS Adopting Release.

[24] A depositor receives or purchases and transfers or sells the pool assets to the issuing entity. *See* Item 1101(e) of Regulation AB [17 CFR 229.1101(e)]. For asset-backed securities transactions where there is not an intermediate transfer of assets from the sponsor to the issuing entity, the term depositor refers to the sponsor. For asset-backed securities transactions where the person transferring or selling the pool assets is itself a trust, the depositor of the issuing entity is the depositor of that trust.

intermediate entity of a transaction initiated by a sponsor.[25] In addition, investors would be able to find information "aggregated by securitizer" as required by Section 943 in this case because the table would be aggregated either by affiliated depositors or the sponsor the ABS.

We received two comment letters that urged us to consider two other situations related to a securitizer's filing requirement. One requested that either the Exchange Act reporting party or the party that contractually assumes a reporting duty would have the obligation to disclose repurchase request information and file Form ABS–15G, but not both.[26] The other requested we allow securitizers to reference and rely on originator disclosures to satisfy a securitizer's requirements if they have made contractual arrangements to do so.[27] Both of these commentators requested filing accommodations that related to unaffiliated parties, and we are concerned that the requested approach could make it more difficult for investors to locate the information "aggregated by securitizer" as is required by Section 943 because the relationship between unaffiliated transaction parties may not be readily understood. Therefore, we are requiring that all securitizers in a transaction file Form ABS–15G, unless they are affiliated securitizers as discussed above.

One commentator explained that requiring disclosure of assets "originated and sold," as proposed, could be construed to require the securitizer to report demand and repurchase activity on loans originated and sold by it but securitized by other securitizers which might lead to inconsistent and duplicative reporting.[28] In the case of Exchange Act-ABS issued by the GSE's, we received several comment letters noting that the term securitizer, for purposes of Rule 15Ga–1 should be applied solely to Fannie Mae or Freddie Mac and not the financial institution transferring loans for securitization by Fannie Mae or Freddie Mac.[29] We agree with commentators observations that "originated and sold" may be read to require disclosure about transfers of assets that were not securitized, and thus as discussed further below, we have revised the rule to require disclosure concerning assets "securitized" by securitizers.

3. Application to Municipal Securitizers

As stated earlier, Section 943 and the new rule apply to Exchange Act-ABS whether or not offered and sold in Securities Act registered transactions. In addition, Section 943 and the new rule impose the disclosure obligation on any securitizer, as defined in the Exchange Act. Thus, the new rule will apply to a municipal entity that is a securitizer of Exchange Act-ABS ("municipal securitizer"). We sought comment in the Proposing Release on whether we should provide further guidance regarding the application of proposed Rule 15Ga–1 to securities issued by municipal entities that would fall within the definition of Exchange-Act ABS. We also asked whether the types of municipal securities about which proposed Rule 15Ga–1 would require a municipal securitizer to provide representation and warranty repurchase disclosure was clear. Several commentators provided examples of municipal securities that could fall within the definition of Exchange-Act ABS such as student loan bonds, housing and mortgage bonds, bond-bank issuances, and revolving fund bonds.[30]

With respect to proposed Rule 15Ga–1, a few commentators noted that it would not likely apply to most municipal securities because the underlying transaction documents typically would not contain a covenant to repurchase or replace an asset if it does not comply with representation and warranty provisions, if any.[31] Commentators also noted various reasons why proposed Rule 15Ga–1 should not apply to municipal securitizers, such as a belief that they have an express statutory exemption [32] or that there is a requirement under the Act to first make a rule determination about the status of the securities.[33] In addition, several commentators argued that the Commission has authority to exempt municipal securitizers from Rule15Ga–1, citing the overall structure of the Act's amendments and legislative history. These commentators questioned whether Congress intended to require Section 943 disclosures with respect to municipal securities at all.[34]

Other commentators suggested that the Commission wait for the results of the municipal disclosure study required by Subtitle H of the Act [35] before

[25] There may be other situations where multiple affiliated securitizers would have individual reporting obligations under Rule 15Ga–1 with respect to a particular transaction. Under our final rule, if one securitizer has filed all the disclosures required in order to meet the obligations under Rule 15Ga–1, which would include disclosures of the activity of affiliated securitizers, those securitizers would not be required to separately provide and file the same disclosures. Several commentators also requested that a securitizer be permitted to file separate reports for different asset classes, instead of including the activity for all asset classes in which the securitizer has issued ABS in a single report. *See* discussion below in Section II.A.4.b. and fn. 82.

[26] *See* letter from SIFMA (noting, "for example, in a 'rent-a-shelf' transaction, both the renter and the registrant could be deemed securitizers").

[27] *See* letter from ABA (noting that the Commission has previously allowed ABS issuers to incorporate by reference information filed by third parties, such as credit enhancement providers or significant obligors).

[28] *See* letter from American Securitization Forum (ASF).

[29] *See e.g.,* letters from ASF, Bank of America (BOA), Fannie Mae and Freddie Mac (GSEs), Mortgage Bankers Association (MBA), and SIFMA.

[30] *See e.g.,* letters from Federated Investors, Inc., Investment Company Institute (ICI), National Association of Bond Lawyers (NABL), Kutak Rock (Kutak) and Moody's Investors Service (Moody's). We also received some comment letters that questioned whether municipal securities fall within the definition of Exchange Act-ABS. In particular, a few letters questioned whether a municipal security would meet the Exchange-Act ABS criteria of payments depending "primarily on the cash flow from the asset" if the security also is secured by a general obligation of the municipal issuer. *See e.g.,* letters from Kutak, Education Finance Council (EFC) and Minnesota Housing Finance Agency (MHFA).

[31] *See e.g.,* letters from NABL and Connecticut Housing Finance Authority (CHFA).

[32] Several commentators noted that the Tower Amendment (Section 15B(d)(1) of the Exchange Act [15 U.S.C. 78o–4]) expressly prohibits the Securities and Exchange Commission and the Municipal Securities Rulemaking Board ("MSRB") from requiring an issuer of municipal bonds (including housing bonds) to make any specific disclosure filing with the SEC or MSRB prior to the sale of these securities to investors. *See e.g.,* letters from Kutak, Group of 14 Municipal Organizations (Muni Group), NABL, National Association of Local Housing Finance Agencies (NALHFA), Treasurer of the State of Connecticut (Nappier), National Council of State Housing Agencies (NCHSA) and Robert W. Scott (Scott).

[33] Commentators cited to the phrase "a security that the Commission, by rule, determines to be an asset-backed security" that appears after the description of examples of Exchange Act-ABS. *See* Section 3(a)(77) of the Exchange Act, as amended by the Act. *See e.g.,* letters received from NABL, Muni Group, and Scott.

[34] In particular, one commentator noted that despite the broad definition of "asset-backed security," it believes the SEC has the authority to exempt municipal securities from this rule, and doing so is necessary and appropriate in light of Section 3(a)(2) of the Securities Act and Section 3(a)(12) of the Exchange Act, which both treat municipal securities as exempted securities. *See* letter from NCHSA. Other commentators argued that the Commission has the authority to exempt municipal securities from risk retention in Section 941of the Act (Credit Risk Retention), and those same exemptions should apply to Section 943. *See e.g.,* letters from ICI, NABL, NALHFA, NCSHA, Muni Group, and Scott. Specifically, four commentators cited to language in the Joint Explanatory Statement of the Conference Committee suggesting the Commission has authority to grant total or partial exemptions from risk-retention and disclosure requirements for municipal securities. *See e.g.,* letters from ICI, NCSHA, Muni Group, and Scott. *But see* letter from Nappier (noting concerns from Senate staff that future transactions might be created and structured through municipal issuers specifically to avoid the asset-backed securities provisions).

[35] Section 976 of the Act requires the Comptroller General of the United States to submit a report to Congress on the results of a study and review of the disclosure required to be made by issuers of municipal securities, including recommendations

requiring compliance with the proposals [36] as well as for the results of the Commission's municipal field hearings, discussed below.[37] One investor group was concerned that a piecemeal approach to municipal securities disclosure would have the unintended effect of creating confusion for investors and issuers alike because different asset classes of municipal securities would be subject to different disclosure requirements.[38]

Moreover, many commentators argued that certain municipal ABS, such as housing bonds, only include assets originated under strict underwriting standards and are subject to legal and program requirements in order to obtain and maintain guarantees and tax-exempt status [39] and noted that issues regarding underwriting deficiencies and unfulfilled repurchase requests that the Act intends to address have not been an issue in the municipal securities market.[40] Furthermore, according to a few commentators, any repurchase obligations that do exist for municipal ABS have been enforced by the relevant municipal issuer in order to ensure the continual tax-exempt status of the municipal ABS.[41]

Commentators also noted that a significant difference between municipal ABS and more typical Exchange Act-ABS is that the Municipal Securities Rulemaking Board (MSRB) [42] collects and publicly disseminates market information and information about municipal securities issuers and offerings on its centralized public database, EMMA.[43] Thus, even though most municipal securities are sold in unregistered transactions in reliance on exemptions from registration, as commentators noted,[44] as a result of the applicability of Exchange Act Rule 15c2–12 to municipal securities offerings by underwriters, municipal issuers issuing municipal securities subject to that rule already provide disclosures in offering documents and disclosures to the secondary market pursuant to continuing disclosure agreements entered into for the benefit of bondholders. Under Rule 15c2–12, specified annual and event notices are required to be submitted to the MSRB's EMMA system.[45] However, Rule 15c2–12 does not specifically require representation and warranty repurchase disclosure.

Commentators noted other factors that distinguish securitizers of municipal ABS from other Exchange Act-ABS securitizers. For instance, commentators noted that municipal securitizers generally are state or local government entities and exist to serve a public purpose.[46] In addition, commentators also noted that municipal ABS in some cases are secured by a pledge of assets or are secured by a general obligation of the municipal issuer.[47] Finally, commentators stated that market participants do not identify or consider municipal securities as substantially similar to ABS.[48]

Despite the distinguishing factors discussed above, we have determined that the final rules should apply to municipal securitizers. Section 943(2) of the Act requires the Commission to adopt rules mandating that "any securitizer" of an Exchange Act-ABS, including municipal ABS, provide the disclosures specified therein. The statute does not expressly provide the Commission the authority to provide exemptions for particular classes of securitizers, including municipal securitizers. We note that Section 943 is a stand-alone provision and is not included as an amendment to the Exchange Act or the Securities Act. As a result, our final rule applies to municipal ABS if they otherwise come within the definition of Exchange Act-ABS. Nonetheless, we recognize that municipal securitizers may have had less experience with developing and providing the types of information required by Section 943(2) and the new rule, and thus may have less developed infrastructures for providing the required disclosures.[49] We believe that a delayed compliance date for municipal securitizers should allow those securitizers to observe how the rule operates for other securitizers and to better prepare for implementation of the rules. We also believe that delayed compliance for municipal securitizers will allow us to evaluate the implementation of Rule 15Ga–1 by other securitizers and provide us with the opportunity to consider whether adjustments to the rule would be appropriate for municipal securitizers before the rule becomes applicable to them. As commentators also noted, we are currently undergoing a review of the municipal securities market, and as part of that review, we recently began a

for how to improve disclosure by issuers of municipal securities no later than 24 months after the date of enactment of the Act. In addition, pursuant to Section 977 of the Act, the Comptroller General of the United States is also required to conduct a study of the municipal securities markets and report no later than 18 months after the date of enactment of the Act.

[36] *See e.g.,* letters from CHFA, ICI, Muni Group, NABL, NALHFA, Nappier, and NCHSA.

[37] *See e.g.,* letters from ICI, Muni Group and Scott.

[38] *See* letter from ICI.

[39] *See e.g.,* letters from Connecticut Higher Education Supplemental Loan Authority (CHESLA), CHFA, Hawkins, Delafield and Wood (Hawkins), Kutak, MHFA, NABL, and NCSHA.

[40] *See generally* letters from CHESLA CHFA, EFC, Hawkins, Kutak, MHFA, Muni Group, NABL, NCSHA, and City of New York (NYC) (noting generally that the policy concerns that led to adoption of the Act are not present in the case of municipal securities and the municipal securities markets did not experience the failures or defaults that led to the Act). *See also* Moody's Investors Service, Inc., *Special Report: U.S. Municipal Bond Defaults and Recoveries, 1970–2009,* February, 2010 (noting that municipal issuers have a very limited default experience with only 54 defaults over the period 1970–2009). *See also* letter from NYC (noting that tax lien securitizations arise out of operation of law and are not originated pursuant to underwriting standards).

[41] *See e.g.,* letters from CHESLA, CHFA and NABL.

[42] The MSRB, a self-regulatory organization subject to oversight by the Commission, regulates securities firms and banks that underwrite, trade and sell municipal securities. The Act broadened the mission of the MSRB to include the protection of state and local governments and other municipal entities, in addition to investors and the public interest. The MSRB also regulates municipal advisors. *See* Section 975 of the Act.

[43] *See e.g.,* letters from EFC, Kutak, MHFA, NABL and NCSHA. The Web site address for EMMA is *http://www.emma.msrb.org.*

[44] *See e.g.,* letters from EFC, Kutak, MHFA, NABL and NCSHA.

[45] Pursuant to Exchange Act Rule 15c2–12 [17 CFR 240.15c2–12], municipal underwriters must submit final official statements, for municipal securities offerings subject to the rule, on EMMA, which must include, at a minimum, information on the terms of the securities, financial information or operating data concerning the issuer and other entities, enterprises, funds, accounts or other persons material to an evaluation of the offering, and a description of the continuing disclosure undertaking made in connection with the offering (including any indication of any failures to comply with such undertaking during the past five years). Official statements typically also include information regarding the purposes of the issuance, how the securities will be repaid, and the financial and economic characteristics of the obligor with respect to the offered securities. Several commentators stated that, if the final rules applied the Section 943 disclosure requirements to municipal securitizers, then these disclosures should be made on EMMA rather than on EDGAR because they argued that filing such disclosures on EDGAR would be confusing to issuers and to investors who have become accustomed to using EMMA as the repository of municipal-related disclosures. *See e.g.,* letters from EFC, Kutak, NABL and NCSHA.

[46] *See e.g.,* letters from CHESLA and CHFA (public purpose is to alleviate the shortage of quality affordable housing) and NALHFA (public purpose is to provide mortgage assistance to first-time home buyers, and multi-family below-market financing for the acquisition, construction and preservation of rental housing for lower-income households).

[47] *See e.g.,* letters from EFC, Kutak, MHFA, and NABL.

[48] *See e.g.,* letters from Muni Group and Scott.

[49] *See e.g.,* letters from CHESLA (noting that it operates with a staff of two and a part-time Executive Director); Kutak (noting that many municipal issuers rely on paper files and do not have the technology or staff to produce historical information); and NABL (noting that certain state agencies will need to obtain the necessary funds to meet the filing requirements, and certain state agencies determine their budgets on a biannual cycle).

series of field hearings to examine the municipal securities markets, including disclosure and transparency within the municipal securities markets.[50] At the conclusion of this process, the staff of the Commission expects to prepare a report containing information learned and any recommendations for regulatory changes, industry "best practices," or legislative changes.[51] The results of our review and the studies required by the Act[52] could lead us to conclude that changes to the requirements of Rule 15Ga–1 would be appropriate for municipal securitizers.

Therefore, we are delaying compliance for new Rule 15Ga–1 for municipal securitizers for a period of three years after the date applicable to securitizers other than municipal securitizers.[53] For purposes of the delayed compliance only, a municipal securitizer would be any securitizer that is a State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory or the District of Columbia, or any public instrumentality of one or more States, Territories or the District of Columbia.

In addition, as discussed below, in an effort to limit the cost and burden on municipal securitizers subject to the new rule, as well as provide the disclosures for investors in the same location as other disclosures regarding municipal securities, we will permit municipal securitizers to satisfy the rule's filing obligation by filing the information on EMMA.[54]

4. Disclosures Required by Rule 15Ga–1

In accordance with Section 943 of the Act, we are adopting new Rule 15Ga–1[55] to require any securitizer of an Exchange Act-ABS to provide tabular disclosure of fulfilled and unfulfilled repurchase requests, so that investors may identify asset originators with clear underwriting deficiencies.

(a) Proposed New Rule 15Ga–1

We proposed that if the underlying transaction agreements include a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, then a securitizer would be required to provide the information described below for all assets originated or sold by the securitizer that were the subject of a demand for repurchase or replacement with respect to all outstanding Exchange Act-ABS of the securitizer held by non-affiliates of the securitizer. As discussed further below, we proposed that a securitizer provide the repurchase history for the last five years by filing Form ABS–15G at the time a securitizer first offers an Exchange Act-ABS or organizes and initiates an offering of Exchange Act-ABS, registered or unregistered, after the effective date of the new rules, as adopted. In addition, we proposed that going forward, a securitizer would provide the disclosures for all outstanding Exchange Act-ABS on a monthly basis by filing Form ABS–15G.

Section 943(2) requires disclosure of fulfilled and unfulfilled repurchase requests. Therefore, we proposed to require tabular disclosure of assets subject to any and all demands for repurchase or replacement of the underlying pool assets as long as the transaction agreements provide a covenant to repurchase or replace an underlying asset, which would include demands that did not result in a repurchase under the transaction agreements and demands that were made by the investors upon the trustee. We also proposed that securitizers be permitted to footnote the table to provide additional explanatory disclosures to describe the data disclosed.

In the Proposing Release, we expressed concern that initially a securitizer may not be able to obtain complete information from a trustee about demands made by investors because it may not have tracked these demands. Because securitizers may not have access to historical information about investor demands made upon the trustee, (as opposed to trustee demands upon the securitizer, which presumably, would be known to the securitizer) prior to the effective date of the new rules, we proposed an instruction that a securitizer may disclose in a footnote, if true, that a securitizer requested and was able to obtain only partial information or was unable to obtain any information with respect to investor demands to a trustee that occurred prior to the effective date of the proposed rules and state that the disclosures do not contain all investor demands made to the trustee prior to the effective date.

In the Proposing Release, we acknowledged that a single securitizer (*i.e.,* sponsor) may have several securitization programs to securitize different types of asset classes. Because the Act requires information "aggregated by securitizer," we proposed that a securitizer list the names of all the issuing entities[56] of Exchange Act-ABS outstanding, in order of the date of formation of the issuing entity, so that investors may identify the securities that contain the assets subject to the demands for repurchase and when the issuing entity was formed. We also proposed to require disclosure of the asset class and grouping of the information in the table by asset class. Additionally, if any of the Exchange Act-ABS of the issuing entity were registered under the Securities Act, we proposed that the Central Index Key ("CIK") number of the issuing entity be disclosed and that the securitizer indicate by check mark whether any Exchange Act-ABS were registered. We noted that these items would provide important information that would enable an investor to locate additional publicly available disclosure for registered transactions, if applicable. Because the Act provided that disclosure is required "so that investors may identify asset originators with clear underwriting deficiencies,"[57] we proposed that securitizers further break out the information by originator of the underlying assets.

We also proposed that the table provide information about the assets that were subject of a demand; the assets that were repurchased or replaced; the assets that were not repurchased or replaced; and the assets that are pending repurchase or replacement.[58] Additionally, we proposed an instruction to include footnote

[50] *See* SEC Press Release 2010–64, SEC Sets Field Hearings on State of Municipal Markets, Sept. 7, 2010 available on the "Spotlight on the State of the Municipal Securities Market" page of our Web site at *http://www.sec.gov/spotlight/municipalsecurities.shtml.*

[51] Id.

[52] See fn. 35.

[53] *See* discussion below regarding transition period in Section III.

[54] Id.

[55] We are adopting this rule as an Exchange Act rule because of the relationship with other requirements under the Exchange Act and other statutory requirements we are implementing.

[56] Issuing entity is defined in Item 1101(f) of Regulation AB [17 CFR 229.1101(f)] as the trust or other entity created at the direction of the sponsor or depositor that owns or holds the pool assets and in whose name the asset-backed securities supported or serviced by the pool assets are issued.

[57] *See* Section 943(2) of the Act.

[58] We noted that if the ABS were offered in a registered transaction, an investor may be able to locate additional detailed information. For instance, in the 2010 ABS Proposing Release, we proposed that issuers be required to provide loan-level disclosure of repurchase requests on an ongoing basis. If the proposal is adopted, then an issuer would be required to indicate whether a particular asset has been repurchased from the pool with each periodic report on a Form 10–D. If the asset has been repurchased, then the registrant would have to indicate whether a notice of repurchase has been received, the date the asset was repurchased, the name of the repurchaser and the reason for the repurchase. That proposal remains outstanding. *See* previously proposed Item 1(i) of Schedule L–D [Item 1121A of Regulation AB] in the 2010 ABS Proposing Release.

disclosure about the reasons why repurchase or replacement is pending.[59] Lastly, we proposed that the table include totals by asset class for columns that require numbers of assets and principal amounts.[60]

(b) Comments on the Proposed Rule

Comments on this aspect of the proposal were mixed. We received several comments on the form and the content of the table. Four commentators expressed general support that the proposed rule would implement the statutory requirements.[61] Some commentators suggested that we only require reporting where the repurchase obligation is tied to representations and warranties regarding the underwriting criteria.[62] Another commentator remarked that while repurchase requests occur for many reasons, they serve as a useful benchmark to identify loans with potential problems, such as early payment defaults, incorrect loan information, fraud problems, impermissible adverse selection procedures, or paperwork deficiencies.[63]

Several commentators also requested that demands be limited to those that comport with the procedures specified in the transaction documents.[64] One commentator noted that its investor members believe that existing transaction agreements include overly restrictive thresholds for recognizing bona fide repurchase demands, and noted that even where the data may be incomplete, demands that were not made in accordance with the relevant transaction documents would provide directional information as to the responsiveness of securitizers and originators of assets as well as identify originators with a history of underwriting deficiencies.[65]

Comments regarding the proposal to provide repurchase history for an initial five-year look back period were mixed. Several commentators were generally supportive of an initial look back period.[66] Two commentators noted that the requirement should apply regardless of whether the ABS is outstanding at the end of the reporting period.[67] Several others did not support an initial look back period and requested prospective application only.[68] Several commentators noted issues with historical information, such as lack of systems to capture the data, the change in underwriting standards since the housing crisis, misperceptions that may arise from analyzing fragmented data, and the ability to obtain the data from other transaction parties including that certain transaction parties may no longer exist.[69] We also received comment letters suggesting that a three- or five-year look back period would be appropriate for ongoing periodic disclosures.[70]

Several commentators requested that a securitizer should report activity for different asset classes in separate reports, instead of including the activity for all asset classes in which the securitizer has issued ABS in a single report, as proposed.[71] One commentator acknowledged that the result of this suggested change would be that some securitizers may be required to file more than one report, but its members believed reports by asset class would produce more consistent reports that are more useful to investors in evaluating particular offerings.[72]

Most commentators generally supported disclosure of the name of the asset originator.[73] A few commentators suggested that disclosure should only be required if the number of assets or amounts related to a particular originator exceeds a certain de minimis amount of the asset pool.[74] Another commentator requested that instead of listing all issuing entities, it be allowed to aggregate the data by seller of the loan and noted that the GSEs have hundreds of thousands of individual GSE securities outstanding; therefore, a listing by individual issuing entity would likely result in extremely unwieldy and disjointed disclosures.[75]

We also received several comments regarding revisions to the columns in the table in order to provide more standardized disclosures. Generally, commentators requested more standardization regarding demands that were pending and not repurchased or replaced.[76] One commentator also strongly recommended that whether, and to what extent detail is provided, should be left to the judgment of each individual securitizer, rather than mandated.[77] Other commentators requested we specifically require more narrative disclosure about the information presented in the table.[78]

(c) Final Rule

After considering the comments, we are adopting the table substantially as proposed, with some modifications to the format of the table. We are also adopting modifications to the filing requirement for the initial disclosures and to the filing requirements for periodic disclosures. We continue to believe that Section 943(2) requires historical disclosures about a securitizer's repurchase history, in order to give investors a clearer sense of potential problems with originators' underwriting practices, but as we recognized in the Proposing Release, and as commentators stated, securitizers may not have all of the information readily available. Therefore, we have tailored the final amendments to address many of the concerns expressed by the commentators that we believe are consistent with the purposes of Section 943.

[59] For example, the securitizer would indicate by footnote if pursuant to the terms of a transaction agreement, assets have not been repurchased or replaced pending the expiration of a cure period.

[60] *See* letter from Association of Mortgage Investors on the 2010 ABS Proposing Release (requesting that disclosure of information regarding claims made and satisfied under representation and warranties provisions of the transaction documents be broken down by securitization and then aggregated).

[61] *See* letters from ICI, Levin, Metlife, and SIFMA (investor members).

[62] *See e.g.,* letters from ASF, BOA, GSEs, Kutak, NABL, MHFA, and NCHSA.

[63] *See* letter from Levin.

[64] *See e.g.,* letters from ABA, American Bankers Association and ABA Securities Association (ABASA), American Financial Services Association (AFSA), ASF, BOA, Commercial Real Estate Finance Council (CREFC), Financial Services Roundtable (Roundtable), SIFMA and Wells Fargo Bank (Wells) (effectively excluding investor demands upon a trustee if not provided for in the transaction agreements). *See also* fn. 14.

[65] *See* letter from SIFMA.

[66] *See e.g.,* letters from Association of Financial Guaranty Insurers (AFGI), CFRL, Metlife, MBIA Inc. (MBIA), and SIFMA.

[67] *See* letters from Metlife and SIFMA.

[68] *See e.g.,* letters from ABA, ABASA, AFSA, ASF, BOA, Community Mortgage Banking Project (CMBP), CREFC, GSEs, Kutak, MBA, NABL, Roundtable, and Wells. In addition, three commentators suggested that the statute did not clearly require historical information. *See* letters from ABA, ABASA and GSEs.

[69] *See e.g.,* letters from ABA, ABASA, BOA, CREFC, GSEs, Kutak, MBA, Roundtable and Wells.

[70] *See e.g.,* letters from AFSA, ASF, Metlife and SIFMA.

[71] *See e.g.,* letters from ABA, ABASA, AFSA, ASF, BOA, CREFC, Roundtable, and SIFMA.

[72] *See* letter from SIFMA.

[73] *See e.g.,* letters from AFGI, CFRL, CMBP, MBIA and Metlife.

[74] *See e.g.,* letters from GSEs, Kutak, and SIFMA. In addition, SIFMA noted that to the extent that an originator is no longer in existence, the securitizer should have the option of not providing the information related to such originator.

[75] *See* letter from GSEs.

[76] *See e.g.,* letters from ASF, CMBP, Metlife and SIFMA (suggesting that additional columns should be added to the table to make clear which demand requests have not been resolved and are subject of arbitration, litigation or negotiation). *See also* letters from ABA, BOA and Roundtable (suggesting that standardized categories of information would better reflect the repurchase request and resolution process so that investors may more easily compare information presented in the table than if it were presented in footnotes only).

[77] *See* letter from CREFC.

[78] *See e.g.,* letters from CFRL and Metlife.

As proposed, we are requiring disclosure in the table with respect to any Exchange Act-ABS where the underlying transaction agreements contain a covenant to repurchase or replace an underlying asset for breach of a representation or warranty. We are not limiting the disclosure requirement to representations and warranties concerning underwriting standards, as suggested by some commentators [79] because as discussed above, covenants may require repurchase if the underlying asset does not meet other types of representations and warranties, such as applicable laws or fraud, which could also be indicative of underwriting deficiencies.[80] We are also revising the text of the regulation to refer to assets "securitized" by a securitizer instead of "originated and transferred" as proposed to address commentators concerns as described above.[81]

After considering the comments received, we are adopting additions to the table in order to provide better disclosures about the demand, repurchase and replacement history so that investors may identify asset originators with clear underwriting deficiencies.

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[79] *See e.g.,* letters from ABA, ABASA, AFSA, ASF, BOA, CREFC, Roundtable, SIFMA and Wells.

[80] *See* Section I. *See also* letter from Levin (noting repurchase requests may occur for early payment defaults, incorrect loan information, fraud, impermissible adverse selection procedures and paperwork deficiencies).

[81] *See e.g.,* letters from ASF, BOA, GSEs, MBA and SIFMA (generally noting that the requirement should apply solely to Fannie Mae or Freddie Mac and not the institution transferring loans for securitization by Fannie Mae or Freddie Mac. *See also* Section II.A.2. regarding the definition of securitizer for purposes of Rule 15Ga–1.

Name of Issuing Entity	Check if Registered	Name of Originator	Total Assets in ABS by Originator			Assets That Were Subject of Demand			Assets That Were Repurchased or Replaced			Assets Pending Repurchase or Replacement (within cure period)			Demand in Dispute			Demand Withdrawn			Demand Rejected		
			(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	(t)	(u)	(v)	(w)	(x)
Asset Class X																							
Issuing Entity A CIK #	X	Originator 1																					
		Originator 2																					
Total			#	$		#	$		#	$		#	$		#	$		#	$		#	$	
Asset Class Y																							
Issuing Entity B		Originator 3																					
Total			#	$		#	$		#	$		#	$		#	$		#	$		#	$	
Total			#	$		#	$		#	$		#	$		#	$		#	$		#	$	

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First, the final rule requires, as proposed, that a securitizer disclose the asset class and group the information in the table by asset class (column (a)).[82]

Second, the final rule requires, as proposed, that the securitizer disclose the names of the issuing entities[83] of the ABS and list the issuing entities in order of the date of formation (column (a)).[84] In addition, we are adding an instruction to clarify that the activity should include all issuing entities that had securities outstanding during the reporting period in order to provide investors with complete and comparable disclosure for the entire reporting period.[85]

Third, the final rule requires, as proposed, that the securitizer indicate by check mark whether the transaction was registered under the Securities Act of 1933 (column (b)) and provide the CIK number of the issuing entity (column (a)).[86]

Fourth, the final rule requires, as proposed, that securitizers disclose the name of the originator of the underlying assets. In addition, we are adopting an instruction to clarify that all originators must be disclosed.[87] As noted earlier, some commentators requested that we require only disclosure of originators that originated more than a de minimis amount of the assets within an issuing entity, or that were responsible for more than a de minimis number of repurchase requests.[88] We, however, believe that in order for the disclosures to meet the purpose of the statute to "identify asset originators with clear underwriting deficiencies," it must be comparable, and even de minimis amounts may in the aggregate over time create information gaps about an originators' repurchase history. In addition, originators with no repurchase request activity should be listed in the table also to provide comparable disclosures.

Fifth, the final rule requires new columns to disclose the number, outstanding principal balance and percentage by principal balance of the assets originated by each originator in the pool at the time of securitization for each issuing entity (columns (d) through (f)).[89] We were persuaded by one commentator's suggestion that the columns should be added in order to assist investors in placing the information on repurchase demands in the proper context.[90] This way, investors may be able to determine the concentration of each originators' assets in each securitized asset pool.

Sixth, we are adopting, as proposed, a requirement to disclose the number, outstanding principal balance and percentage by principal balance of assets that were subject of a demand to repurchase or replace for breach of representations and warranties (columns (g) through (i)), including investor demands upon a trustee.[91] As stated earlier, Section 943(2) requires disclosure of fulfilled and unfulfilled repurchase requests. We continue to believe that disclosure should not be limited to only those demands, repurchases and replacements made pursuant to the transaction agreement alone. Investors have demanded that trustees enforce repurchase covenants because transaction agreements do not typically contain a provision for an investor to directly make a repurchase demand.[92] Since Section 943(2) does not limit the required disclosures to those demands successfully made by the trustee, under our final rule, investor demands upon a trustee are required to be included in the table, irrespective of the trustee's determination to make a repurchase demand on a securitizer based on the investor request. As we discussed above, we recognize that initially a securitizer may not be able to obtain complete information from a trustee because it may not have established systems to track investor demands. To address this concern, we are adopting, substantially as proposed, a provision in Rule 15Ga–1 that a securitizer may include a footnote if the securitizer was unable to obtain all information with respect to investor demands upon a trustee that occurred prior to July 22, 2010 (the effective date of the Act) and state that the disclosure does not contain investor demands upon a trustee made prior to July 22, 2010.[93]

The Act does not specify when the disclosure should first be provided, or the frequency with which it should be updated. We are adopting a three-year look back period for the initial disclosures, instead of a five-year look back period, as proposed. We believe a three-year look back period for the initial disclosures strikes the right balance between the disclosure benefits to investors, availability of historical information and compliance costs to securitizers.[94] Commentators suggested that periods from three to five years would provide a sufficient period of data for investors to make comparisons in order to identify underwriting deficiencies.[95] However, we also recognize other commentators' suggestions that the rule apply only prospectively because of concerns regarding the availability and

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[82] Rule 15Ga–1(a)(1)(i). As noted earlier, some commentators requested that a securitizer should report activity for different asset classes in separate reports, instead of including the activity for all asset classes in a single report. *See e.g.,* letters from ABA, ASF, BOA, CMBP, Metlife, Roundtable and SIFMA. As discussed in Section II.A.2., both sponsor and depositors fall within the definition of securitizer and thus are obligated under Section 943 and the new rule to provide the disclosures. The final rule addresses commentators' requests because sponsors typically securitize assets of different classes through separate affiliated depositors for each asset class. For example, if a sponsor has two different affiliated depositors, one that securitizes auto loans and the other credit cards, the sponsor's reporting obligation would be satisfied if each of the depositors filed the required disclosures with respect to all of their respective trusts. Thus, a sponsor would not have to separately provide and file the same disclosures, if they were filed by an affiliated depositor of the same transaction. We expect users will find reports disclosing the information by asset class useful in making comparisons regarding originators of the same asset class.

[83] 17 CFR 229.1101(f).

[84] Rule 15Ga–1(a)(1)(ii). In a stand-alone trust structure, usually backed by a pool of amortizing loans, a separate issuing entity is created for each issuance of ABS backed by a specific pool of assets. The date of formation of the issuing entity would most likely be at the same time of the issuance of the ABS. In a securitization using a master trust structure, the ABS transaction contemplates future issuances of ABS by the same issuing entity, backed by the same, but expanded, asset pool. Master trusts would organize the data using the date the issuing entity was formed, which would most likely be earlier than the date of the most recent issuance of securities.

[85] *See e.g.,* letters from Metlife and SIFMA (suggesting that disclosure should include any deals that were outstanding at any point in time during a reporting period).

[86] Rule 15Ga–1(a)(1)(iii).

[87] Rule 15Ga–S1(a)(1)(iv). We are adding the instruction to clarify that all originators are required to be included. *See generally,* letters from AFGI, CFRL, CMBP, MBIA and Metlife (noting that without the disclosure requirement of the originator, it may be more difficult for investors to make fair comparisons regarding the repurchase history, including which originators are most likely to be subject to repurchase or replacement requests and which are most likely to honor such requests when made).

[88] *See e.g.,* letters from Kutak, GSEs and SIFMA.

[89] Rule 15Ga–1(a)(1)(v).

[90] *See* letter from CMBP.

[91] Rule 15Ga–1(a)(1)(vi).

[92] *See* Jody Shenn, "BNY Won't Investigate Countrywide Mortgage Securities," *Bloomberg Business Week* (Sep. 13, 2010) available at *http://www.businessweek.com/news/2010-09-13/bny-won-t-investigate-countrywide-mortgage-securities.html* (noting the difficulties that investors are facing to enforce contracts with respect to repurchase demands) and Al Yoon, "NY Fed joins other investors on loan repurchase bid," Reuters (Aug. 4, 2010) available at *http://www.reuters.com/article/idUSTRE6736DZ20100804* (noting that investors have been frustrated with trustees and servicers and are banding together to force trustees to act on repurchase requests). *See also* Kevin J. Buckley, "Securitization Trustee Issues," The Journal of Structured Finance (Summer 2010) (discussing investors demands upon trustees to enforce sellers' repurchase obligations).

[93] Rule 15Ga–1(a)(2). *See also* Section 4 of the Act.

[94] *See also* discussion in Section II.A.5.c.

[95] *See e.g.,* letters from AFSA, ASF, Metlife and SIFMA.

comparability of historical information relating to repurchase demands (including investor demands upon a trustee).[96] In particular, older data may be very hard or impossible for securitizers to obtain if they have not had systems in place to track the data required for the required disclosures, which may lead to less comparable data. In order to balance the goals of the Act with commentators' concerns that all securitizers may not be able to provide complete information, we are also adopting a provision in Rule 15Ga–1 [97] to permit a securitizer to omit information that is unknown or not reasonably available to the securitizer without unreasonable effort or expense similar to Exchange Act Rule 12b–21.[98] Under the final rule, a securitizer must provide the information it possesses or it can acquire without unreasonable effort or expense, and the securitizer must include a statement describing why unreasonable effort or expense would be involved in obtaining the omitted information.

Seventh, we are adopting, as proposed, a requirement to disclose the number, outstanding principal balance and percentage by principal balance of assets that were repurchased or replaced for breach of representation and warranties (columns (j) through (l)).[99]

Eighth, we are persuaded by commentators' suggestions that we should clarify our proposal for disclosures related to pending purchase requests in order to better reflect the repurchase request and resolution process in a comparable format, as opposed to if the information were presented in footnotes.[100] As a result, we are adopting requirements to present more specific information about the pending nature of the demand. We are requiring disclosure of the number, outstanding principal balance and percentage by principal balance of assets that are pending repurchase or replacement specifically due to the expiration of a cure period (columns (m) through (o))[101] and where the demand is currently in dispute (columns (p) through (r)).[102] If the cure period has expired, and the demand is not in dispute, the asset should be reflected in the "demand rejected" columns described below.[103]

Ninth, we are also persuaded by commentator's suggestions that we should clarify our proposal for disclosures related to unfulfilled repurchase requests.[104] As a result, we are adopting requirements to present the number, outstanding principal balance and percentage by principal balance of assets that were not repurchased or replaced because the demand was withdrawn (columns (s) through (u)) [105] and because the demand was rejected (columns (v) through(x)).[106]

Tenth, we are addressing commentators' requests [107] that we clarify the disclosures required for the amount of outstanding principal balance and percentage by principal balance by adopting an instruction to specify that outstanding principal balance shall be the principal balance as of the reporting period end date and the percentage by principal balance shall be the outstanding principal balance of the asset(s) subject to the repurchase request(s) divided by the outstanding principal balance of the asset pool as of the reporting period end date.

Eleventh, we are adopting, with slight modification from our proposal, a requirement that the securitizer provide totals by each issuing entity reported, and for all issuing entities for columns that require number of assets and principal balance amounts.[108]

Finally, the rule requires securitizers to include narrative disclosure in order to further explain the information presented in the table, if applicable. We are revising the proposed instruction to clarify that securitizers should indicate by footnote and provide narrative disclosure in order to further explain information presented in all columns of the table, as appropriate.[109] As noted above, we received several comments requesting that we expressly require certain disclosures to be provided by footnote or accompanying narrative disclosure.[110] Some commentators also requested confirmation that providing narrative information would not jeopardize an issuer's reliance upon a private offering exemptions or safe harbors.[111] As we noted in the Proposing Release, filing proposed Form ABS–15G would not foreclose the reliance of an issuer on the private offering exemption in the Securities Act of 1933 and the safe harbor for offshore transactions from the registration provisions in Section 5.[112]

5. Form ABS–15G

(a) Proposed Form ABS–15G

As we discussed in the Proposing Release, the disclosures required by Rule 15Ga–1 do not fit neatly within the framework of existing Securities Act and Exchange Act Forms because those forms relate to registered ABS transactions, and unregistered ABS transactions are not required to file those forms.[113] Therefore, we proposed new Form ABS–15G to be filed on EDGAR so that parties obligated to make disclosures related to Exchange Act-ABS under Rule 15Ga–1 could file the disclosures on EDGAR. We proposed that a securitizer provide the repurchase history for the last five years by filing Form ABS–15G at the time a securitizer first offers an Exchange Act-ABS or organizes and initiates an offering of Exchange Act-ABS, registered or unregistered, after the effective date of the new rules, as adopted. In addition, we proposed that going forward, a securitizer would provide the disclosures for all outstanding Exchange Act-ABS on a monthly basis by filing Form ABS–15G within 15 calendar days after the end of each calendar month. We proposed continued periodic reporting through and until the last payment on the last Exchange Act-ABS outstanding held by a non-affiliate that was issued by the securitizer or an affiliate. We also proposed that securitizers file Form ABS–15G to provide a notice to terminate the reporting obligation and disclose the

[96] *See e.g.,* letters from ABA, ABASA, AFSA, ASF, BOA, CMBP, CREFC, GSEs, Kutak, MBA, NABL, Roundtable, and Wells.

[97] Rule 15Ga–1(a)(2). *See e.g.,* letters from AFSA, ASF, BOA, CREFC, Roundtable, and SIFMA.

[98] 17 CFR 240.12b–21.

[99] Rule 15Ga–1(a)(1)(vii).

[100] *See e.g.,* letters from ABA, ASF, BOA, CMBP, Metlife, Roundtable, and SIFMA.

[101] Rule 15Ga–1(a)(1)(viii). *See e.g.,* letters from BOA, Roundtable, and SIFMA.

[102] Rule 15Ga–1(a)(1)(ix). *See e.g.,* letters from ASF, CMBP, Metlife, and SIFMA.

[103] *See e.g.,* letter from SIFMA.

[104] *See* fn. 100.

[105] Rule 15Ga–1(a)(1)(x). *See e.g.,* letters from CMBP, Roundtable and SIFMA.

[106] Rule 15Ga–1(a)(1)(xi). *See e.g.,* letters from BOA, Roundtable and SIFMA.

[107] *See e.g.,* letters from AFSA (suggesting that a method of calculation should be prescribed or disclosed in order to provide comparable data) and Roundtable (noting that the percentage by principal balance is not straightforward, given that the pool size will vary over time).

[108] Rule 15Ga–1(a)(1)(xii). We had proposed to require totals by asset class only.

[109] We had urged footnote disclosure for the entire table; however, we had specifically proposed an instruction with respect to repurchase requests that were pending.

[110] *See e.g.,* letters from SIFMA (requesting disclosure of the party responsible for the breach, exclusion of originator no longer in existence, and notation of assets subject to multiple repurchase requests); Metlife (requesting disclosure of specific violations of representations and warranties, status of the claims and the reason for denial); and ABA (requesting disclosure of whether a demand was resolved through an indemnity payment or purchase price adjustment but not a repurchase).

[111] *See e.g.,* letters from ABA, ASF, BOA and SIFMA.

[112] 15 U.S.C. 77e.

[113] However, a portion of the information required by Rule 15Ga–1 would be required in a registration statement and in periodic reports as we discuss further below.

date the last payment was made. Consistent with current filing practices for other ABS forms,[114] for purposes of making the disclosures required by Rule 15Ga-1, we proposed that Form ABS–15G be signed by the senior officer of the securitizer in charge of the securitization.

(b) Comments on the Proposed Rule

Comments received on new Form ABS–15G were mixed. Two commentators requested that disclosures be provided on currently available forms because Section 943 does not expressly require, nor create an obligation to file on a new form.[115] One commentator suggested that the disclosure requirements apply only to an initial offering of an Exchange Act-ABS, and not to ongoing reporting because they believe that ongoing information regarding repurchase activity will provide little benefit to investors who have already made the decision to purchase a particular ABS.[116] However, another commentator stated that filing Form ABS–15G on EDGAR would make the disclosures readily available to all investors and the public and would ensure that the data is maintained, easy to find, and cost free for investors as well as regulators and policymakers.[117]

Several commentators suggested that the trigger for the initial filing not be tied to when a securitizer completes its first offering after the effective date of the new rule.[118] Of those, two commentators suggested that the Form ABS–15G filings be required on a certain date after the effective date of the new rules.[119] In support of the proposed trigger, one commentator noted that the prospect of a new issuance by many securitizers may be delayed for a long period following the effective date of the final rules. As a result, investors and insurers of outstanding ABS would be deprived of the information at a time when representation and warranty repurchase claims and disputes related to residential mortgages, in particular, are increasing.[120] Several commentators requested a long implementation period in order to set up systems and gather historical data.[121] Three commentators proposed alternative filing rules suggesting we require securitizers to file a single Form ABS–15G if no demands are received.[122] Three suggested that, thereafter, an annual confirmation could be filed to confirm that no demands have occurred since the filing of the previous Form ABS–15G.[123]

Comments received on reporting frequency of ongoing reporting were mixed, with some supporting monthly,[124] quarterly,[125] and annual [126] ongoing reporting. Several commentators suggested that reporting should only be required if any repurchase activity has occurred.[127] The preferred due date of the filing ranged from 30 days to 90 days after the end of the period.[128] In addition, some commentators requested that the table be presented in periodic intervals rather than on a cumulative basis.[129]

(c) Final Form ABS–15G

We are adopting new Form ABS–15G so that securitizers may provide the disclosures required by new Rule 15Ga–1. As noted above, the Act does not specify when the disclosure should first be provided, or the frequency with which it should be updated. As discussed above in Section III.A.4.c., we are adopting a requirement to file initial disclosures required by new Rule 15Ga–1 for the last three years. However, we were persuaded by commentators' concerns that our proposal to trigger the filing requirement of Form ABS–15G at the time a securitizer first offers an Exchange Act-ABS or organizes and initiates an offering of Exchange Act-ABS, registered or unregistered, after the effective date of the new rules could deny market participants of information about demand, repurchase and replacement activity.[130] Further, delaying the required disclosure of information about originators could impair investors' ability to compare issuing entities and the originators of the underlying pools. Therefore, we are adopting a requirement that any securitizer that issued an Exchange Act-ABS during the three-year period ended December 31, 2011, that includes a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, would be required to file on new Form ABS–15G the disclosures required by new Rule 15Ga–1, if the securitizer has Exchange Act-ABS that had such a covenant to repurchase or replace outstanding held by non-affiliates as of December 31, 2011.[131] If a securitizer has no activity to report for the three-year period, then it may indicate that by checking the appropriate box on Form ABS–15G. The initial Form ABS–15G will be required to be filed no later than 45 days after the end of the three-year period, or on February 14, 2012.

[114] The Form 10–K report for ABS issuers must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing. *See* General Instruction J.3. of Form 10–K [17 CFR 249.310]. In addition, the certifications for ABS issuers that are required under Section 302 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7241] must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor if the depositor is signing the Form 10–K report, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer if the servicer is signing the Form 10–K report. In our 2010 ABS Proposing Release, we also proposed to require that the senior officer in charge of securitization of the depositor sign the registration statement (either on Form SF–1 or Form SF–3) for ABS issuers. *See* Section II.F. of the 2010 ABS Proposing Release.

[115] *See* letters from AFSA (suggesting that securitizers be given a choice of providing the information either on new Form ABS–15G or by presenting the disclosure in related offering documents) and ASF (noting that disclosure would be more useful to investors in an offering document).

[116] *See* letter from AFSA (but also noting that frequent securitizers who sponsor multiple asset classes would find it easier to make a single filing on Form ABS–15G rather than in a series of prospectuses).

[117] *See* letter from Levin.

[118] *See e.g.,* letters from AFGI, AFSA, ASF, MBIA, Metlife and SIFMA.

[119] *See* Metlife (suggesting 90 days after effective date), and ASF (suggesting no earlier than one year after effective date).

[120] *See* letter from AFGI. Metlife also requested that sponsors with significant outstanding securitizations should file Form ABS–15G in order to enable fair comparisons for investors.

[121] *See e.g.,* letters from ASF, BOA, GSEs, MBA and SIFMA. *See* further discussion about the transition period below in Section III.

[122] *See* letters from ABA, ASF and SIFMA. In addition, two other commentators suggested that only a statement or checkbox be provided to confirm no activity to report if periodic reporting would still be required. *See* letters from AFSA and NABL.

[123] *See* letters from ABA, ASF and SIFMA.

[124] *See* letters from AFGI and ICI (generally supporting monthly reporting), and Metlife (noting that monthly reporting would be adequate and that a frequency longer than quarterly would fail to provide investors with information about underwriting deterioration).

[125] Some commentators noted that the repurchase process may move slowly, and monthly reporting may not be a useful interval for investors. In particular, residential mortgage ABS typically provide for cure periods of 60–90 days. Further, commentators argued that monthly reporting of no change in activity would be burdensome. *See e.g.,* letters from ABA, ABASA, ASF, CREFC, Roundtable and SIFMA. Other commentators generally supported a quarterly reporting interval. *See* letters from BOA, CMBP, GSEs, MBA and NYC.

[126] *See* letters from AFSA, GSEs, Kutak, NABL and NYC (generally supporting an annual reporting interval).

[127] *See e.g.,* letters from ABA, AFSA, BOA, NABL, Roundtable and SIFMA.

[128] *See* letters from ABA and NABL (suggesting the Form ABS–15G be required 45 days after period end). *See also* letters from AFSA, CREFC, NYC and SIFMA.

[129] *See* letter from Metlife (noting that repurchase activity in more recent windows of time would provide useful information on trends in asset quality). *See also* letter from ABA (noting that cumulative reporting may make the information unwieldy and that information about earlier periods would be available on the SEC Web site).

[130] *See e.g.,* letters from AFGI, MBIA, Metlife and SIFMA.

[131] Rule 15Ga–1(c).

As we discussed in the Proposing Release, while we believe that Congress intended to provide investors with historical information about repurchase activity so that investors may identify asset originators with clear underwriting deficiencies, we also recognized that securitizers may not have historically collected the information required under the new rules. We are requiring that the initial disclosures be limited to the last three years of activity, rather than five years as proposed, in order to balance the requirements of Section 943 and the burden on securitizers to provide the historical disclosures. As we note above, we are also adopting certain provisions in new Rule 15Ga–1 in order to address commentators' concerns regarding the production of historical information.[132] On balance, we believe that the new rule addresses the Act's requirement and investors' need for historical disclosures in order to identify asset originators with clear underwriting deficiencies, while also addressing securitizers' concerns with the challenges of producing historical information and related liability.

We are also persuaded by commentators' views regarding the frequency of reporting and, therefore, we are adopting a requirement for securitizers to provide periodic disclosures of demand, repurchase and replacement history on a quarterly basis [133] by filing Form ABS–15G on EDGAR within 45 days of the end of the calendar quarter.[134] In the Proposing Release, we noted that most transaction agreements provide for monthly distributions, and also provide for reporting on a monthly basis. We were persuaded, however, by commentators' suggestions that demand, repurchase and replacement history could be presented in less frequent intervals while still providing meaningful disclosure. For instance, as commentators noted, the repurchase process may move slowly, and monthly reporting may not be a useful interval for investors if no activity typically occurs during such periods.[135] We also had proposed that ongoing disclosures be presented on a cumulative basis, for each issuing entity. Instead, we are adopting, as suggested by commentators, a requirement for securitizers to present only the information for the quarter in their quarterly filing because cumulative data may be cumbersome to manipulate and not be as useful to identify recent trends as information presented on a quarter by quarter basis.[136] In addition, as noted in the Proposing Release, we recognize that demands may have been made prior to the beginning of the initial look back period and that resolution may have occurred after that date. We are also adopting two instructions to clarify that a securitizer would need to disclose activity during the reporting period, even if it relates to assets that were subject to demands made prior to the beginning of the reporting period,[137] including if they were made prior to the beginning of the three-year look back period. Securitizers should include footnote disclosure to clarify, if applicable.

Further, to address commentators' concerns that certain issuers who include a covenant to repurchase or replace pool assets in their transaction agreements, but who are never presented with a repurchase demand would be required to make disclosure, we are adopting a provision, suggested by commentators,[138] that in lieu of providing the table, a securitizer may check a box indicating that it had no demands during the quarter.[139] Thereafter, a securitizer would have suspended its obligation to report on a quarterly basis, until the time when a demand occurs during the quarterly reporting period.[140] However, the securitizer would be required to file an annual Form ABS–15G to confirm that no demands were made during the entire year.[141] If demands were made during a calendar quarter, the securitizer would have to report that activity for the calendar quarter by filing Form ABS–15G within 45 days of the end of the calendar quarter. The new rule would also apply to new securitizers where the new securitizer would have to file Form ABS–15G for the calendar quarter in which it issued Exchange Act-ABS.[142] If no demand activity occurred, it could check the box indicating that no activity occurred and thereafter, would not have to file Form ABS–15G on a quarterly basis until it had demand history to report. A new securitizer would still be required to file an annual Form ABS–15G to indicate it had no demand activity if true.

We are also adopting, as proposed, the ability to terminate the reporting obligation. The new rule allows a securitizer to terminate its reporting obligation when the last payment is made on the last Exchange Act-ABS outstanding held by a non-affiliate that was issued by the securitizer or an affiliate.

Lastly, as discussed above, in an effort to limit the cost and burden on municipal securitizers subject to the new rule as well as allow issuers to provide the Rule 15Ga–1 disclosures for investors in the same location as other disclosures regarding municipal securities, we will permit municipal securitizers to satisfy the filing obligation by filing the information required by new Rule 15Ga–1 on EMMA.[143]

B. Disclosure Requirements in Regulation AB Transactions

1. Proposed Amendments to Regulation AB

We re-proposed some of our 2010 ABS proposals for Regulation AB with respect to disclosures regarding sponsors in prospectuses and with respect to disclosures about the asset pool in periodic reports, so that issuers would be required to include the disclosures in the same format as

[132] *See* Section II.A.4.c., Rule 15Ga–1(c)(1) and Item 1.01 of Form ABS–15G.

[133] *See e.g.,* letters from ABA, ABASA, ASF, BOA, CMBP, CREFC, GSEs, MBA, Metlife, NYC, Roundtable and SIFMA.

[134] *See* Rule 15Ga–1(c)(2) and Item 1.02 of Form ABS–15G. *See e.g.,* letters from ABA and NABL.

[135] *See* fn. 125. Also, as we discuss further below, we are adopting amendments to Regulation AB that would require disclosure of demand, repurchase and replacement history with respect to a particular issuing entity to be provided in distribution reports, which may occur more frequently than quarterly. For example, if a Form 10–D is due to be filed monthly for a particular issuing entity, then demand, repurchase and replacement history of that particular ABS would have to be reported monthly. *See e.g.,* letter from SIFMA.

[136] Rule 15Ga–1(c)(2). *See* letters from ABA (suggesting that only updated information be provided) and Metlife (noting that repurchase activity in more recent windows of time would provide useful information on trends in asset quality). In addition, investors may locate information about prior periods on our website and as we discuss below in Section II.B.3., we are amending Regulation AB to require cumulative repurchase history for a three-year look back period in prospectuses. We also highlight the instruction to Rule 15Ga–1(a)(1)(ii) which specifies that the table should include all issuing entities with activity during the quarterly reporting period, including those that are no longer outstanding at the end of the calendar quarter.

[137] *See* instructions to paragraph (a)(1) and (c)(1) of Rule 15Ga–1.

[138] *See e.g.,* letters from ABA and ASF.

[139] Rule 15Ga–1(c)(2)(i).

[140] If a securitizer had no activity during the initial three-year period, and indicated that by checking the box on the initial filing, then its obligation to file periodic filings would be suspended. *See* Rule 15Ga–1(c)(2)(i).

[141] Rule 15Ga–1(c)(2)(ii).

[142] Rule 15Ga–1(c)(2)(i). We had proposed that the disclosure requirements would be triggered with an offering of Exchange Act-ABS. Under the final rule, a new securitizer would not be required to make the initial three-year look back filing because it would not have any Exchange Act-ABS outstanding as of December 31, 2011 and thus, would not have any historical repurchase activity to report. Thus, a new securitizer is only required to provide information on a prospective basis.

[143] Rule 314 of Regulation S–T.

required by proposed Rule 15Ga–1(a).[144] We proposed that issuers of Reg AB–ABS provide disclosures in the same format as proposed Rule 15Ga–1(a) within a prospectus and within ongoing reports on Form 10–D. For prospectuses, we proposed that if the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, then issuers would be required to provide in the body of the prospectus disclosure of a sponsor's repurchase demand and repurchase and replacement history for the last three years, pursuant to the format proscribed in Rule 15Ga–1(a). In addition, we proposed to limit the disclosure required in the prospectus to repurchase history for the same asset class as the securities being registered. Our proposal did not include a materiality threshold, as Section 943 includes no such standard. We proposed that a reference be included in the prospectus to the Form ABS–15G filings made by the securitizer (i.e., sponsor) of the transaction and disclose the CIK number of the securitizer so that investors may easily locate Form ABS–15G filings on EDGAR.

We also proposed to amend Item 1121 of Regulation AB so that issuers would be required to disclose the demand, repurchase and replacement history regarding the assets in the pool in the format prescribed by new Rule 15Ga–1(a) in Form 10–D. In order to conform the requirements to proposed Rule 15Ga–1, we also did not include a materiality threshold. We proposed that the Form 10–D include a reference to the Form ABS–15G filings made by the securitizer of the transaction and disclose the CIK number of the securitizer so that investors may easily locate Form ABS–15G filings on EDGAR. As we noted in the Proposing Release, providing repurchase history disclosure in prospectuses and in Form 10–D would be independent from and would not alleviate a securitizer's obligation to disclose ongoing information for all of their transactions as required by new Rule 15Ga–1.

[144] In the 2010 ABS Proposing Release, we also proposed to amend Item 1110(c) of Regulation AB to require originators (of greater than 20% of the assets underlying the pool) to disclose the amount, if material, of publicly securitized assets originated or sold by the sponsor that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the prior three years pursuant to the transaction agreements on a pool by pool basis as well as the percentage of that amount that were not then repurchased or replaced by the sponsor. That proposal remains outstanding.

2. Comments Received on the Proposal

Commentators generally supported our proposal to have Regulation AB disclosures in the same format as required under proposed Rule 15Ga–1 to lessen the burden on securitizers and permit investors to more readily review and compare the data.[145] However, we also received three comment letters suggesting that Regulation AB should be subject to a materiality threshold.[146]

One commentator suggested that the information presented in the prospectus should be presented as of a date not later than 135 days prior to the date of first use of the prospectus.[147] We received one comment letter which stated that monthly reporting is appropriate at the issuing entity level where most ABS are making distributions to investors on a monthly basis and monthly reporting is tied directly to that schedule.[148]

Five commentators supported a different liability standard for historical data [149] and some suggested that we adopt implementation in a fashion similar as we had provided for static pool implementation.[150]

3. Final Rule

We are adopting the amendment to Item 1104 substantially as proposed with a few modifications in response to comments received.[151] We are revising the text of the regulation to refer to assets "securitized" by a securitizer instead of "originated and transferred", as proposed, to address commentators concerns and to conform to Rule 15Ga–1 as described above in Section II.A.2. Also, as proposed, tabular disclosure is required in prospectuses in the format required by new Rule 15Ga–1 for the last three years.[152] We are also adopting, as proposed, a requirement that issuers include a reference to the CIK number of the securitizer. In addition, and as suggested by a commentator,[153] we are adopting a requirement that the information presented in the prospectus shall not be more than 135 days old.[154] This provision should reduce the burdens on securitizers because it is consistent with the disclosure conventions for static pool and interim financial information as well as the quarterly filing deadlines we are adopting today for Form ABS–15G.[155] It also should not diminish the quality of the information provided to investors because, as we discuss above, commentators stated that the repurchase process is typically slow and quarterly reporting is an appropriate interval to provide useful information about demand and repurchase activity.[156] In addition, information subsequent to the last quarterly reporting period may be available for a particular Exchange Act-ABS if it is required to report on Form 10–D on a more frequent basis than quarterly, such as monthly.

Finally, as we discuss above, commentators expressed significant concern about the ability to produce historical data to meet the requirements of Item 1104 and requested specific relief from liability for historical information.[157] We recognize that issuers may not have been collecting the necessary data for periods before the compliance date of the new rules and even if they had been collecting the necessary information, the information may not have been collected under processes and controls with a view toward disclosure in a prospectus. However, we believe that concerns regarding the availability of data on a going forward basis will not be applicable. Therefore, we are addressing commentators' concerns by phasing in the disclosure requirement. A prospectus filed in the first year after the compliance date, will be permitted to include a one-year look back period, and in the second year after the compliance date, a two-year look back period.[158] Prospectuses filed in the third

[145] *See* letters from Metlife and SIFMA.

[146] *See* letters from ASF, BOA and SIFMA.

[147] *See* letter from BOA.

[148] *See* letter from SIFMA.

[149] *See* letters from AFSA, ASF, BOA, Roundtable and SIFMA.

[150] *See* letters from AFSA, ABA, BOA and SIFMA (suggesting that information related to periods prior to the effective date or ABS issued prior to the effective date not be considered part of the prospectus or registration statement). *See also* Section III.B.4. of the 2004 ABS Adopting Release.

[151] Item 1104(e) of Regulation AB.

[152] Item 1104(e)(1) of Regulation AB. As we noted in the Proposing Release, we proposed that prospectuses include disclosure about the same asset class for a three-year look back period because information about other asset classes and information older than three years may make the size of the prospectus unwieldy and investors should have ready access to more current information. *See* fn. 57 of the Proposing Release.

[153] *See* letter from BOA.

[154] Item 1104(e)(3). For example, a prospectus dated May 12, 2012 could include information as of December 31, 2011 (the information would be 133 days old); however, because a quarterly report on Form ABS–15G for the period ending March 31, 2012, would be due on May 15, 2012 (45 days after quarter end), then a prospectus dated May 17, 2012 would need to provide disclosures as of March 31, 2012.

[155] *See, e.g.,* Item 1105 of Regulation AB (17 CFR 229.1105), Rule 3–01 of Regulation S–X (17 CFR 210.3–01) and Rule 3–12 of Regulation S–X (17 CFR 210.3–12).

[156] *See* fn. 125 and 135.

[157] *See e.g.* letters from AFSA, ASF, BOA, Roundtable and SIFMA.

[158] Therefore, prospectuses filed between February 14, 2012 and February 13, 2013 would be

year after the compliance date and thereafter must include the full three-year look back period.

We are also adopting the amendment to Item 1121, as proposed, so that investors will receive disclosures with their reports on Form 10–D about the demand, repurchase and replacement history with respect to a particular issuing entity.

C. Disclosure Requirements for NRSROs

1. Proposed New Rule 17g–7

We proposed to add new Exchange Act Rule 17g–7, which would implement Section 943(1) of the Act by requiring an NRSRO to make certain disclosures in any report accompanying a credit rating relating to an asset-backed security.[159] Specifically, in accordance with Section 943(1), Rule 17g–7 as proposed would require an NRSRO [160] to include, in such reports, a description of the representations, warranties and enforcement mechanisms available to investors and a description of how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.[161] As discussed above, the Act also amended the Exchange Act to include the definition of an "asset-backed security" and Section 943 of the Act references that definition.[162] Therefore, we proposed that under Rule 17g–7 an NRSRO must provide the disclosures with respect to any Exchange Act-ABS, whether or not the security is offered in a transaction registered with the Commission.

In the Proposing Release we noted that Section 943, by its terms, applies to any report accompanying a credit rating for an ABS transaction, regardless of when or in what context such reports and credit ratings are issued. Proposed Rule 17g–7 was intended to reflect the broad scope of this congressional mandate. In addition, we proposed a note to the new rule which would clarify that for the purposes of the proposed rule, a "credit rating" would include any expected or preliminary credit rating issued by an NRSRO.[163] We noted in the Proposing Release that in ABS transactions, pre-sale reports are typically issued by an NRSRO at the time the issuer commences the offering and typically include an expected or preliminary credit rating and a summary of the important features of a transaction. We also noted that disclosure at the time pre-sale reports are issued is particularly important to investors, since such reports provide them with important information prior to the point at which they make an investment decision.[164]

2. Comments Received on Proposed Rule

We received two comment letters expressing general support for the enhanced disclosure that the proposed Rule 17g–7 would require.[165] One commentator noted that it should facilitate an investor's understanding of available remedies for a breach and that the additional requirement for NRSROs to produce information regarding the representations, warranties and enforcement mechanisms available to investors in issuances of similar securities would further enhance the value of this information for investors by allowing them to readily compare various transactions involving the same asset class or similar asset class.[166]

Two commentators requested that the rule text be revised to refer exclusively to representations and warranties regarding the pool assets.[167] One commentator expressed its belief that Congress intended Section 943(1) to include those representations and warranties that an issuer makes about the underlying assets, not those concerning other aspects of the transaction, e.g., corporate or governance representations.[168]

We received several comments regarding the term "similar securities." Several commentators requested that we clarify or expressly define the term,[169] while one commentator suggested that we require all NRSROs (in collaboration with investors and other market participants) to agree on concepts of "similar securities." [170] On the other hand, one commentator argued that deciding whether one security is similar to another, and therefore deciding whether their terms are comparable, is ultimately a question of analytic judgment that should be left in the hands of the NRSRO.[171]

Some commentators urged us to allow NRSROs to provide the required disclosures by reference to a transaction's offering documents or other materials disclosed by the issuer or underwriter, primarily due to the anticipated length of the disclosures.[172] One commentator suggested as an alternative limiting the disclosure requirement to a summary of the provisions.[173] However, another commentator opposed allowing NRSROs to satisfy the proposed disclosure requirement by referring to prospectus disclosure, noting the enhanced utility to investors that would arise from placing the relevant disclosure in a ratings report alongside information about the representations,

permitted to include only one year of repurchase activity; prospectuses filed between February 14, 2013 and February 13, 2014 would be permitted to include only two years of repurchase activity. All prospectuses filed on or after February 14, 2014 would be required to include three years of repurchase activity. Investors may locate information for prior periods on Form ABS–15G.

[159] In June 2008, we proposed a new Rule 17g–7 that would have required an NRSRO to publish a report containing certain information each time the NRSRO published a credit rating for a structured finance product or, as an alternative, use ratings symbols for structured finance products that differentiated them from the credit ratings for other types of debt securities. *See Exchange Act Release No. 57967* (June 16, 2008), [73 FR 36212]. In November 2009, we announced that we were deferring consideration of action on that proposal and separately proposed a new Rule 17g–7 to require annual disclosure by NRSROs of certain information. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* SEC Release 34–61051 (November 23, 2009), [74 FR 63866]. Although we are adopting a new rule with the same rule number, that proposal remains outstanding.

[160] Current Item 1111(e) of Regulation AB [17 CFR 1111(e)] already requires issuers to disclose the representations and warranties related to the transaction in prospectuses. Additionally, in the 2010 ABS Proposing Release, the Commission proposed changes to this item to require a description of any representation and warranty relating to fraud in the origination of the assets, and a statement if there is no such representation or warranty.

[161] As discussed in the Proposing Release, we anticipate that one way an NRSRO could fulfill the requirement to describe how representations, warranties and enforcement mechanisms differ from those provided in similar securities would be to review previous issuances both on an initial and an ongoing basis in order to establish "benchmarks" for various types of securities and revise them as appropriate.

[162] *See* Section 3(a)(77) of the Exchange Act, as amended by the Act.

[163] As explained in the Proposing Release, we intend the term "preliminary credit rating" to include any rating, any range of ratings, or any other indications of a rating used prior to the assignment of an initial credit rating for a new issuance. *See generally Credit Ratings Disclosure,* SEC Release No. 33–9070 (October 7, 2009) [74 FR 53086].

[164] We further noted that Section 932 of the Act amends Section 15E of the Exchange Act to require the Commission to adopt rules requiring NRSROs to prescribe and use a form to accompany the publication of each credit rating that discloses certain information. *See* Section 932 of the Act. For the purposes of Section 943 and new Rule 17g–7, such a form would clearly be a "report" and, as such, if published in connection with a rating relating to an asset-backed security, would therefore require the necessary disclosures regarding the representations, warranties and enforcement mechanisms available to investors and how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.

[165] *See* letters from ICI and Levin.

[166] *See* letter from ICI.

[167] *See* letters from ABA and Moody's.

[168] *See* letter from Moody's.

[169] *See e.g.,* letters from ASF, CREFC, Fitch, Levin, MBA, Realpoint and SIFMA.

[170] *See* letter from Metlife.

[171] *See* letter from S&P.

[172] *See* letters from ASF, Moody's, Realpoint and S&P.

[173] *See* letter from ASF.

warranties and enforcement mechanisms available to investors in issuances of similar securities.[174]

Commentators were also divided on the issue of utilizing, for the purpose of the required disclosure, industry standards for the representations, warranties and enforcement mechanisms available to investors. Several commentators voiced support for allowing comparisons to industry standards for the representations, warranties and enforcement mechanisms available to investors as an alternative to comparisons to the representations, warranties and enforcement mechanisms available to investors in issuances of similar securities,[175] while others suggested that the rule should eliminate the comparison to standard securities altogether and replace it with a requirement to provide comparisons to industry standards.[176] One commentator suggested instead that the rule itself establish or reference mechanisms "to encourage the development and standardization of effective ABS representations and warranties to increase the ability to make meaningful comparisons among ABS securities and to strengthen investor confidence that promises made to investors can be enforced."[177] Other commentators, however, opposed the use of industry standards for comparative purposes.[178] Finally, some commentators suggested that the rule should expressly state that comparisons to either an NRSRO's internal benchmarks for representations, warranties and enforcement mechanisms or to any applicable industry standards would meet the requirement.[179]

We received two comment letters expressing conditional support for the note to the proposed rule clarifying that for the purposes of the proposed rule, a "credit rating" would include any expected or preliminary credit rating issued by an NRSRO.[180] One of these commentators expressed its belief that the required disclosure should be limited only to pre-sale reports,[181] while the second stated that its support was contingent on our allowing all required disclosure under the rule to be done by reference to issuer or underwriter materials.[182] Another commentator, noting that under existing market practice, the timing of pre-sale reports is often unpredictable and there may have been instances where rating agencies have not provided pre-sale reports for rated transactions, expressed its belief that the required disclosure should be part of the offering memorandum.[183]

Two commentators expressed their belief that the rule's requirements should apply to issuer paid ratings only.[184] Another commentator, however, argued against exempting non-issuer paid ratings from the scope of the rule, noting that Section 943(1) does not discriminate between NRSRO business models.[185] Finally, one commentator argued that the rule should not apply to ratings of ABS issuances by foreign issuers that are not issuing securities into the U.S. market.[186]

3. Final Rule

We are adopting new Rule 17g–7 as proposed, including the proposed note to the rule indicating that for the purposes of the rule's requirement, a "credit rating" includes any expected or preliminary credit rating issued by an NRSRO. As explained in the Proposing Release, we intend the term "preliminary credit rating" to include any rating, any range of ratings, or any other indications of a rating used prior to the assignment of an initial credit rating for a new issuance.

We acknowledge commentators' concerns about the interpretation of the term "similar securities," as well as some commentators' requests that NRSROs be allowed to utilize comparisons to industry standards as an alternative to, or instead of, comparisons to the representations, warranties and enforcement mechanisms available to investors in issuances of similar securities. While we recognize these views, we are concerned that defining similar securities or allowing reliance exclusively on industry standards for the purpose of the required comparisons could create unintentional gaps in disclosure. We expect, however, that in making its own determinations as to what constitutes a "similar security" for the purposes of the required comparisons, an NRSRO would draw upon its knowledge of industry standards, along with its own experience with previously rated deals and its knowledge of the market in general. As discussed in the Proposing Release, we anticipate that one way an NRSRO could fulfill the requirement to describe how representations, warranties and enforcement mechanisms differ from those provided in similar securities would be to review previous issuances both on an initial and an ongoing basis in order to establish, and periodically revise as appropriate, "benchmarks" for various types of securities.

As noted above, several commentators suggested we allow NRSROs to satisfy the requirements of new Rule 17g–7 by incorporating the required disclosures by reference to the transaction's offering documents. We were not persuaded, however, by these comments and believe that Congress intended, by including clear and specific language in Section 943(1), that investors receive the disclosures within the ratings report itself. Similarly, in response to commentators' suggestions that the rule should apply only to representations and warranties regarding the pool assets, as well as to the suggestion that the rule should not apply to foreign issuers that are not issuing securities into the U.S. market, we note that nothing in the text of Section 943(1) would support drawing any such distinctions in connection with reports issued by NRSROs subject to Commission oversight.

We also acknowledge commentators' concerns regarding the application of the rule to unsolicited ratings. We note that this concern can be addressed directly by NRSROs themselves through disclosure in their reports accompanying credit ratings. For example, an NRSRO could disclose whether it was hired by the arranger and therefore received information on the representations, warranties and enforcement mechanisms directly; was issuing an unsolicited rating using access to arranger information provided under Rule 17g–5(a)(3),[187] in which case

[174] *See* letter from ICI.

[175] *See* letters from ASF, CREFC, Moody's and S&P.

[176] *See* letters from Realpoint and Metlife. The latter commentator suggested comparisons to industry standards as an alternative to its preferred basis of comparison, a uniform set of representations, warranties and enforcement mechanisms within each underlying asset class agreed upon by all NRSROs in collaboration with investors and other market participants.

[177] *See* letter from Levin.

[178] *See* letters from MBA and SIFMA.

[179] *See* letters from ASF and S&P. The ASF noted that its NRSRO members have broad-based internal measures for representations and warranties in ABS transactions, and believe that these measures could act as benchmarks, or as a starting point for developing benchmarks, to meet the required comparison.

[180] *See* letters from Realpoint and S&P.

[181] *See* letter from Realpoint (also arguing for the exclusion of surveillance reports from the rule's scope).

[182] *See* letter from S&P.

[183] *See* letter from Metlife.

[184] *See* letters from ABA and Realpoint.

[185] *See* letter from S&P.

[186] *See* letter from Moody's.

[187] 17 CFR 240.17g–5(a)(3). This provision requires an NRSRO that is hired by an arranger to determine an initial credit rating for a structured finance product to take certain steps designed to allow an NRSRO that is not hired by the arranger to nonetheless determine an initial credit rating—and subsequently monitor that credit rating—for the structured finance product. *See Amendments to*

it obtained that information indirectly; or was issuing an unsolicited rating without relying on Rule 17g–5(a)(3), in which case it may not have had access to the information at all. The rule as adopted does not include any limitation on the application of the disclosure requirement to "any report accompanying a credit rating." As such, the requirements of the rule will apply to reports issued in conjunction with both solicited and unsolicited ratings.

III. Transition Period

The new rules will be effective 60 days after publication in the **Federal Register**; however, securitizers, issuers and NRSROs will be required to comply with the new rules as described below.

With regard to Rule 15Ga–1, we received several comments suggesting a compliance date of six months,[188] one year,[189] 18 months [190] and two years [191] from the effective date of the new rule. Some commentators noted that securitizers need a longer time to implement the systems for tracking and recording repurchase requests necessary to comply with the rule.[192] However, other commentators believed that many securitization sponsors and servicers have systems in place and have collected the information.[193]

We have considered the comments and as noted earlier, for those securitizers other than municipal securitizers, who have issued ABS during the three-year period ended December 31, 2011, the rule will require that the initial filing pursuant to new Rule 15Ga–1 be filed on EDGAR by February 14, 2012. We are providing this transition period so that securitizers and other transaction participants may set up systems and gather historical data and to track the data.

In addition, as discussed above, we are delaying compliance for a period of three years for municipal securitizers. Therefore, municipal securitizers will be required to make the initial filing required by Rule 15Ga–1(c)(1) for the three years ended December 31, 2014 and file on February 14, 2015. Also, as discussed above, we will permit municipal securitizers to satisfy the rule's filing obligation by filing the information on EMMA.

We are also providing the same transition period with respect to demand, repurchase and replacement history disclosure in registration statements and prospectuses in accordance with Regulation AB; therefore, Item 1104 disclosures would be required with the first bona fide offering of registered ABS on or after February, 14, 2012. The information in prospectuses should be as of date no older than 135 days. However, as we describe above, we are phasing in the look back period in the first two years of compliance.[194]

With respect to Form 10–Ds, the information should be provided with respect to the particular ABS that is required to report on Form 10–D after December 31, 2011. Securitizers will already be obligated to report information with respect to transactions issued prior to December 31, 2011 on Form ABS–15G on a quarterly basis; therefore, the information required by new Item 1121(c) of Regulation AB should be readily available to report on Form 10–D for a particular Reg AB–ABS (including for Reg AB–ABS issued prior to December 31, 2011).

With respect to Rule 17g–7, we received two comments about the transition period, one requesting six months [195] and the other one year,[196] in each case primarily to be able to comply with the requirement to perform a comparison to similar securities. We are providing a period of six months from the effective date of the new rule for NRSROs to comply with new Rule 17g–7. We believe this is sufficient time to allow NRSROs to set up the systems to collect, maintain and analyze previous issuances to establish benchmarks.

IV. Paperwork Reduction Act

A. Background

Certain provisions of the rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[197] We published notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted these requirements to the Office of Management and Budget (OMB) for review in accordance with the PRA.[198]

An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

(1) "Form ABS–15G" (a new collection of information);

(2) "Regulation S–K" (OMB Control No. 3235–0071); [199] and

(3) "Rule 17g–7" (a new collection of information).

The regulation listed in No. 2 was adopted under the Securities Act and the Exchange Act and sets forth the disclosure requirements for registration statements and periodic and current reports filed with respect to asset-backed securities and other types of securities to inform investors.

The regulations and form listed in Nos. 1 and 3 are new collections of information under the Act. Rule 15Ga–1 would require securitizers to provide disclosure regarding fulfilled and unfulfilled repurchase requests with respect to Exchange Act-ABS pursuant to the Act. Form ABS–15G is a new form type that will contain Rule 15Ga–1 disclosures and be filed with the Commission. Rule 17g–7 will require NRSROs to provide disclosure regarding representations, warranties, and enforcement mechanisms available to investors in any report accompanying a credit rating issued by an NRSRO in connection with an Exchange Act-ABS transaction.

Compliance with the amendments is mandatory. Responses to the information collections will not be kept confidential and there is no mandatory retention period for the collections of information.

B. Summary of the Final Rules

As discussed in more detail above, the new rules and amendments we are adopting will require:

- ABS securitizers to disclose demand, repurchase and replacement history in a tabular format for an initial three-year look back period ending December 31, 2011;
- ABS securitizers to disclose, subsequent to that date, demand,

Rules for Nationally Recognized Statistical Rating Organizations, SEC Release No. 34–61050 (November 23, 2009) [74 FR 63832].

[188] *See* letter from Roundtable (but noting a six month period would only be appropriate if the final rule would only require prospective information).

[189] *See* letter from ASF (suggesting a compliance date of no earlier than one year from the date of publication of the final rule if the rule would only require prospective information).

[190] *See* letters from BOA and SIFMA.

[191] *See* letter from GSEs. *See also* letter from Roundtable suggesting an alternative of 24 months if securitizers are required to re-create data that was not maintained.

[192] *See* letters from BOA, MBA and SIFMA.

[193] *See* letters from AFGI and Metlife.

[194] In the first year after the compliance date issuers may limit the disclosures to the prior year of activity and in the second year after the compliance date, disclosures may be limited to the prior two years of activity.

[195] *See* letter from Moody's.

[196] *See* letter from Fitch.

[197] 44 U.S.C. 3501 *et seq.*

[198] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[199] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S–K.

repurchase and replacement activity in a tabular format on a quarterly basis;

- ABS issuers to disclose demand, repurchase and replacement history for a three-year look back period, in the same tabular format as new Rule 15Ga–1, in the body of the prospectus;
- ABS issuers to disclose demand, repurchase and replacement activity for a specific ABS, in the same tabular format, in periodic reports filed on Form 10–D; and
- NRSROs to disclose, in any report accompanying a credit rating for an ABS transaction, the representations, warranties and enforcement mechanisms available to investors and how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.

The new rules implement Section 943 of the Act as well as conform disclosure in prospectuses and ongoing reports for ABS sold in registered transactions.

C. Summary of Comment Letters on the PRA Analysis and Revisions to Proposals

In the Proposing Release, we requested comment on the PRA analysis. We have made several changes in response to comments on the substance of the proposals that are designed to avoid potential unintended consequences and reduce possible additional costs or burdens pointed out by commentators. For example, in response to comment letters regarding the burdens of monthly reporting pursuant to Rule 15Ga–1, we have made responsive revisions to change to a quarterly periodic reporting requirement. We are also permitting a securitizer to suspend its reporting obligation as long as it has no repurchase activity for the reporting period; however, a securitizer would still have to provide an annual confirmation that no disclosure is required under Rule 15Ga–1 by checking a box on new Form ABS–15G.

We received one comment letter addressing our PRA burden estimates for Rule 17g–7, as proposed. The commentator argued that our PRA estimate of 10 hours underestimated the time that NRSROs would need to gather all of the information to conduct the comparisons required by the rule and requested an adequate transition period in order to prepare to comply with the rule.[200] The comment letter, however, did not acknowledge the additional burden estimates that we provided for in the Proposing Release. In addition to the estimated 10 hours per transaction to compare the terms of the current transaction to the benchmarks, cited by the commentator, we also estimated an initial burden of 3,000 hours to set up systems to establish benchmarks and an additional 3,000 hours per year to revise the various benchmarks. Because we believe these estimates adequately estimate the burden imposed by Rule 17g–7, we are not revising our estimates with respect to Rule 17g–7.

D. PRA Reporting and Cost Burden Estimates

Our PRA burden estimates for the rule amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used with respect to asset-backed securities, as well as information from outside data sources.[201] When possible, we base our estimates on an average of the data that we have available for years 2004, 2005, 2006, 2007, 2008, and 2009.

In adopting rules under the Credit Rating Agency Reform Act of 2006 ("the Rating Agency Act"),[202] as well as proposing additional rules in November 2009, we previously estimated that approximately 30 credit rating agencies would be registered as NRSROs.[203]

1. Form ABS–15G

This new collection of information relates to new disclosure requirements for securitizers that offer Exchange Act-ABS. Under the new rules, such securitizers are required to disclose demand, repurchase and replacement history with respect to pool assets across all trusts aggregated by securitizer. We had proposed that the new information be required at the time a securitizer offers Exchange Act-ABS after the implementation of the new rule, and then monthly, on an ongoing basis as long as the securitizer has Exchange Act-ABS outstanding held by non-affiliates. Instead, we are adopting that the new information be required for all securitizers that offered Exchange Act-ABS during the three-year period ending December 31, 2011, and that have Exchange Act-ABS outstanding that are held by non-affiliates. Going forward, periodic disclosures will be required on a quarterly basis. We are also permitting securitizers to suspend quarterly reporting so long as they have no activity for the quarterly period; however a securitizer is required, annually, to confirm that they had no activity for the year. The disclosures are required to be filed on EDGAR on new Form ABS–15G, except that municipal securitizers may satisfy their reporting obligations by filing their disclosures on EMMA. As discussed in the Proposing Release, we believe that the costs of implementation would include costs of collecting the historical information, software costs, costs of maintaining the required information, and costs of preparing and filing the form. Although the new requirements apply to securitizers, which by definition include both sponsors and issuers, we base our estimates on the number of unique ABS sponsors because we are also providing under the final rule, that issuers affiliated with a sponsor would not have to file a separate Form ABS–15G to provide the same Rule 15Ga–1 disclosures.

Our estimates in the Proposing Release were based on the number of unique ABS securitizers (i.e., sponsors) over 2004–2009, which was 540, for an average of 90 unique securitizers per year.[204] We base our burden estimates for this collection of information on the assumption that most of the costs of implementation would be incurred before the securitizer files its first Form ABS–15G. Because ABS issuers currently have access to systems that track the performance of the assets in a pool we believe that securitizers should also have access to information regarding whether an asset had been repurchased or replaced. However, securitizers may not have historically collected the information and systems may not currently be in place to track when a demand has been made, and in particular, systems may not be in place to track those demands made by investors upon trustees. Therefore, securitizers would incur a one-time cost to compile historical information in systems. Furthermore, the burden to collect and compile the historical information may vary significantly between securitizers, due to the number of asset classes and number of ABS issued by a securitizer.

For the initial filing, we estimate that 270 unique securitizers would be required to file Form ABS–15G.[205] We

[200] *See* letter from Fitch.

[201] We rely on two outside sources of ABS issuance data. We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC).

[202] Pub. L. No. 109–291 (2006).

[203] *See e.g.,* Section VIII of *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* SEC Release No. 34–61051 (Dec. 4, 2009) [74 FR 63866].

[204] We base the number of unique sponsors on data from SDC.

[205] We estimate 270 securitizers for the three-year period from January 1, 2009–December 31, 2011, the look back period for the initial disclosures, (90 unique securitizers x 3 years). Also, as noted above, municipal securitizers will not be subject to Rule 15Ga–1 until three years after the implementation date for other securitizers. For purposes of the PRA,

estimate that a securitizer would incur a one-time setup cost for the initial filing of 852 hours to collect and compile historical information and adjust its existing systems to collect and provide the required information going forward.[206] Therefore, we estimate that it would take a total of 230,040 hours for a securitizer to set up the mechanisms to file the initial Rule 15Ga–1 disclosures.[207] We allocate 75% of these hours (172,530 hours) to internal burden for all securitizers. For the remaining 25% of these hours (57,510 hours), we use an estimate of $400 per hour for external costs for retaining outside professionals totaling $23,004,000.

After a securitizer has made the necessary adjustments to its systems in connection with the new rule and, after an initial filing of Form ABS–15G disclosures has been made, securitizers will have to file Form ABS–15G on a quarterly basis, unless it suspends its reporting obligation. We estimate that each subsequent quarterly filing of Form ABS–15G to disclose ongoing information by a securitizer will take approximately 30 hours to prepare, review and file. We estimate, for PRA purposes, that the average number of quarterly Form ABS–15G filings per year will be 720.[208]

Therefore, after the initial filing is made, we estimate the total annual burden hours for preparing and filing the disclosure will be 21,600 hours.[209] We allocate 75% of those hours (16,200 hours) to internal burden hours for all securitizers and 25% of those hours (5,400 hours) for professional costs totaling $400 per hour of external costs of retaining outside professionals totaling $2,160,000.

In addition, securitizers that have suspended their quarterly reporting obligation are required to file one annual confirmation that no repurchase activity has occurred for the calendar year. We estimate an average of 90 confirmation filings per year.[210] We estimate that each annual filing to confirm that no activity occurred on Form ABS–15G will take approximately 5 hours to prepare, review and file, therefore we estimate the total annual burden hours to be 450.[211] We allocate 75% of those hours (338 hours) to internal burden hours for all securitizers and 25% of those hours (113 hours) for professional costs totaling $400 per hour of external costs of retaining outside professionals totaling $45,000.

Therefore, the total internal burden hours are 189,068 [212] and the total external costs are $25,209,000.[213] The increase from our original burden estimate in the Proposing Release is primarily due to the change in the trigger for the initial filing requirement. However, we have significantly reduced the burden estimate on a going forward basis by requiring quarterly, instead of monthly filings, as proposed, as well as permitting securitizers to suspend the quarterly reporting obligation.

2. Forms S–1, S–3 and 10–D

We are requiring that asset-backed securities offered on Forms S–1 and S–3 include the required Rule 15Ga–1 disclosures for the same asset class in registration statements. We are also requiring that issuers of registered ABS include the new Rule 15Ga–1 disclosures for only the pool assets on Form 10–D, which contains periodic distribution and pool performance information. The burden for the collection of information is reflected in the burden hours for Form ABS–15G filed by a securitizer; however, Forms S–1, S–3 and 10–D are filed by asset-backed issuers, and issuers may include a portion of the information in the prospectus and in periodic reports. Therefore, we have not included additional burdens for Forms S–1, S–3 and 10–D.

3. Regulation S–K

Regulation S–K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. In 2004, we noted that the collection of information requirements associated with Regulation S–K as it applies to ABS issuers are included in Form S–1, Form S–3, Form 10–K and Form 8–K.[214]

The amendments would make revisions to Regulation S–K. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to ABS issuers. The rules in Regulation S–K do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour to Regulation S–K for administrative convenience.

4. Rule 17g–7

This new collection of information relates to new disclosure requirements for NRSROs. Under new Rule 17g–7, an NRSRO is required to disclose in any report accompanying a credit rating in an asset-backed securities offering the representations, warranties and enforcement mechanisms available to investors and describe how they differ from those in issuances of similar securities. The following summarizes the burden estimates for Rule 17g–7 that we provided in the Proposing Release. We estimated it would take 1 hour per ABS transaction to review the relevant disclosures prepared by an issuer, which an NRSRO would presumably have reviewed as part of the rating process, and convert those disclosures into a format suitable for inclusion in any report to be issued by an NRSRO. We noted our expectation that an NRSRO would incur an initial setup cost to collect, maintain and analyze previous issuances to establish benchmarks as well as an ongoing cost to review the benchmarks to ensure that they remain appropriate. We estimated that the initial review and set up system cost will take 100 hours and that NRSROs will spend an additional 100 hours per year revising the various benchmarks. Therefore, we estimated it

however, we have calculated the burden estimates as if the rule was fully phased in for all companies.

[206] The value of 852 hours for setup costs is based on staff experience. In the Proposing Release, we estimated that 672 of those hours will be to set up systems to track the information and is calculated using an estimate of two computer programmers for two months, which equals 21 days per month times two employees times two months times eight hours per day.

[207] 852 hours to adjust existing systems per securitizer x 270 average number of unique securitizers.

[208] The Form ABS–15G is required to be filed on a quarterly basis; however, based on comments received that securitizers of certain asset classes would be able to immediately suspend the quarterly reporting requirement because they have not received demands for repurchase (*See* letters from ABA and ASF) and data available, we are estimating that 90 securitizers would be able to suspend their quarterly reporting requirement after filing the initial filing. Therefore, we estimate that 180 securitizers would be subject to the quarterly reporting requirement (270–90). As a result, we expect 720 quarterly filings of Form ABS–15G per year (180 x 4 quarterly filings per year). We assume that the number of quarterly filings will remain the same in the second and third years after implementation because we estimate that the average number of new securitizers that will trigger the reporting obligation each year will be 90, but we also use the same estimate of 90 securitizers that would be able to suspend its quarterly reporting requirement, resulting in no increase in the number of securitizers or quarterly filings.

[209] 30 hours x 720 filings.

[210] Because the first annual confirmation filing would not be due until February 2013, we estimate no annual filings in the first year of implementation. In the second year of implementation we estimate 90 securitizers will file the annual confirmation. In the third year, we estimate that 180 securitizers will file the annual confirmation. The total number of annual confirmations filed would be 270 over three years, therefore we estimate for PRA purposes, an annual average of 90 filings.

[211] 5 hours x 90 filings.

[212] 172,530 hours + 16,200 hours + 338 hours.

[213] $23,004,000 + $2,160,000 + $45,000.

[214] *See* the 2004 ABS Adopting Release.

would take a total of 3,000 hours [215] for NRSROs to set up systems and an additional 3,000 hours per year revising various benchmarks.[216]

On a deal-by-deal basis, we estimated it would take NRSRO 10 hours per ABS transaction to compare the terms of the current deal to those of similar securities. Because NRSROs would need to provide the disclosures in connection with the issuance of a credit rating on a particular offering of ABS, we based our estimates on an annual average of 2,067 ABS offerings.[217] We also assigned four to the number of credit ratings per issuance of ABS, based on an average of two NRSROs preparing two reports (pre-sale and final) for each transaction. Therefore, we estimated that it would take a total of 90,948 hours, annually, for NRSROs to provide the new Rule 17g–7 disclosures.[218] As noted above, we received one comment letter regarding our PRA estimate for Rule 17g–7,[219] and as we discuss above, we are not adjusting our PRA estimates with respect to Rule 17g–7.

5. Summary of Changes to Annual Burden Compliance in Collection of Information

Table 1 illustrates the annual compliance burden of the collection of information in hours and costs for the new disclosure requirements for securitizers and NRSROs. Below, the new Rule 15Ga–1 requirement for securitizers is noted as "Form ABS–15G" and the new requirement for NRSROs is noted as "17g–7."

Form	Current annual responses	Proposed annual responses	Current burden hours	Decrease or increase in burden hours	Proposed burden hours	Current professional costs	Decrease or increase in professional costs	Proposed professional costs
Form ABS–15G	.....	810	.....	189,068	189,068	.....	25,209,000	25,209,000
17g–7	.....	8,268	.....	96,948	96,948	.....	.....	.....

V. Benefit-Cost Analysis

Section 943 of the Act requires the Commission to prescribe rules relating to disclosure of demand, repurchase and replacement history by securitizers and disclosure of representations, warranties, and enforcement mechanisms by NRSROs. In response to the requirements of Section 943, the Commission is adopting new rules and form amendments that would require securitizers and NRSROs to make the required disclosures.

First, Section 943(2) requires any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies. As the Act requires, our rules will apply to "any securitizer" of Exchange Act-ABS, including unregistered Exchange Act-ABS. The Act requires disclosure of "fulfilled and unfulfilled repurchase requests" and our new rules require disclosure of all repurchase requests, not just those limited to the transaction agreements. Further, the Act requires disclosure "across all trusts aggregated by the securitizer." The new rule seeks to account for the potential limited availability and usefulness of older information by requiring securitizers to provide demand and repurchase history, initially for a three-year look back period and then quarterly on an ongoing basis for all outstanding Exchange Act-ABS held by non-affiliates during the reporting period. In order to implement the disclosure requirement, we are requiring that securitizers provide the disclosures in a tabular format and file them on EDGAR on new Form ABS–15G. As we discuss above, the new rules provide that if an affiliate securitizer has filed the same disclosures, then other affiliated securitizers would not have to also file the disclosures in order to avoid duplicate disclosures. In addition, a securitizer may suspend its quarterly reporting obligation if it has no reportable activity and makes an annual filing to confirm that it has had no activity for the prior year. We are also providing approximately a one-year transition period so that securitizers may set up systems and gather the data to make the required disclosures. For municipal securitizers, we are providing approximately a four-year transition period and permitting municipal securitizers to satisfy the filing obligation by filing on EMMA.

Second, we are also adopting disclosure requirements with respect to repurchase requests in Regulation AB in order to conform disclosures in prospectuses and in periodic reports to those required by Section 943 of the Act.

Third, Section 943(1) of the Act requires that each NRSRO include in any report accompanying a credit rating, a description of the representations, warranties and enforcement mechanisms available to investors. Our new Rule 17g–7 includes an instruction to clarify that for purposes of the requirement, a "credit rating" includes any expected or preliminary credit rating issued by an NRSRO.

We are sensitive to benefits and costs imposed by the new rules, form and amendments. The discussion below focuses on the benefits and costs of the amendments made by the Commission to implement the Act within its permitted discretion, rather than the overall benefits and costs of the changes mandated by the Act.

A. Benefits

In new Rule 15Ga–1 we choose to require that the disclosure mandated by the Act be presented in a tabular format with standardized headings. We believe that this data formatting requirement will benefit investors by providing them with demand, repurchase and replacement information that is easy to use and easy to compare across securitizers.

We are limiting the scope of the disclosures to outstanding Exchange Act-ABS, and in the initial filing to the last three years of demand, repurchase and replacement history. We believe that a three-year look back period strikes the right balance between compliance costs to securitizers and disclosure benefits to investors, since three years of data should be sufficient for investors to identify originators with underwriting deficiencies.

After the initial filing, securitizers are required to file Form ABS–15G,

[215] 100 hours x 30 NRSROs.

[216] 100 hours x 30 NRSROs.

[217] The annual average number of registered offerings was 958 and the annual average number of Rule 144A ABS offerings was 716 for an estimated annual average of 1,674 over the period 2004–2009. *See* Section X. of the 2010 ABS Proposing Release. We also add 393 to estimate for offerings under other exemptions that were not within the scope of the 2010 ABS Proposing Release. Thus, in total we use an estimated annual average number of 2,067 ABS offerings for the basis of our PRA burden estimates.

[218] 4 reports x 2,067 ABS offerings x 11 hours (1 hour to review disclosures + 10 hours to compare and prepare).

[219] *See* letter from Fitch.

periodically, on a quarterly basis with information about activity that occurred during the quarter, so that consistent with the purpose of Section 943 of the Act, an investor may monitor the demand, repurchase and replacement activity across all Exchange Act-ABS issued by a securitizer. We have chosen to require that the quarterly report include information for the current quarter, instead of cumulative data. This will benefit investors by allowing them the flexibility to track activity over periods of their choosing because it is more user-friendly and less unwieldy than cumulative data. Depending on their needs, they can analyze the current-quarter data alone or aggregate it with data from prior filings in order to identify trends. In addition, aggregated data for the same asset class would be provided in prospectuses.

Several provisions in the adopted rules are designed to limit filing costs to securitizers without diminishing the usefulness of the disclosure available to investors. We are permitting a securitizer to suspend its quarterly obligation if it has no reportable activity, though such a securitizer would still be required to file an annual confirmation that it had no reportable demand or repurchase activity by checking a box on Form ABS–15G. In addition, if an affiliate securitizer has filed the same disclosures with respect to a particular ABS transaction, then other affiliated securitizers would not have to also file the disclosures. We are also requiring that the disclosures be filed on EDGAR on new Form ABS–15G and permitting municipal securitizers to satisfy the reporting obligation by filing on EMMA. By requiring the new Form ABS–15G to be filed on EDGAR, the required information for most securitizers would be housed in a central repository that would preserve continuous access to the information to the benefit of investors. Municipal securitizers can file the information in a central repository for municipal market information, EMMA. Although it is likely that most, if not all municipal securitizers will file on EMMA, they are not required to. However, we believe that filing on EMMA will facilitate use by investors, since the demand, repurchase and replacement disclosures will generally be available in the same repository where investors are most likely to look for other municipal ABS disclosures.

The one-year transition period will provide securitizers time to set up systems and gather the data to make the required disclosures. For municipal securitizers, we are providing an additional three-year transition period so that they may develop the infrastructures and observe how the rule operates for other securitizers, so that they may better prepare to comply with the new rules.

To facilitate investors' use of demand, repurchase and replacement information, we are amending Regulation AB to require disclosures in the prospectus and periodic reports in a format similar to that required by Rule 15Ga–1. The information in the prospectus must be presented for a three-year look-back period, so that an investor in a particular offering receives and may review cumulative information in one place. Furthermore, an investor would receive disclosure about a demand, repurchase and replacement activity related to a particular ABS in periodic reports, which may be required to be filed at a more frequent interval than Form ABS–15G, such as monthly.

If an Exchange Act-ABS is rated, new Rule 17g–7 would require disclosures by NRSROs about the representations, warranties and enforcement mechanisms available to investors, and how they differ from those of other similar securities in a report accompanying a credit rating. We interpret a "credit rating" to include any expected or preliminary credit rating issued by an NRSRO because pre-sale reports typically accompany an expected or preliminary rating. We believe that this interpretation will benefit investors by allowing them access to information on representations, warranties and enforcement mechanisms prior to the point at which they make an investment decision. As a result, these disclosures will possibly expand the information available to investors and improve transparency regarding the use of representations and warranties in ABS transactions.

B. Costs

With respect to Rule 15Ga–1, the requirement to file on EDGAR initially and then on a quarterly basis will result in costs related to preparation of such filings. Filing on EDGAR would require a securitizer to obtain authorization codes and to adhere to formatting instructions. While our revision from monthly to a quarterly reporting requirement will reduce the filing burden on securitizers, an annual filing would still be required to confirm by check box that no demand, repurchase or replacement activity has occurred.[220]

In addition, we are providing approximately a one-year transition period (and an additional three years for municipal securitizers), which will delay the availability of current information on representations and warranties repurchase activity to investors; however, we believe that a transition period of this length is necessary for securitizers to set up systems and gather historical data needed to comply with the new rules. Further, investors would not receive information about repurchase activity for periods prior to the initial three-year period; however, it is not clear that older data would provide useful information about underwriting deficiencies, because many loan origination and underwriting standards have changed post-crisis. In addition, older data may be very hard or impossible for securitizers to obtain if they have not had systems in place to track the data required for the required disclosures.

The new rules implement the Act's requirement on securitizers to disclose the repurchase and replacement demands resulting from breaches of representations and warranties in past ABS transactions initially, for the last three years and then updated disclosures going forward on a quarterly basis. We understand that some of the data collection may be costly. In some cases, it may be very difficult to obtain repurchase or replacement records from the distant past.[221] The final rule, however, permits a securitizer under certain conditions to omit information unknown and not available to the securitizer without unreasonable effort or expense.

As noted above, we have chosen to require that ongoing quarterly reports include information for the current quarter, instead of cumulative data. Therefore, users who would find cumulative data more helpful will need to make additional efforts to compile the information for periods; although cumulative information related to the same asset class would be available in a prospectus for a three-year look back period.

In order to minimize duplicate disclosures, the new rules would not require a securitizer to report if an affiliated securitizer in the same transaction files the required disclosures. As discussed above, we believe this accommodation is appropriate because otherwise such disclosure would be duplicative and would not provide any additional useful information, since as noted above, the depositor usually serves as an intermediate entity of a transaction initiated by a sponsor. However, in

[220] *See* discussion in Section II.A.5.

[221] *See* discussion in Section II.A.3.

some cases, users who would find information about affiliated transactions useful will need to compile information about affiliated transactions themselves.[222]

The new rules, pursuant to the Act, would also require NRSROs to disclose in any report accompanying a credit rating for an ABS transaction the representations, warranties and enforcement mechanisms available to investors and how they differ from those of other similar securities. A note to new Rule 17g–7 clarifies the statutory requirements by explaining that for the purposes of the rule's requirements, a "credit rating" includes any expected or preliminary credit rating issued by an NRSRO. This clarification is designed to ensure that the disclosure requirements of the rule will apply to pre-sale reports issued by NRSROs in ABS transactions. We recognize that this could result in some additional incremental costs to NRSROs; however, we believe that any such additional costs would be more than offset by the benefits to investors that will arise from the inclusion of the required disclosures in NRSRO pre-sale reports, thus providing them with additional information prior to the point at which they make an investment decision.

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act [223] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 2(b) of the Securities Act [224] and Section 3(f) of the Exchange Act [225] require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

The new rules implement Section 943 of the Act and amend Regulation AB in order to conform disclosures in prospectuses and periodic reports to those required by Section 943. New Rule 15Ga–1 implements Section 943(2) by requiring disclosures of the repurchase history of securitized assets be filed on EDGAR (or in the case of municipal securitizers, may be filed in the alternative on EMMA). Filing on these centralized databases preserves access to information, thereby enhancing transparency regarding the use of representations and warranties in asset-backed securities transactions, and an investor's ability to consider historical information when making an investment decision. Requiring that information be presented in a standardized tabular format will further enable investors to more easily understand the disclosed information, compare originators, and identify those with better underwriting criteria or practices. Our amendments to Regulation AB, which require conforming disclosures in the prospectus and periodic reports to the disclosures required by Rule 15Ga–1, should promote comparison of repurchase history information. Furthermore, if investors pull funds away from ABS with consistent underwriting deficiencies or purchase such ABS at a significant discount, securitizers would find it in their interest to avoid acquiring pool assets from originators with a record of poor loan underwriting. As a result, such originators would have an additional incentive to improve their loan origination and underwriting processes. The ultimate effect would be that of better allocative efficiency and improved capital formation.

New Rule 15Ga–1 also includes provisions designed to limit the filing costs to securitizers without compromising the disclosure available to investors, thereby improving efficiency in the ABS market. First, if an affiliate securitizer has filed the same disclosures required by new Rule 15Ga–1, then other affiliated securitizers in the same ABS transaction would not have to also file the same disclosures. Second, a securitizer may suspend its ongoing quarterly reporting obligation if it has no reportable activity, although it would still be required to file an annual confirmation that it had no reportable activity.

Because the rules generally apply equally to all securitizers, and ABS transactions, we do not believe the rules will have an impact on competition. However, we are providing a delayed compliance date for securitizers of ABS that are municipal entities in order to provide those securitizers with more time to better prepare for implementation of the Rule 15Ga–1. Therefore, the costs of compliance may also be delayed for municipal securitizers, which could provide municipal securitizers with a competitive cost advantage over other securitizers for a period of time. Based on our research, however, the dollar volume of ABS issued by municipal securitizers has typically been significantly less than other securitizers.

New Rule 17g–7 implements Section 943(1) of the Act by requiring NRSROs to describe in any report accompanying a credit rating, in an asset-backed securities offering, how the representations, warranties and enforcement mechanisms of the rated ABS differ from the representations, warranties and enforcement mechanisms in issuances of similar securities. The rule applies to any expected or preliminary credit rating issued by an NRSRO and will therefore require that this information be presented in pre-sale reports issued by NRSROs in connection with asset-backed securities offerings. As such, the rule will provide information to investors at an earlier point in time, which may promote allocative efficiency and capital formation.

We requested comment on whether the proposed rule, if adopted, would promote efficiency, competition, and capital formation. We did not receive any comments directly responding to this request.[226]

VII. Regulatory Flexibility Act Certification

In Part IX of the Proposing Release, the Commission certified pursuant to 5 U.S.C. 605(b) that the new rules contained in this release would not have a significant economic impact on a substantial number of small entities. While the Commission encouraged written comments regarding this certification, no commentators responded to this request or indicated that the rules, as adopted would have a significant economic impact on a substantial number of small entities.

[222] Rule 15Ga–1 requires a securitizer to indicate if the ABS transaction was registered and disclose the CIK number of the issuing entity of the ABS transaction, so that users may locate other information available on EDGAR.

[223] 15 U.S.C. 78w(a).

[224] 15 U.S.C. 77b(b).

[225] 15 U.S.C. 78c(f).

[226] One commentator did note, however, that if the proposed rules did not provide an adequate transition period, some securitizers would have to remain out of the securitization markets until they can complete the transition, with potential adverse effects on capital formation. It also expressed concern that requiring that reports be compiled for all asset classes in a single filing may amplify the issue. *See* letter from Roundtable. As we note above, we have considered the comments received and we note that we have provided a long transition period and the initial filing requirement is not triggered by the timing of new offerings.

VIII. Statutory Authority and Text of Rule and Form Amendments

We are adopting the new rules, forms and amendments contained in this document under the authority set forth in Section 943 of the Act, Sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act and Sections 3(b), 12, 13, 15, 15E, 17, 23(a), 35A and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 232, 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 229.1104 by adding paragraph (e) to read as follows:

§ 229.1104 (Item 1104) Sponsors.

* * * * *

(e) *Repurchases and replacements.* (1) If the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, provide in the body of the prospectus for the prior three years, the information required by Rule 15Ga–1(a) (17 CFR 240.15Ga–1(a)) concerning all assets securitized by the sponsor that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets for all asset-backed securities (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) where the underlying transaction agreements included a covenant to repurchase or replace an underlying asset of the same asset class held by non-affiliates of the sponsor, except that:

(i) For prospectuses to be filed pursuant to § 230.424 of this chapter prior to February 14, 2013, information may be limited to the prior year; and

(ii) For prospectuses to be filed pursuant to § 230.424 of this chapter on or after February 14, 2013 but prior to February 14, 2014, information may be limited to the prior two years.

(2) Include a reference to the most recent Form ABS–15G filed by the securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) and disclose the CIK number of the securitizer.

(3) For prospectuses to be filed pursuant to § 230.424 of this chapter, the information presented shall not be more than 135 days old.

■ 3. Amend § 229.1121 by adding paragraph (c) to read as follows:

§ 229.1121 (Item 1121) Distribution and pool performance information.

* * * * *

(c) *Repurchases and replacements.* (1) Provide the information required by Rule 15Ga–1(a) (17 CFR 240.15Ga–1(a)) concerning all assets of the pool that were subject of a demand to repurchase or replace for breach of the representations and warranties.

(2) Include a reference to the most recent Form ABS–15G (17.CFR 249.1400) filed by the securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) and disclose the CIK number of the securitizer.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 4. The general authority citation for Part 232 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 et seq.; and 18 U.S.C. 1350.

* * * * *

■ 5. Amend § 232.101 by adding and reserving paragraphs (a)(1)(xiv) and (xv), and adding paragraph (a)(1)(xvi) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiv) [Reserved]

(xv) [Reserved]

(xvi) Form ABS–15G (as defined in § 249.1400 of this chapter).

* * * * *

■ 6. Add § 232.314 to read as follows:

§ 232.314 Accommodation for certain securitizers of asset-backed securities.

The information required in response to Rule 15Ga–1 (§ 240.15Ga–1 of this chapter) by a municipal securitizer will be deemed to satisfy the electronic submission requirements of Rule 101 (§ 232.101 of this chapter) under the following conditions:

(a) For purposes of this section, a municipal securitizer is a securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) that is any State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory or the District of Columbia, or any public instrumentality of one or more States, Territories or the District of Columbia; and

(b) The information required by Rule 15Ga–1 is provided to the Municipal Securities Rulemaking Board in an electronic format available to the public on the Municipal Securities Rulemaking Board's Internet Web site.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The authority citation for part 240 is amended by adding authorities for § 240.15Ga–1 and § 240.17g–7 to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350 and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

Section 240.15Ga–1 is also issued under sec. 943, Pub. L. 111–203, 124 Stat. 1376.

* * * * *

Section 240.17g–7 is also issued under sec. 943, Pub. L. 111–203, 124 Stat. 1376.

* * * * *

■ 8. Add § 240.15Ga–1 to read as follows:

§ 240.15Ga–1 Repurchases and replacements relating to asset-backed securities.

(a) *General.* With respect to any asset-backed security (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) for which the underlying transaction agreements contain a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, a securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) shall disclose fulfilled and unfulfilled repurchase requests across all trusts by providing the information required in paragraph (a)(1) of this section concerning all assets securitized by the securitizer that were the subject of a demand to

repurchase or replace for breach of the representations and warranties concerning the pool assets for all asset-backed securities held by non-affiliates of the securitizer during the reporting period.

BILLING CODE 8011–01–P

Name of Issuing Entity	Check if Registered	Name of Originator	Total Assets in ABS by Originator			Assets That Were Subject of Demand			Assets That Were Repurchased or Replaced			Assets Pending Repurchase or Replacement (within cure period)			Demand in Dispute			Demand Withdrawn			Demand Rejected		
			(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)	(#)	($)	(% of principal balance)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	(t)	(u)	(v)	(w)	(x)
Asset Class X																							
Issuing Entity A CIK #	X	Originator 1																					
		Originator 2																					
Total			#	$		#	$		#	$		#	$		#	$		#	$		#	$	
Asset Class Y																							
Issuing Entity B		Originator 3																					
Total			#	$		#	$		#	$		#	$		#	$		#	$		#	$	
Total			#	$		#	$		#	$		#	$		#	$		#	$		#	$	

BILLING CODE 8011–01–C

(1) The table shall:

(i) Disclose the asset class and group the issuing entities by asset class (column (a)).

(ii) Disclose the name of the issuing entity (as that term is defined in Item 1101(f) of Regulation AB (17 CFR 229.1101(f)) of the asset-backed securities. List the issuing entities in order of the date of formation (column (a)).

Instruction to paragraph (a)(1)(ii): Include all issuing entities with outstanding asset-backed securities during the reporting period.

(iii) For each named issuing entity, indicate by check mark whether the transaction was registered under the Securities Act of 1933 (column (b)) and disclose the CIK number of the issuing entity (column (a)).

(iv) Disclose the name of the originator of the underlying assets (column (c)).

Instruction to paragraph (a)(1)(iv): Include all originators that originated assets in the asset pool for each issuing entity.

(v) Disclose the number, outstanding principal balance and percentage by principal balance of assets at the time of securitization (columns (d) through (f)).

(vi) Disclose the number, outstanding principal balance and percentage by principal balance of assets that were subject of a demand to repurchase or replace for breach of representations and warranties (columns (g) through (i)).

(vii) Disclose the number, outstanding principal balance and percentage by principal balance of assets that were repurchased or replaced for breach of representations and warranties (columns (j) through (l)).

(viii) Disclose the number, outstanding principal balance and percentage by principal balance of assets that are pending repurchase or replacement for breach of representations and warranties due to the expiration of a cure period (columns (m) through (o)).

(ix) Disclose the number, outstanding principal balance and percentage by principal balance of assets that are pending repurchase or replacement for breach of representations and warranties because the demand is currently in dispute (columns (p) through (r)).

(x) Disclose the number, outstanding principal balance and percentage by principal balance of assets that were not repurchased or replaced because the demand was withdrawn (columns (s) through (u)).

(xi) Disclose the number, outstanding principal balance and percentage by principal balance of assets that were not repurchased or replaced because the demand was rejected (columns (v) through (x)).

Instruction to paragraphs (a)(1)(vii) through (xi): For purposes of these paragraphs (a)(1)(vii) through (xi) the outstanding principal balance shall be the principal balance as of the reporting period end date and the percentage by principal balance shall be the outstanding principal balance of an asset divided by the outstanding principal balance of the asset pool as of the reporting period end date.

(xii) Provide totals by asset class, issuing entity and for all issuing entities for columns that require number of assets and principal amounts (columns (d), (e), (g), (h), (j), (k), (m), (n) (p), (q), (s), (t), (v) and (w)).

Instruction 1 to paragraph (a)(1): The table should include any activity during the reporting period, including activity related to assets subject to demands made prior to the beginning of the reporting period.

Instruction 2 to paragraph (a)(1): Indicate by footnote and provide narrative disclosure in order to further explain the information presented in the table, as appropriate.

(2) If any of the information required by this paragraph (a) is unknown and not available to the securitizer without unreasonable effort or expense, such information may be omitted, provided the securitizer provides the information it possesses or can acquire without unreasonable effort or expense, and the securitizer includes a statement showing that unreasonable effort or expense would be involved in obtaining the omitted information. Further, if a securitizer requested and was unable to obtain all information with respect to investor demands upon a trustee that occurred prior to July 22, 2010, so state by footnote. In this case, also state that the disclosures do not contain investor demands upon a trustee made prior to July 22, 2010.

(b) In the case of multiple affiliated securitizers for a single asset-backed securities transaction, if one securitizer has filed all the disclosures required in order to meet the obligations under paragraph (a) of this section, other affiliated securitizers shall not be required to separately provide and file the same disclosures related to the same asset-backed security.

(c) The disclosures in paragraph (a) of this section shall be provided by a securitizer:

(1) For the three year period ended December 31, 2011, by any securitizer that issued an asset-backed security during the period, or organized and initiated an asset-backed securities transaction during the period, by securitizing an asset, either directly or indirectly, including through an affiliate, in each case, if the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty and the securitizer has asset-backed securities, containing such a covenant, outstanding and held by non-affiliates as of the end of the three year period. If a securitizer has no activity to report, it shall indicate by checking the appropriate box on Form ABS–15G (17 CFR 249.1400). The requirement of this paragraph (c)(1) applies to all issuances of asset-backed securities whether or not publicly registered under the provisions of the Securities Act of 1933. The disclosures required by this paragraph (c)(1) shall be filed no later than February 14, 2012.

Instruction to paragraph (c)(1): For demands made prior to January 1, 2009, the disclosure should include any related activity subsequent to January 1, 2009 associated with such demand.

(2) For each calendar quarter, by any securitizer that issued an asset-backed security during the period, or organized and initiated an asset-backed securities transaction by securitizing an asset, either directly or indirectly, including through an affiliate, or had outstanding asset-backed securities held by non-affiliates during the period, in each case, if the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty. The disclosures required by this paragraph (c)(2) shall be filed no later than 45 calendar days after the end of such calendar quarter:

(i) Except that, a securitizer may suspend its duty to provide periodic quarterly disclosures if no activity occurred during the initial filing period in paragraph (c)(1) of this section or during a calendar quarter that is required to be reported under paragraph (a) of this section. A securitizer shall indicate that it has no activity to report by checking the appropriate box on Form ABS–15G (17 CFR 249.1400). Thereafter, a periodic quarterly report required by this paragraph (c)(2) will only be required if a change in the demand, repurchase or replacement activity occurs that is required to be reported under paragraph (a) of this section during a calendar quarter; and

(ii) Except that, annually, any securitizer that has suspended its duty to provide quarterly disclosures pursuant to paragraph (c)(2)(i) of this section must confirm that no activity occurred during the previous calendar year by checking the appropriate box on Form ABS–15G (17 CFR 249.1400). The

confirmation required by this paragraph (c)(2)(ii) shall be filed no later than 45 days after each calendar year.

(3) Except that, if a securitizer has no asset-backed securities outstanding held by non-affiliates, the duty under paragraph (c)(2) of this section to file periodically the disclosures required by paragraph (a) of this section shall be terminated immediately upon filing a notice on Form ABS–15G (17 CFR 249.1400).

■ 9. Add § 240.17g–7 to read as follows:

§ 240.17g–7 Report of representations and warranties.

Each nationally recognized statistical rating organization shall include in any report accompanying a credit rating with respect to an asset-backed security (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) a description of—

(a) The representations, warranties and enforcement mechanisms available to investors; and

(b) How they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.

Note to § 240.17g–7: For the purposes of this requirement, a "credit rating" includes any expected or preliminary credit rating issued by a nationally recognized statistical rating organization.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 10. The authority citation for part 249 is amended by adding an authority for § 249.1400 to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Section 249.1400 is also issued under sec. 943, Pub. L. 111–203, 124 Stat. 1376.

■ 11. Add Subpart O (consisting of § 249.1400) to Part 249 to read as follows:

Subpart O—Forms for Securitizers of Asset-Backed Securities

§ 249.1400 Form ABS–15G, Asset-backed securitizer report pursuant to Section 15G of the Securities Exchange Act of 1934.

This form shall be used for reports of information required by Rule 15Ga–1 (§ 240.15Ga–1 of this chapter).

Note: The text of Form ABS–15G does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form ABS–15G

Asset-Backed Securitizer

Report Pursuant to Section 15G of

The Securities Exchange Act of 1934

Check the appropriate box to indicate the filing obligation to which this form is intended to satisfy:

___ Rule 15Ga–1 under the Exchange Act (17 CFR 240.15Ga–1) for the reporting period _____ to _____

Date of Report (Date of earliest event reported)_____

Commission File Number of securitizer: _____

Central Index Key Number of securitizer: _____

_____

Name and telephone number, including area code, of the person to contact in connection with this filing

Indicate by check mark whether the securitizer has no activity to report for the initial period pursuant to Rule 15Ga–1(c)(1) [ ]

Indicate by check mark whether the securitizer has no activity to report for the quarterly period pursuant to Rule 15Ga–1(c)(2)(i) [ ]

Indicate by check mark whether the securitizer has no activity to report for the annual period pursuant to Rule 15Ga–1(c)(2)(ii) [ ]

GENERAL INSTRUCTIONS

A. Rule as to Use of Form ABS–15G

This form shall be used to comply with the requirements of Rule 15Ga–1 under the Exchange Act (17 CFR 240.15Ga–1).

B. Events To Be Reported and Time for Filing of Reports

Forms filed under Rule 15Ga–1. In accordance with Rule 15Ga–1, file the information required by Part I in accordance with Item 1.01, Item 1.02, or Item 1.03, as applicable. If the filing deadline for the information occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the filing deadline shall be the first business day thereafter.

C. Preparation of Report

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 (17 CFR 240.12b–12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b–13 (17 CFR 240.12b–13). All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

D. Signature and Filing of Report

1. *Forms filed under Rule 15Ga–1.* Any form filed for the purpose of meeting the requirements in Rule 15Ga–1 must be signed by the senior officer in charge of securitization of the securitizer.

2. *Copies of report.* If paper filing is permitted, three complete copies of the report shall be filed with the Commission.

INFORMATION TO BE INCLUDED IN THE REPORT

REPRESENTATION AND WARRANTY INFORMATION

Item 1.01 Initial Filing of Rule 15Ga–1 Representations and Warranties Disclosure

Provide the disclosures required by Rule 15Ga–1 (17 CFR 240.15Ga–1) according to the filing requirements of Rule 15Ga–1(c)(1).

Item 1.02 Periodic Filing of Rule 15Ga–1 Representations and Warranties Disclosure

Provide the disclosures required by Rule 15Ga–1 (17 CFR 240.15Ga–1) according to the filing requirements of Rule 15Ga–1(c)(2).

Item 1.03 Notice of Termination of Duty to File Reports Under Rule 15Ga–1

If a securitizer terminates its reporting obligation pursuant to Rule 15Ga–1(c)(3), provide the date of the last payment on the last asset-backed security outstanding that was issued by or issued by an affiliate of the securitizer.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the reporting entity has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

(Securitizer) _____

Date _____

(Signature) * _____

* Print name and title of the signing officer under his signature.

* * * * *

Dated: January 20, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1504 Filed 1–25–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM07–9–003; Order No. 710–B]

Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is revising its financial forms, statements, and reports for natural gas companies, contained in FERC Form Nos. 2, 2–A, and 3–Q, to include functionalized fuel data on pages 521a through 521c of those forms, and to include on those forms the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. For consistency, the Commission also is revising page 520. The revisions are designed to enhance the forms' usefulness by providing greater transparency as to fuel data.

DATES: *Effective Date:* This rule will become effective February 25, 2011.

FOR FURTHER INFORMATION CONTACT:

Brian Holmes (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–6008, e-mail: *brian.holmes@ferc.gov*.

Robert Sheldon (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8672, e-mail: *robert.sheldon@ferc.gov*.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8321, e-mail: *gary.cohen@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Issued January 20, 2011.

1. The Federal Energy Regulatory Commission (Commission) is revising its financial forms, statements, and reports for natural gas companies, contained in FERC Form Nos. 2, 2–A, and 3–Q, to include functionalized fuel data on pages 521a through 521c of those forms, and to include on those forms the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. In addition, the Commission also is revising page 520 for consistency.

I. Background

2. In Order No. 710, the Commission revised its financial forms, statements, and reports for natural gas companies, contained in FERC Form Nos. 2, 2–A, and 3–Q, to make the information reported in these forms more useful by updating them to reflect current market and cost information relevant to interstate natural gas pipelines and their customers.[1] The information provided in these forms included data on fuel use, but did not require these data to be functionally disaggregated.

3. On rehearing, the American Gas Association (AGA) argued that the fuel data would be more useful if such data were broken out by different pipeline functions, including transportation, storage, gathering, and exploration/production, and should include, by function, the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. This argument originally was rejected in Order No. 710–A, and Chairman (then Commissioner) Wellinghoff issued a partial dissent arguing that AGA's proposals should have been adopted.[2]

4. Subsequently, AGA filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit arguing that the Commission erred by not addressing the concerns raised by Chairman Wellinghoff in his partial dissent to Order No. 710–A. The court agreed and remanded the matter back to the Commission for further proceedings.[3]

5. On June 17, 2010, the Commission issued a notice of proposed rulemaking proposing to revise pages 521a, 521b, and page 520, and proposing to add pages 521c and 521d to FERC Form Nos. 2, 2–A, and 3–Q to include functionalized fuel data, including the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement.[4]

6. In response to the June 2010 NOPR, comments were filed by eight commenters.[5] Certain of the comments presented proposals that differed from the Commission's proposals in the June 2010 NOPR. To give all interested persons an opportunity to comment on these proposals prior to making a final decision, the Commission issued a notice allowing reply comments. Reply comments were filed by two commenters.[6]

II. Discussion

A. Overview

7. After consideration of the comments, the Commission will revise pages 521a, 521b, and page 520 of FERC Form Nos. 2, 2–A, and 3–Q, and will add page 521c, as proposed in the June 2010 NOPR.[7] We make this determination because we find that the additional information to be reported on pages 521a–521c will allow the user to match the revenues generated by the sale of excess fuel with the functionalized costs reported on page 520 and will allow a user to better determine if there is a cross-subsidy. The revised forms will also now allow the user to determine where on the pipeline system fuel costs are being incurred and how they are being allocated. This added transparency will ensure that the Commission and pipeline customers have information critical to assessing the justness and reasonableness of pipeline rates. The collection and public availability of this information is consistent with our goal of having sufficient information reported to allow the Commission and pipeline customers to assess the impact on pipeline rates of changing fuel costs. The Commission also gave consideration to whether the data reported on FERC Form Nos. 2, 2–A, and 3–Q discussed herein should be reported on a monthly or quarterly basis. We have determined to require that the page 521 fuel use information should be reported on a monthly basis in the quarterly reports,[8] as that provides greater transparency.

8. These revisions to FERC Form Nos. 2, 2–A, and 3–Q do not require the

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[1] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 FR 19389 (Apr. 10, 2008), FERC Stats. & Regs. ¶ 31,267 (2008), *order on reh'g and clarification,* Order No. 710–A, 123 FERC ¶ 61,278 (2008), *remanded sub nom. American Gas Ass'n* v. *FERC,* 593 F.3d 14 (D.C. Cir 2010) (D.C. Circuit Remand Order).

[2] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710–A, 123 FERC at 62,708–9.

[3] 593 F.3d at 21.

[4] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Notice of Proposed Rulemaking, 75 FR 35700 (June 23, 2010), FERC Stats. & Regs. ¶ 32,659 (June 17, 2010) (June 2010 NOPR).

[5] These commenters and the abbreviations used to identify them are provided in the attached Appendix.

[6] INGAA and AGA.

[7] As proposed pages 521c and 521d were identical, we no longer see a need for a separate page 521d.

[8] The data reported in FERC Form Nos. 2 and 2–A on page 521 represents fourth quarter data and is not a total of data for all four quarters.

reporting of previously unreported new categories of information.[9] Instead, the new requirements merely require greater transparency through a disaggregation of existing data categories. Moreover, the Commission has determined that the burden on filers of reporting this information is small and is justified by the usefulness of the information.

B. Support for the June 2010 NOPR Proposal

1. Commenters' Views

9. Of the eight comments filed in response to the June 2010 NOPR, six support the Commission's proposals.[10] One of the six comments offers suggestions for additional revisions to the forms.[11] In addition, one commenter seeks clarification as to the scope of the reporting requirements,[12] and another, while expressing support for the goals of the June 2010 NOPR, offers a counterproposal to accomplish these goals.[13]

10. APGA urges the Commission to adopt the proposed revisions to FERC Form Nos. 2, 2–A, and 3–Q.[14] While AGA also supports the June 2010 NOPR proposals and urges prompt action on a final rule,[15] AGA requests that the Commission require monthly reporting of volume throughput data on page 520 and separate reporting of backhaul volumes.[16] Associations add that the proposed revised reporting requirements would provide useful information.[17] TVA likewise supports the Commission's proposal to include additional line items in 521a and 521b to account for fuel information disaggregated by function.[18] IOGA supports the proposed changes in reporting, particularly the inclusion of lost and unaccounted-for gas ("LAUF") used in transportation, storage, gathering, and exploration/production in the fuel data required on FERC Form Nos. 2, 2–A, and 3–Q as a separate component of fuel, by function.[19] Kansas Commission supports the changes proposed in the NOPR.[20]

11. MidAmerican requests clarification that the reporting of discounted and negotiated fuel should only contain fuel volumes related to agreements that contain discounted or negotiated fuel.[21]

12. While INGAA expresses support for the Commission's goal of enhancing FERC Form No. 2 fuel use reporting, it asserts that the Commission's June 2010 NOPR went beyond AGA's original proposal of reporting fuel by function that has been waived, discounted, or reduced as part of a negotiated rate agreement. INGAA offers an alternative reporting plan that it asserts will meet the Commission's stated goals.[22]

2. Usefulness of Reporting Additional Details on Fuel Use

13. The Commission's proposal in the June 2010 NOPR would disaggregate fuel use data into Discounted, Negotiated and Recourse categories. By contrast, under INGAA's proposal, companies would report aggregated Dths and Total dollars collected by function for Gas Used for Compressor Stations, for Gas Used for Other Deliveries and Other Operations, Gas Lost and Unaccounted for, Net Excess or (Deficiency), Disposition of Excess Gas, and Gas Acquired to meet Deficiency (eliminating the reporting of data in columns b, c, d, f, g, and h, as proposed in the June 2010 NOPR).

14. The Commission's proposal would require filers to report Dths not collected under waived, discounted, and negotiated for Gas Used for Compressor Stations, for Gas Used for Other Deliveries and Other Operations, Gas Lost and Unaccounted for, Net Excess or (Deficiency), Disposition of Excess Gas, and Gas Acquired to meet Deficiency. Under INGAA's proposal, this reporting requirement (Dths not collected by function under waived and negotiated deals) would apply to shipper supplied gas only, including Lines 2–7 on pages 521a and 521b. This change would eliminate the reporting of waived, negotiated and total fuel for lines 9 through 64 that was proposed in the June 2010 NOPR.

15. Six of the seven commenters that addressed this issue contend that the NOPR proposal reports an appropriate level of detail on fuel use.[23] INGAA was the sole commenter arguing against the NOPR proposal in this regard.

16. INGAA urges that the Commission limit its revisions to FERC Form No. 2 to AGA's proposal in its response[24] to the September 2007 NOPR, arguing that the June 2010 NOPR went further than necessary to accomplish what AGA proposed, and objects to the June 2010 NOPR proposal as providing more information than necessary.[25] INGAA demonstrates its point by referring to AGA's November 13, 2007 comments which referenced pages 4, 5, and 6 of Workpaper 2, and Workpaper 10 of the Informational Fuel Report filed by Dominion Transmission, Inc., (DTI) in Docket No. RP00–632–023 on June 27, 2007, as an example of what should be included on page 521.[26] INGAA argues that neither the Commission nor AGA has made a case that the additional degree of reporting is required to facilitate monitoring for potential cross-subsidies among services.[27]

17. By contrast, AGA agrees that the level of detail in the information to be reported under the NOPR proposal is needed to adequately assess the justness and reasonableness of pipeline fuel charges, addresses the D.C. Circuit Remand Order, and the burden of producing such information is small and nonetheless justified.[28]

18. APGA also states that the additional reporting requirements proposed in the NOPR will better ensure that pipeline customers and the Commission have sufficient information to identify unjust and unreasonable rates and services and to support potential complaints.[29] APGA states that, under the Commission's current reporting requirements, customers and the Commission currently cannot match the revenues generated by the sale of excess gas with the reported functionalized fuel costs.[30] Information regarding both fuel costs and excess gas revenues, broken-down and reported by function (including gathering, transmission, distribution, storage and production/extraction/processing), will allow customers and the Commission to better assess how pipeline fuel costs are incurred and allocated.[31] Requiring pipelines to disaggregate their excess gas revenue information and report it by function will thus provide customers and the Commission with information

[9] As explained further below, reporting will be prospective in nature and data for previous periods need not be corrected and refiled.

[10] AGA, APGA, Associations, IOGA, Kansas Commission and TVA.

[11] AGA.

[12] MidAmerican.

[13] INGAA.

[14] APGA Comments at 1.

[15] AGA Comments at 1, 5–6.

[16] *Id.* at 6–9.

[17] Associations Comments at 3–4.

[18] TVA Comments at 2.

[19] IOGA Comments at 1–2.

[20] Kansas Commission Comments at 1.

[21] MidAmerican Comments at 3–4.

[22] INGAA Comments at 1.

[23] MidAmerican Comments do not take a position on this issue.

[24] AGA Comments filed November 13, 2007 at 4–5 to the September 2007 NOPR. *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipeline,* Notice of Proposed Rulemaking, 72 FR 54860 (Sept. 27, 2007), FERC Stats. & Regs. ¶ 32,623 (2007) (September 2007 NOPR).

[25] INGAA Comments at 3.

[26] *Id.* at 4.

[27] *Id.* at 11.

[28] AGA Comments at 5–6.

[29] APGA Comments at 2.

[30] *Id.* at 3.

[31] *Id.*

necessary to better determine the reasonableness of pipeline fuel rates.[32]

19. APGA also supports the Commission's proposal to require pipelines to report the amount of fuel by function that has been waived, discounted or reduced in negotiated rate agreements.[33] It states that, under the Commission's policy, existing shippers are protected from subsidizing pipeline customers who have negotiated rates.[34] It adds that the Commission's proposal to require pipelines to report fuel costs and revenues associated with each type of rate structure (i.e., negotiated, discounted, or recourse) by function will aid customers and the Commission in identifying inappropriate cross-subsidization.[35]

20. Associations assert that the revised reporting requirements will improve the reporting of fuel data in FERC Form No. 2.[36] Associations maintain that pipeline fuel revenues can constitute a substantial percentage of a pipeline's total system revenues, and therefore, ensuring that shippers are not paying excessive fuel rates or percentages is extremely important.[37]

21. Associations comment that shippers will benefit from having functionalized fuel data reported on FERC Form No. 2 because this will allow shippers: (1) To ensure that rates are just and reasonable, as the greater level of detail will allow them to better assess whether pipelines are substantially over recovering fuel from their shippers [38] and (2) to assess whether they are subsidizing other shippers.[39] In this regard, Associations state that functionalized reporting will show the sources and uses of a pipeline's fuel by service type on FERC Form No. 2. Associations state that functionalized fuel reporting, for example, will show a pipeline's shippers the amount of fuel that storage users provided to the pipeline, as well as how much of that fuel the pipeline actually used for storage services.[40] If storage users in this example provided less fuel than the pipeline used for storage services, shippers using other pipeline services might want to take a closer look at the pipeline's fuel to determine whether they are subsidizing the storage shippers' fuel.[41] Thus, Associations assert that functionalized fuel data will allow shippers to confirm that they are providing the appropriate amount of fuel to the pipeline and are not subsidizing other shippers.[42]

22. Associations also support breaking out fuel volumes and revenues into rate types—discounted rates, negotiated rates or recourse rates—and maintain that this level of detail will provide shippers and the Commission with information that will be useful in assessing fuel rates.[43] Associations maintain that reporting fuel volumes and revenues by rate type will help shippers ensure: (1) The prevention of inappropriate subsidization; (2) the accuracy of pipeline fuel trackers; and (3) the compliance of pipelines with the Commission's fuel discounting policies.[44]

23. Associations also state that requiring pipelines to report fuel data by rate type would prevent subsidization of some shippers by allowing the Commission and shippers to distinguish between those fuel discounts that are eligible for a discount adjustment in a rate case and those that are not.[45] Associations add that, as the new FERC Form No. 2 will require pipelines to identify discounted fuel volumes and revenues as either "discounted," "negotiated," or "recourse," shippers could use these data to distinguish between those fuel discounts that are appropriately included as adjustments in a rate case (e.g., backhauls) and those that are not (e.g., discounts that are part of a negotiated rate).[46] Moreover, Associations assert that this detail gives shippers a better indication of what appropriate fuel rates should be, allowing the shippers to determine if fuel rate changes are warranted.[47]

24. Finally, Associations argue that reporting fuel data by rate type could provide an added check on fuel tracker calculations and on pipelines' compliance with fuel discounting policies.[48]

25. IOGA maintains that it is critical to include and break out LAUF, which it asserts, has been far in excess of actual fuel use on certain Appalachian pipelines.[49] In this regard, IOGA posits that requiring interstate pipelines to break out fuel and LAUF by function in FERC Form Nos. 2, 2–A, and 3–Q would be helpful to IOGA's efforts to limit fuel and LAUF assessed to shippers and ultimately netted back to Appalachian producers.[50] Because the Appalachian pipelines are part of integrated energy companies engaged in exploration, production, gathering, storage and transportation of natural gas, IOGA asserts that it has long been concerned that unmetered gas flow allocable to affiliated exploration and production affiliates or farm tap customers of affiliated LDCs becomes LAUF charged to other shippers, instead.[51] It states that increasing the transparency of FERC Form Nos. 2, 2–A, and 3–Q could help alleviate those concerns.[52]

26. IOGA also argues that requiring the filing of more transparent fuel and LAUF data will allow the Commission and interested market participants to better analyze allegedly extraordinary fuel and LAUF experienced by certain interstate pipelines.[53] For example, IOGA notes that one interstate pipeline serving the Appalachian basin recently made a filing with the Commission claiming that its actual gathering fuel and LAUF during a 12-month period was in excess of 11 percent.[54] IOGA asserts that pipeline recovery of fuel and LAUF should be minimized to the extent possible. If gas is disappearing between the wellhead and the interconnection between a pipeline's gathering and transmission facilities, IOGA argues that producers and shippers deserve to know why.[55] IOGA further argues that, by increasing its ability to compare fuel and LAUF experienced among pipelines, the Commission will be better equipped to determine whether a given level of fuel and LAUF is unjust and unreasonable and whether the cost should be borne by the pipeline rather than by its customers.[56]

27. Kansas Commission asserts that the information submitted on the Commission's financial forms is critical to the ability of shippers and other interested parties to assess pipeline rates, and as such should be as complete and detailed as practical.[57]

28. TVA agrees with the June 2010 NOPR assertion that breaking down fuel costs and revenues associated with negotiated, discounted, or recourse rate structures by function will provide greater clarity on the justness and reasonableness of rates.[58] In addition, TVA agrees that reporting the amount of

[32] *Id.*
[33] *Id.* at 3.
[34] *Id.*
[35] *Id.*
[36] Associations Comments at 3.
[37] *Id.* at 3.
[38] *Id.* at 4.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.* at 5.
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.* at 5–6.
[47] *Id.* at 6.
[48] *Id.*
[49] IOGA Comments at 2.
[50] *Id.* at 2–3.
[51] *Id.* at 3.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] Kansas Commission Comments at 1.
[58] TVA Comments at 2–3.

fuel by function that has been waived, discounted, or reduced as part of a negotiated rate agreement will allow for the determination of whether cross-subsidization is occurring, and thus, is critical to assessing the justness and reasonableness of the pipeline's fuel rates in the absence of mandated rate cases.[59]

29. Further, TVA hopes that the added transparency will encourage support for pipelines to develop, and customers to support, incentive fuel initiatives, as tracking mechanisms with a true-up process do little to promote capital investment for energy efficiency.[60] In addition, it states that the proposed changes will add detail and promote transparency when considering the unknown impact of cost-recovery resulting from potential carbon legislation requirements associated with monitoring and/or reporting greenhouse gas emissions.[61]

30. INGAA, by contrast, would have the pipelines aggregate fuel use data by function along with the volume of fuel "not collected." [62] INGAA asserts that this approach has the benefit of focusing the additional fuel use reporting on the areas that gave rise to AGA's original concerns of fuel waivers and negotiated rate contracts that could present cross subsidy concerns.[63]

31. Specifically, INGAA suggests the following revisions to page 521a and b:

(1) Lines 1–7: Total volume and the dollar value of shipper-supplied fuel gas, by function, with volumes "not collected" because the otherwise applicable fuel rate was waived (column (d)) or because a negotiated fuel rate was less than the recourse rate (column (e)), along with the pertinent account(s) under the Uniform System of Accounts.

(2) Lines 8–14: Total volume and dollar value of gas used in compressor stations, by function.

(3) Lines 15–22: Same data for miscellaneous "other deliveries" and "other operations."

(4) Lines 23–30: Same data for LAUF.

(5) Lines 31–37: A calculation of the excess or deficiency by function.

(6) Lines 38–51 and 52–65: Disposition of the excess or source of gas acquired to meet a deficiency.[64]

32. INGAA also suggests that the Commission not include a separate reporting category for discounted rates because pipelines cannot discount the fuel use component of a discounted rate because it is a non-discountable variable cost.[65]

33. AGA responds that, as recognized in the June 2010 NOPR, the Commission has a policy against existing shippers subsidizing the negotiated rate program, and it notes that the June 2010 NOPR properly concluded that the information proposed to be required could be useful in identifying potential violations of that policy.[66] AGA objects to INGAA's counterproposal, arguing that the NOPR proposal would increase the ability of the Commission and interested parties to assess whether a pipeline's existing shippers are subsidizing the pipeline's negotiated rate program, while INGAA's counterproposal would effectively delete much of the information sought in the June 2010 NOPR.[67]

34. AGA notes that INGAA argued in its comments that reporting fuel use data by customer contract would require pipelines to establish mechanisms for allocating fuel use among the types of contracts (negotiated, discounted, or recourse).[68] AGA believes that it would be appropriate for pipelines to make those allocations transparent through the reporting requirements proposed in the NOPR.[69]

35. Unless the pipeline itself provides its allocation methods on its financial forms, AGA argues that customers cannot adequately assess the costs and revenues associated with fuel charges to discounted and negotiated rate customers.[70] Commission staff and interested parties cannot be expected to estimate or otherwise discern a pipeline's allocation scheme in the absence of information from the pipeline itself. Accordingly, AGA urges the Commission to require pipelines to report fuel costs and revenues by rate structure (discounted, negotiated, recourse) broken down by function as proposed in the June 2010 NOPR.[71] Thus, AGA supports the June 2010 NOPR proposal and urges the Commission to reject the proposals advanced by INGAA.[72]

3. Commission Determination

36. In Order No. 710–A, the Commission found that the detail sought by AGA might provide additional clarity with respect to fuel costs, but decided not to require the reporting of this information based on concerns over the burden associated with compliance with such a requirement.[73] The Commission also declined to accept AGA's proposal to require natural gas pipelines to report details about the amount of fuel that they waived, discounted or reduced as part of a negotiated rate agreement based on concerns that this information might not be significant and might not be readily available, as many pipelines do not periodically file to adjust fuel rates and may not keep records of this type of information.[74]

37. After consideration of the comments and reply comments to the June 2010 NOPR, the Commission finds that the additional information to be reported on pages 521a and 521b will allow users to match the revenues generated by the sale of excess fuel with the functionalized costs reported on page 520 and will allow users to better determine if there is a cross-subsidy, which is critical to assessing the justness and reasonableness of the pipeline's fuel rates particularly in the context of pipelines' negotiated rate program. We find that requiring the reporting of fuel costs and revenues by rate structure broken down by function will increase the ability of the Commission and interested parties to assess whether a pipeline's existing shippers are subsidizing the pipeline's negotiated rate program. Thus, we find that INGAA's proposal would effectively delete much of the valuable information sought in the June 2010 NOPR.

38. The revised forms also will now allow the user to better determine where on the pipeline system fuel costs are being incurred and how they are being allocated. This added transparency, which is supported by the majority of the commenters, will ensure that the Commission and pipeline customers have sufficient information to be able to assess the justness and reasonableness of pipeline rates. The collection and public availability of this information is consistent with our goal of having sufficient information to allow the Commission and pipeline customers to assess the impact on pipeline rates of changing fuel costs.

39. By contrast, if we adopted INGAA's suggestion to limit the revisions to FERC Form No. 2 to those originally proposed by AGA, then the benefits of increased transparency of rates, particularly within the negotiated rate program, which are described in the two preceding paragraphs, would not be

[59] *Id.* at 3.

[60] *Id.*

[61] *Id.*

[62] INGAA Comments at 2.

[63] *Id.* at 6. INGAA provides its recommended revisions for a revised page 521a in Appendix A to its comments.

[64] *Id.* at 7.

[65] *Id.*

[66] AGA Reply Comments at 2.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Revisions to Forms, Statements, and Requirements for Natural Gas Pipelines* Order No. 710–A, 123 FERC ¶ 61,278 at P 10.

[74] *Id.* P 11.

fully realized. The Commission's proposal better captures important information about a company's fuel use. The fact that this is not identical to that proposed by AGA to the September 2007 NOPR in no way refutes the usefulness of these data being reported and made available to the Commission and the public.

40. Moreover, requiring the reporting by function of the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement will enable pipeline customers to better determine if inappropriate cross-subsidization is occurring. The Commission has a policy that existing shippers must not subsidize the negotiated rate program; this additional information would be useful in identifying potential violations of that policy.[75] The revised schedules adopted in this Final Rule will functionally disaggregate the fuel costs and revenues associated with each type of rate structure (i.e., negotiated, discounted, or recourse) to provide users with better information to assess the justness and reasonableness of a pipeline's fuel rates.

41. In this Final Rule, therefore, the Commission is revising the financial reporting forms required to be filed by natural gas companies (FERC Form Nos. 2, 2–A, and 3–Q) to include functionalized fuel data on pages 521a, 521b, and 521c of those forms, and to include on such forms the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. Specifically, the Commission is revising pages 521a and 521b in the following manner:

(1) Expanding line 1 to separately reflect shipper supplied fuel by function (now shown on lines 1–7 on page 521a), i.e., production/extraction/processing, gathering, transmission, distribution, and storage;

(2) Expanding lines 2, 3, and 4 to separately list the volumes for each of these functions (now shown on lines 8–30 on page 521a);[76]

(3) Expanding the listing of volumes in columns (b), (c), and (d) to include discounted, negotiated and recourse rates;

(4) Expanding line 6, net excess or deficiency, to separately list the volumes for each of these functions (now shown on lines 31–37 on page 521b);

(5) Expanding the reporting of dollar amounts in columns (f) through (i) to include amounts collected under discounted, negotiated and recourse rates;

(6) Requiring the reporting of volumes of gas (in dekatherms) in columns (j) through (m) not collected where the request for that gas has been waived or reduced under discounted or negotiated rates; and

(7) Directing filers (if the pipeline does not use a particular function) to enter a zero for that field.

42. FERC Form Nos. 2, 2–A, and 3–Q involve estimates and allocations and the methods for making these allocations are to be documented in FERC Form Nos. 2, 2–A, and 3–Q. Thus, we will add an instruction to page 521a to require that companies disclose their fuel use allocation method(s) in a note to these financial forms.

C. Separate Reporting of Forwardhaul and Backhaul Throughput Volumes

1. Comments

43. AGA favors further revisions to the forms to require interstate pipelines to separately report forwardhaul and backhaul throughput volumes associated with detailed fuel use, LAUF, and fuel collections data reported on the revised FERC Form No. 2.[77] AGA cites a recent case involving the calculation of retention percentages for fuel use and LAUF where, it asserts, the Commission determined that additional data were required regarding forwardhaul and backhaul deliveries in order to properly determine a pipeline's level of fuel use.[78]

44. AGA argues that in *Columbia Gulf* the Commission stated that it was unable to determine whether the throughput figures set forth on page 305 of the pipeline's FERC Form No. 2 filings included or excluded backhaul volumes and that the Commission accordingly directed the pipeline to provide "[f]orward haul and backhaul deliveries stated separately for the mainline, onshore, and offshore zones for each month" for a specified period of time.[79] AGA asserts that the Commission recognized in that case that accurate forwardhaul and backhaul throughput data are important for the Commission and shippers to properly assess fuel use and LAUF, and that the current FERC Form No. 2 is not adequate to collect the separate forwardhaul and backhaul throughput data needed to conduct a proper analysis of fuel use and lost and unaccounted for fuel costs.[80]

45. AGA maintains that the current rulemaking is the proper proceeding in which to consider this revision, even though it was not raised earlier, because the purpose of this proceeding is to revise the financial forms for interstate pipelines "to provide, in greater detail, the information the Commission needs to carry out its responsibilities under the NGA to ensure that rates are just and reasonable, and to provide pipeline customers and the public the information they need to assess the justness and reasonableness of pipeline rates."[81]

46. In its reply comments INGAA disagrees with AGA's proposal for an additional breakout of forwardhaul and backhaul data, arguing that this is neither practical nor necessary to achieve the Commission's FERC Form No. 2 reporting goals.[82] In INGAA's view, the fact that this information was deemed important by the Commission in *Columbia Gulf* does not warrant a general requirement that it be reported across the industry on an ongoing basis.[83] INGAA also notes that "typically no fuel is used for backhaul volumes, although the Commission requires an allocation of LAUF gas [to] be attributed to backhauls."[84]

47. INGAA cautions that if the proposal involves the reporting of fuel retained and fuel used on backhaul volumes, this would present practical difficulties with respect to backhauls that use no compressor fuel (citing *Mississippi River Transmission Corp.,* 98 FERC ¶ 61,119 at 61,353 (2002) in this regard). However, INGAA agrees that these problems would not be present if the proposal only requires the reporting of forwardhaul and backhaul throughput volumes, which is all that is being required in this Final Rule.

48. INGAA comments that, particularly on a reticulated pipeline, gas flows in each direction, depending on demand and storage operations, and there may be no specific or designated transportation path for many services, which makes reporting problematic or impossible.[85] INGAA argues that the current gas system does not provide shippers with a set capacity path and that gas flows in each direction, depending on demand and storage, and this is why the Commission declined to adopt a generic requirement to establish

[75] *See Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulations of Negotiated Transportation Services of Natural Gas Pipeline* (*Alternative Rate Policy Statement*), 74 FERC ¶ 61,076, at 61,242 (1996), *order granting clarification,* 74 FERC ¶ 61,194 (1996), and *NorAm Gas Transmission Company,* 77 FERC ¶ 61,011 (1996).

[76] Lines 2–4 previously consisted of: (2) Less gas used in compressors; (3) Less gas used for other operational purposes (footnote); and (4) Less gas lost and unaccounted for.

[77] AGA Comments at 1, 7–9.

[78] (Citing *Columbia Gulf Transmission Co.,* 132 FERC ¶ 61,009, at P 38 (2010) (*Columbia Gulf*)).

[79] AGA Comments at 8.

[80] *Id.*

[81] *Id. Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* citing Order No. 710, FERC Stats. & Regs. ¶ 31,267 at P 1.

[82] INGAA Reply Comments at 2.

[83] *Id.*

[84] *Id.* at n.1.

[85] *Id.* at 3.

a path priority system in Order No. 637.[86]

49. In addition, INGAA argues that a single transportation service can involve a combination of forwardhauls or backhauls; thus, classifying each dekatherm of transportation as forwardhaul or backhaul is impossible.[87]

2. Commission Determination

50. Currently FERC Form No. 2 does not require a distinction between forwardhaul and backhaul volumes. Since compressor fuel use is not assessed to backhaul volumes, it is inaccurate to include backhaul volumes for throughput.

51. After consideration of all the arguments on this issue, we find that it would be informative and useful for pipelines to separately report their forwardhaul and backhaul volumes, because this would allow the Commission and customers to determine whether the fuel use being assigned to customers in their bills contain any cross-subsidies, based on the inclusion of backhaul volumes in their gas purchases, and thus help ensure that rates are just and reasonable. We also find that the benefits arising from this reporting, providing the opportunity to track fuel costs and examine cross-subsidies, outweigh the burden of reporting such data.

52. As to INGAA's argument that it would not be possible, even for the services that are pathed, to classify each dekatherm of transportation as either forwardhaul or backhaul, we conclude that, for a majority of pipelines, this is not a significant problem. Many pipelines offer clearly defined backhaul services that are defined in their tariffs. In order to offer and, ultimately, provide that service, those pipelines must be able to determine the volumes for which the service is provided. However, some pipelines do not offer backhaul service, and for these pipelines it is reasonable to expect that backhaul volumes may not be able to be tracked. Therefore, the Commission will require reporting on this matter depending on the service identified in the tariff. If backhaul service is not offered under the tariff, the reporting pipeline may report as if the service it offers is entirely forwardhaul. The reporting pipeline must separately identify backhaul volumes only if it offers backhaul service in its tariff and provides this service to customers.

D. Clarification of Whether Additional Details on Fuel Use Only Apply in Instances Where Contract Provides for Discounted or Negotiated Fuel Rates

1. Comments

53. MidAmerican comments that, to its knowledge, very few discounted and negotiated rate agreements include a provision for discounted or negotiated fuel.[88] Thus, MidAmerican suggests that the Commission clarify that columns (b) and (c) of pages 521a and 521b and columns (f) and (g) of pages 521c and 521d include only contracts with discounted or negotiated fuel rates, and the column headings be revised to read "Discounted Fuel Rate" and "Negotiated Fuel Rate."[89]

54. MidAmerican further argues that the columns should only contain volumes related to agreements with discounted or negotiated fuel, not fuel volumes related to all discounted or negotiated agreements, if the purpose of the information is to determine if there is a cross subsidy.[90]

2. Commission Determination

55. In this Final Rule, we are requiring pipelines to report fuel use by function for all contracts involving discounted rates, negotiated rates, or recourse rates. We reject MidAmerican's proposal to only require the reporting of fuel costs in contracts where the fuel rate is discounted. Under MidAmerican's proposal, how a contract is structured would dictate whether it would be within the scope of the reporting requirements of this Final Rule and MidAmerican states that very few discounted and negotiated rate agreements include a provision for discounted or negotiated fuel. If this is so, or if future contracts are specifically written to make it so, then, under MidAmerican's proposal, many contracts that otherwise would be included in the reporting requirements would not be reported. This would have the consequence of diminishing the benefits of enhanced transparency that we hope to achieve with this Final Rule and thus we reject MidAmerican's suggestion.

56. As to MidAmerican's suggestion that columns (b) and (c) on pages 521a and 521b, and columns (f) and (g) on pages 521c and 521d, should only contain volumes and dollars related to agreements with discounted or negotiated fuel, not fuel volumes or dollars related to discounted or negotiated agreements, for the reasons stated, we clarify that the amounts reported on pages 521a and 521b in columns (b) and (c) and on page 521c at columns (f) and (g) reflect shipper supplied gas collected under all discounted or negotiated rate agreements.[91]

E. Monthly v. Quarterly Reporting

57. As mentioned above, FERC Form Nos. 2 and 2–A are annual reports and FERC Form 3–Q is a quarterly report. In the June 2010 NOPR, the Commission invited comments on whether the data reported on FERC Form Nos. 2, 2–A, and 3–Q should be reported on a monthly or quarterly basis (i.e., whether the data should provide separate entries for each month, or one entry covering the entire quarter).

1. Comments

58. AGA favors continuation of the requirement for monthly reporting of fuel use on page 521, asserting that important seasonal changes would be obscured by quarterly reporting.[92] AGA states that the consumption of natural gas in the United States varies significantly from one month to the next and, while demand in the industrial sector is largely constant, demand in the residential and commercial sector is weather-driven and has a dramatic seasonal shape with a winter peak.[93]AGA also notes that demand in the power generation sector is weather sensitive with a summer peak, or in some cases bi-modal with both winter and summer peaks.[94] AGA states that, because fuel is a variable cost and varies with consumption, the amount of fuel costs and revenues experienced by interstate pipelines varies by month and the fuel cost and revenue data of interstate pipelines does not fit neatly into calendar quarters. Consequently, significant variations in fuel data would be masked by fuel reporting only on a quarterly basis.[95]

59. AGA further recommends that the fuel information on page 520 be reported on a monthly basis.[96] AGA argues that, as the Commission noted in the June 2010 NOPR, the fuel information reported on page 520 works in tandem with the information reported on page 521 and should allow a shipper to match the functionalized costs on page 520 with the functionalized

[86] *Id.* at 4.

[87] *Id.* at 4–5.

[88] MidAmerican Comments at 3.

[89] *Id.*

[90] *Id.*

[91] As discussed above, the revised forms we are adopting in this Final Rule do not include page 521d.

[92] AGA Comments at 1, 6–7.

[93] *Id.* at 6.

[94] *Id.*

[95] *Id.*

[96] *Id.* at 7, AGA Reply Comments at 5, and AGA Further Reply Comments at 4.

revenues on page 521.[97] Having only quarterly information reported on page 520 would impede the ability of shippers and the Commission to match costs and revenues with the monthly information reported on page 521.[98] Therefore, AGA requests that page 520 of the financial reports be revised to add the appropriate columns to reflect the reporting of the information on that page on a monthly basis.[99]

60. Associations also argue that providing shippers with access to detailed fuel information on a monthly basis, such as functionalized fuel data by rate type on FERC Form No. 2, would allow the Commission and shippers to ensure that fuel rates remain just and reasonable.[100] Associations state that better information would also help the Commission and shippers to develop a Natural Gas Act (NGA), section 5 complaint proceeding case and, further, would allow parties to confirm fuel tracker reports.[101]

61. IOGA urges the Commission to retain the requirement for the monthly filing of fuel data.[102] In IOGA's experience, fuel and LAUF can vary significantly from month to month. Monthly breakdowns in FERC Form Nos. 2, 2–A, and 3–Q could provide valuable data that might be masked by aggregated quarterly data.[103] IOGA notes that pipelines already report transportation and gathering quantities by month, and contends that quarterly reporting of fuel and LAUF as proposed by INGAA will foreclose accurate comparative analysis of the relationship between quantities shipped and fuel and LAUF on a monthly basis.[104]

62. IOGA further argues that, as pipelines track throughput, fuel and LAUF data monthly for invoicing and other purposes, a requirement to report fuel and LAUF by month will not pose additional administrative burden or expense.[105]

63. Kansas Commission believes that monthly reporting of this information is not necessary to provide the information required to effectively evaluate a pipeline's rates. Therefore, Kansas Commission supports INGAA's suggestion to change the reporting requirements to quarterly.[106]

64. INGAA argues that the reporting requirements should be quarterly.[107] INGAA comments that, because of weather events and anomalous events in the data, monthly data cannot provide an accurate picture or trend.[108] INGAA also asserts that pipelines with storage assets or significant line pack do not need to dispose of excess fuel, so monthly data would not provide an accurate picture of fuel use.[109]

65. In response to INGAA, AGA argues that monthly reporting is preferable, because significant variations in fuel data can be masked by fuel reporting on a quarterly basis,[110] and quarterly data cannot be disaggregated to obtain monthly information to determine what costs or revenues were experienced and by what functions. Only monthly fuel information will provide sufficient transparency to allow the Commission and interested parties to assess the justness and reasonableness of interstate pipeline fuel charges.[111] AGA also notes that INGAA did not contradict AGA's observation that weather variations and the location of shipper-scheduled volumes on the pipeline from month to month have a substantial effect on fuel consumption.[112]

2. Commission Determination

66. In Order No. 710, the Commission eliminated FERC Form No. 11, the Natural Gas Pipeline Company Quarterly Statement of Monthly Data, and shifted the reporting of that information to FERC Form Nos. 2 and 3–Q.[113] We found that this fuel use information provides critical data for detecting trends, determining seasonal variation of fuel use, and testing the reasonableness of a pipeline's fuel costs. Upon further consideration of this issue in the instant docket, the Commission finds that monthly reporting provides greater transparency and provides more representative information about a pipeline's fuel use than quarterly reporting and we will retain this requirement.

67. Reporting data on a monthly basis provides more accurate accounting of fuel use, allowing for a better understanding of pipeline operations, and provides critical detail to understand how the pipeline treats its fuel. It would not be unexpected that a pipeline's operating parameters would change from January to March, from April to June, from July to September, or from October to December. It would seem counter to the interest of increased transparency to reduce the granularity of fuel use data over these periods. The monthly data are more representative of the pipeline's varying operations, enabling the transparency required by Order No. 710 to more fully evaluate a pipeline's fuel use and address the concerns of the remand. We conclude that moving to quarterly reporting would gloss over natural gas monthly fluctuations, thus distorting what actually occurred during the reporting period. Thus, we find that fuel use data should continue to be reported on a monthly basis, and not on a quarterly basis.

68. As to AGA's proposal to modify page 520 to have respondent companies report transmission throughput volumes on a monthly basis, we note that AGA did not provide specific reasons supporting the imposition of this requirement. Currently, page 520 only requires that transmission volumes be reported on a quarter and year to date basis and we see no need to revise this requirement. The reporting of transmission volume throughput and the reporting of fuel data are separate matters and the additional information to be provided on fuel use does not provide a reason to further break down transportation volume throughput. Thus, we find that the quarterly separation of that data is sufficient and we will not impose the additional burden on filers to break down these data in the absence of demonstrated benefits.

F. Burden

1. Comments

69. AGA, APGA, and Kansas Commission comment that the burden of producing and reporting the additional details on fuel use proposed in the June 2010 NOPR is both small and justified.[114] By contrast, INGAA finds the June 2010 NOPR proposal unduly burdensome.[115]

70. Specifically, APGA comments that pipelines should have this information readily available because they maintain it for their own purposes.[116] Given the potential benefit of the information and the relatively low compliance burden on pipelines, APGA supports the Commission's proposal to require pipelines to report the amount of fuel

[97] AGA Comments at 7.

[98] *Id.*

[99] *Id.*

[100] Associations Comments at 4.

[101] *Id.*

[102] IOGA Comments at 3.

[103] *Id.*

[104] *Id.* at 4.

[105] *Id.*

[106] Kansas Commission Comments at 2.

[107] INGAA Comments at 3.

[108] *Id.*

[109] *Id.* at 11.

[110] AGA Reply Comments at 3.

[111] *Id.*

[112] *Id.*

[113] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710, FERC Stats. & Regs. ¶ 31,267 at P 51, Order No. 710–A, 123 FERC ¶ 61,278 at P 3.

[114] *See, e.g.,* AGA Comments at 5.

[115] INGAA Comments at 3.

[116] APGA Comments at 3.

waived, discounted or reduced as part of negotiated rate agreements.[117]

71. Kansas Commission states that the benefits of the additional reporting outweigh any burden that might be placed on the reporting pipelines.[118] Given that pipelines already functionalize this data for ratemaking purposes, Kansas Commission concludes that the burden on pipelines will be minimal.[119]

72. Kansas Commission further argues that, in the absence of a mandatory requirement for pipelines to periodically restate their base tariff rates, the Commission must rely on section 5 of the NGA to police pipeline rates. Under these circumstances, the need for functionalized data is heightened.[120] Without functionalized data, shippers and other interested parties cannot determine whether a pipeline is cross-subsidizing service, and the efficacy of the NGA section 5 complaint process is undermined.[121] Accordingly, the Kansas Commission supports the Commission's proposal to require functionalized fuel data to be included on pages 521a and 521b of FERC Form No. 2.[122] Kansas Commission also supports the Commission's proposal to require pipelines to report the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement.[123]

73. INGAA maintains that the Commission's proposal is unnecessarily burdensome.[124] First, INGAA maintains that it is difficult for pipelines to track fuel use by individual contract or contract type because pipelines operate on an integrated basis.[125] Second, INGAA asserts that it would require substantially more information than would be provided under this proposal to enable FERC Form No. 2 users to monitor potential cross-subsidy concerns.[126] Third, INGAA comments that pipelines will have to establish a mechanism for allocating fuel use between or among services and contracts.[127]

2. Commission Determination

74. The Commission finds that fuel use data on a functionalized basis is needed to obtain the transparency necessary to ensure just and reasonable rates. Additionally, we find that this reporting requirement is not unnecessarily burdensome. Currently, pipelines that file annual fuel use trackers assign fuel to their individual shippers. In this Final Rule, the Commission is not imposing any additional reporting requirements that change how those pipelines track fuel. Pipeline billings are provided on an integrated basis, accounting for sales based on whether the volumes are negotiated, recourse, or discounted. Moreover, contrary to INGAA's assertions, the Commission is not requiring pipelines to track fuel by individual contracts, but merely continuing the current practice of requiring the assignment of fuel based on an allocation of throughput or stated fuel rate. The revisions to page 521a through 521c require the same accounting mechanism for fuel, enabling parties to better understand how fuel use costs are assigned.

75. The Commission in the June 2010 NOPR estimated the annual burden to comply with the requirements established in Docket No. RM07–9–003 while inviting comments on the cost to comply with the proposed requirements. We estimated that the additional collection costs would not be overly burdensome.[128] The Commission provided its best estimate of the time required to complete page 521a through 521d. No party presented data contradicting the Commission's estimate. While INGAA contends that the proposal is burdensome, INGAA did not identify any inaccuracies in the Commission's estimate, did not quantify its own estimate of the impact of reporting fuel on a functionalized basis, and did not provide any support for its contention that functionalizing fuel would be burdensome to the pipelines. In this Final Rule, as discussed above, we are adding a requirement to report information on forwardhauls and backhauls and we are revising our burden estimate to account for this requirement. The Commission finds that, even with this minor additional reporting requirement, the benefits of enhanced transparency provided by the additional reporting proposed in the June 2010 NOPR outweigh the burden placed on the pipelines. Further, we find that our estimated burden hours (as adjusted) are small and reasonable, and we will continue to require fuel to be reported on a functionalized basis.

G. Implementation Date

1. Comments

76. AGA contends that the new rules should apply to the financial forms that are required to be filed beginning in calendar year 2011.[129] AGA states that the annual financial reports (FERC Form Nos. 2 and 2–A) showing data for calendar year 2010 would be required to be filed on April 18, 2011. Quarterly financial reports (FERC Form No. 3–Q) would be required to be filed 60 days (for major pipelines) or 70 days (for non-major pipelines) after the end of the reporting quarter. Thus, the first quarterly financial reports in 2011 would be due March 1, 2011 (for majors) and March 10, 2011 (for non-majors), based on fourth quarter 2010 data.[130]

77. INGAA comments that changes to FERC Form No. 2 should be prospective.[131] It states that this approach will provide pipelines adequate time to put data collection software in place.[132] In addition, it states that implementing the changes prospectively will allow time for pipelines to complete any engineering or other operational studies that might be needed for pipelines that do not already have accounting systems in place to make reasonably accurate estimates.[133] INGAA urges that pipelines be permitted to collect any additional data the Commission may require in 2011, with reporting to begin in 2012.[134]

2. Commission Determination

78. We conclude that the information to be reported under this Final Rule may require some companies to revise accounting systems to accurately allocate fuel use. While this is already reflected in the burden estimate, we nonetheless will revise the implementation schedule that we proposed in the June 2010 NOPR to address this concern. Additionally, we are not requiring companies subject to this Final Rule to refile the FERC Form Nos. 2, 2–A, and 3–Q that they have already filed.

79. Companies subject to these new requirements must begin collecting the more detailed data starting on July 1, 2011, and must use that data in completing their FERC Form Nos. 2, 2–A, and 3–Q thereafter. The revised data requirements would first be reflected in the FERC Form No. 3–Q filings for the

[117] *Id.* at 4.
[118] Kansas Commission Comments at 1.
[119] *Id.*
[120] *Id.* at 2.
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] INGAA Comments at 2.
[125] *Id.* at 2.
[126] *Id.*
[127] *Id.*
[128] June 2010 NOPR, FERC Stats. & Regs. ¶ 32,659 at P 19.
[129] AGA Comments at 5–6.
[130] *Id.* at 6.
[131] INGAA Comments at 3.
[132] *Id.* at 12.
[133] *Id.*
[134] INGAA Reply Comments at 2.

period July 1 through September 30, 2011, which must be filed within 60 days of the end of the reporting quarter for majors and within 70 days of the end of the reporting quarter for non-majors (i.e., by November 29, 2011 for majors and December 9, 2011 for non-majors) and in the FERC Form Nos. 2 and 2–A filings for 2011, which must be filed by April 18, 2012.[135]

80. As noted above,[136] page 521 only reports fourth quarter data and not yearly data. By contrast, page 520 gives yearly totals. However, while page 520 currently breaks down LAUF into several subcategories, the revised page 520 adopted in this Final Rule combines these subcategories into a single total that is reported on line 32 of the revised page 520. Thus, the FERC Form Nos. 2 and 2–A, filings for 2011, which must be filed by April 18, 2012, should report LAUF as a single line item on line 32, and should not report the breakdowns of these data for the first six months of the reporting year.

III. Information Collection Statement

81. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[137] Previously, the Commission submitted to OMB the information collection requirements arising from Order No. 710 and OMB approved those requirements.[138] The revisions to FERC Form Nos. 2, 2–A, and 3–Q adopted in this Final Rule consist of giving additional details about certain fuel cost data that the Commission already required to be reported in less detail in Order No. 710.

82. The Commission is submitting the information collection requirements imposed in this Final Rule to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[139] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods of minimizing respondent's burden, including the use of automated information techniques.

83. This Final Rule affects the following existing data collections:

Title: FERC Form No. 2, "Annual Report for Major Natural Gas Companies"; FERC Form No. 2–A, "Annual Report for Nonmajor Natural Gas Companies"; FERC Form No. 3–Q, "Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies."

Action: Proposed information collection.

OMB Control Nos. 1902–0028 (FERC Form No. 2); 1902–0030 (FERC Form No. 2–A); and 1902–0205 (FERC Form No. 3–Q).

Respondents: Businesses or other for profit.

Frequency of responses: Annually (FERC Form Nos. 2 and 2–A) and quarterly (FERC Form No. 3–Q).

Necessity of the information: The information maintained and collected under the requirements of 18 CFR 260.1, 18 CFR 260.2, and 18 CFR 260.300 is essential to the Commission's oversight duties. The data now reported in the forms does not provide sufficient information to the Commission and the public to permit an evaluation of the filers' jurisdictional rates. Since the triennial restatement of rates requirement was abolished and pipelines are no longer required to submit this information, the need for current and relevant data is greater than in the past. The information collection required by this Final Rule will increase the forms' usefulness to both the public and the Commission.

84. Without this information, it is difficult for the Commission and the public to perform an assessment of pipeline costs, and thereby help to ensure that rates are just and reasonable. The pipelines should already have this information readily available for their own use in developing separately stated fuel rates in their tariffs. In any event, we believe this additional information will allow the Commission and form users to better analyze pipeline fuel costs, an important component in assessing the justness and reasonableness of pipelines' rates.

Burden Statement: The Commission estimates that on average it will take each respondent six additional hours per collection to comply with the proposed requirements.[140] Most of the additional information required to be reported is already compiled and maintained by the pipelines. This proposal will increase the burden hours as follows:

Data collection form	Number of respondents	Change in the number of hours per respondent	Filings per year	Change in the total annual hours for this form
FERC Form No. 2	84	6	1	504
FERC Form No. 2–A	44	6	1	264
FERC Form No. 3–Q	128	6	3	2304
Totals				3072

Information Collection Costs: 3072 hours at $120/hour = $368,640.

85. Given that none of the commenters identified any errors or inaccuracies in the estimates we used in the June 2010 NOPR, we will adopt these same estimates in this Final Rule, with the exception that we are adjusting our estimate to account for our requirement to report on forwardhauls and backhauls. At paragraphs 73–74 above, we address and reject INGAA's contention that certain parts of our proposal would be burdensome.

86 *Internal Review:* The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support associated with the information requirements.

[135] *See* 18 CFR 260.300(b)(2)(vii), 18 CFR 260.1(b)(2), and 18 CFR 260.2(b)(2).

[136] *See* n.8, *supra.*

[137] 5 CFR 1320.11.

[138] OMB approved the information collections prescribed in Order No. 710 on June 27, 2008 for FERC Form No. 2 (OMB Control No. 1902–0028, ICR# 200804–1902–005) and FERC Form No. 2–A (OMB Control No. 1902–0030, ICR# 200804–1902–007) and on Oct. 8, 2008 for FERC Form No. 3–Q (OMB Control No. 1902–0205, ICR# 200804–1902–008).

[139] 44 U.S.C. 3507(d).

[140] We revised this number from five hours to six hours to reflect our additional requirement to report information on forwardhauls and backhauls.

87. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, phone (202) 502–8663, fax: (202) 273–0873, e-mail: *DataClearance@ferc.gov.* For submitting comments concerning the collections of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov.* Please refer to OMB Control Nos. 1902–0028 (FERC Form No. 2), 1902–0030 (FERC Form No. 2–A), and 1902–0205 (FERC Form No. 3–Q), and the docket number of this Final Rule in your submission.

IV. Environmental Analysis

88. The Commission is required to prepare an environmental assessment or an environmental impact statement for any action that may have a significant adverse effect on the human environment.[141] However, in 18 CFR 380.4(a)(5), we categorically excluded the type of information gathering required in this Final Rule from the requirement to prepare an environmental impact statement. Thus, we affirm the finding we made in the June 2010 NOPR that this Final Rule does not impose any requirements that might have a significant effect on the human environment and find that no environmental impact statement concerning this rule is required.

V. Regulatory Flexibility Act

89. The Regulatory Flexibility Act of 1980 (RFA)[142] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[143] However, the RFA does not define "significant" or "substantial." Instead, the RFA leaves it up to an agency to determine the effect of its regulations on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.

90. The Commission estimates that there are 84 Major natural gas pipeline companies and 44 Non-major companies that will be affected by the Final Rule.[144] As we stated in the June 2010 NOPR, this Final Rule will apply to all interstate natural gas companies subject to the Commission's jurisdiction. While we do not foresee that this Final Rule will have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, we will consider granting waivers in appropriate circumstances. Moreover, our most recent information shows that only six natural gas companies not affiliated with a large natural gas company fall within the definition of a small entity and these six entities constitute only 4.7 percent of the 128 total companies.

91. Accordingly, the Commission certifies that this Final Rule will not have a significant impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required.

VI. Document Availability

92. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

93. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

94. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

95. These regulations are effective February 25, 2011. Companies subject to the requirements of this Final Rule must comply with the requirements of this rule in accordance with the implementation timeline prescribed in this preamble. The Commission has determined (with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB) that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix—

List of Commenters on June 2010 NOPR

(And Abbreviations Used To Identify Them)

Comments

American Gas Association (AGA)

American Public Gas Association (APGA)

Independent Oil & Gas Association of West Virginia (IOGA)

Interstate Natural Gas Association of America (INGAA)

Kansas Corporation Commission (Kansas Commission)

Natural Gas Supply Association, Independent Petroleum Association of America, Electric Power Supply Association and Process Gas Consumers Group (collectively, Associations)

Northern Natural Gas Company and Kern Gas Transmission Company (collectively, MidAmerican)

Tennessee Valley Authority (TVA)

Reply Comments

AGA

INGAA

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[141] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[142] 5 U.S.C. 601–612.

[143] The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small natural gas pipeline company as one whose total annual revenues, including its affiliates, are $6.5 million or less. 13 CFR parts 121, 201.

[144] These numbers are based on the most recent filings.

Note: The following revised schedules will not be published in the Code of Federal Regulations.

Revised Schedules for FERC Form Nos. 2, 2-A and 3-Q

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Gas Account – Natural Gas

1. The purpose of this schedule is to account for the quantity of natural gas received and delivered by the respondent.
2. Natural gas means either natural gas unmixed or any mixture of natural and manufactured gas.
3. Enter in column (c) the year to date Dth as reported in the schedules indicated for the items of receipts and deliveries.
4. Enter in column (d) the respective quarter's Dth as reported in the schedules indicated for the items of receipts and deliveries.
5. Indicate in a footnote the quantities of bundled sales and transportation gas and specify the line on which such quantities are listed.
6. If the respondent operates two or more systems which are not interconnected, submit separate pages for this purpose.
7. Indicate by footnote the quantities of gas not subject to Commission regulation which did not incur FERC regulatory costs by showing: (1) the local distribution volumes another jurisdictional pipeline delivered to the local distribution company portion of the reporting pipeline; (2) the quantities that the reporting pipeline transported or sold through its local distribution facilities or intrastate facilities and which the reporting pipeline received through gathering facilities or intrastate facilities, but not through any of the interstate portion of the reporting pipeline; and (3) the gathering line quantities that were not destined for interstate market or that were not transported through any interstate portion of the reporting pipeline.
8. Indicate in a footnote the specific gas purchase expense account(s) and related to which the aggregate volumes reported on line No. 3 relate.
9. Indicate in a footnote: (1) the system supply quantities of gas that are stored by the reporting pipeline, during the reporting year and also reported as sales, transportation and compression volumes by the reporting pipeline during the same reporting year; (2) the system supply quantities of gas that are stored by the reporting pipeline during the reporting year which the reporting pipeline intends to sell or transport in a future reporting year,; and (3) contract storage quantities.
10. Also indicate the volumes of pipeline production field sales that are included in both the company's total sales figure and the company's total transportation figure. Add additional information as necessary to the footnotes.

Line No.	Item (a)	Ref. Page No. of (FERC Form Nos. 2/2-A) (b)	Total Amount of Dth Year to Date (c)	Current Three Months Ended Amount of Dth Quarterly Only (d)
1	Name of System:			
2	GAS RECEIVED			
3	Gas Purchases (Accounts 800-805)			
4	Gas of Others Received for Gathering (Account 489.1)	303		
5	Gas of Others Received for Transmission (Account 489.2)	305		
6	Gas of Others Received for Distribution (Account 489.3)	301		
7	Gas of Others Received for Contract Storage (Account 489.4)	307		
8	Gas of Others Received for Production/Extraction/Processing (Accounts 490 and 491)			
9	Exchange Gas Received from Others (Account 806)	328		
10	Gas Received as Imbalances (Account 806)	328		
11	Receipts of Respondent's Gas Transported by Others (Account 858)	332		
12	Other Gas Withdrawn from Storage (Explain)			
13	Gas Received from Shippers as Compressor Station Fuel			
14	Gas Received from Shippers as Lost and Unaccounted for			
15	Other Receipts (Specify) (footnote details)			
16	Total Receipts (Total of lines 3 thru 15)			
17	GAS DELIVERED			
18	Gas Sales (Accounts 480-484)			
19	Deliveries of Gas Gathered for Others (Account 489.1)	303		
20	Deliveries of Gas Transported for Others (Account 489.2)	305		
21	Deliveries of Gas Distributed for Others (Account 489.3)	301		
22	Deliveries of Contract Storage Gas (Account 489.4)	307		
23	Gas of Others Delivered for Production/Extraction/Processing (Accounts 490 and 491)			
24	Exchange Gas Delivered to Others (Account 806)	328		
25	Gas Delivered as Imbalances (Account 806)	328		
26	Deliveries of Gas to Others for Transportation (Account 858)	332		
27	Other Gas Delivered to Storage (Explain)			
28	Gas Used for Compressor Station Fuel	509		
29	Other Deliveries and Gas Used for Other Operations			
30	Total Deliveries (Total of lines 18 thru 29)			
31	GAS LOSSES AND GAS UNACCOUNTED FOR			
32	Gas Losses and Gas Unaccounted For			
33	TOTALS			
34	Total Deliveries, Gas Losses & Unaccounted For (Total of lines 30 and 32)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Shipper Supplied Gas for the Current Quarter

1. Report monthly (1) shipper supplied gas for the current quarter and gas consumed in pipeline operations, (2) the disposition of any excess, the accounting recognition given to such disposition and the specific account(s) charged or credited, and (3) the source of gas used to meet any deficiency, the accounting recognition given to the gas used to meet the deficiency, including the accounting basis of the gas and the specific account(s) charged or credited.
2. On lines 7, 14, 22 and 30 report only the dekatherms of gas provided by shippers under tariff terms and conditions for gathering , production/ extraction/processing, transmission, distribution and storage service and the use of that gas for compressor fuel, other operational purposes and lost and unaccounted for. The dekatherms must be broken out by functional categories on Lines 2-6, 9-13, 16-21 and 24-29. The dekatherms must be reported in column (d) unless the company has discounted or negotiated rates which should be reported in columns (b) and (c).
3. On lines 7, 14, 22 and 30 report only the dollar amounts of gas provided by shippers under tariff terms and conditions for gathering, production/ extraction/processing, transmission, distribution and storage service and the use of that gas for compressor fuel, other operational purposes and lost and unaccounted for. The dollar amounts must be broken out by functional categories on Lines 2-6, 9-13, 16-21 and 23-29. The dollar amounts must be reported in column (h) unless the company has discounted or negotiated rates which should be reported in columns (f) and (g). The accounting should disclose the account(s) debited and credited in columns (m) and (n).
4. Indicate in a footnote the basis for valuing the gas reported in Columns (f), (g) and (h).
5. Report in columns (j), (k) and (l) the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement.
6. On lines 32-37 report the dekatherms and dollar value of the excess or deficiency in shipper supplied gas broken out by functional category and whether recourse rate, discounted or negotiated rate.
7. On lines 39 through 51 report the dekatherms, the dollar amount and the account(s) credited in Column (o) for the dispositions of gas listed in column (a).
8. On lines 53 through 65 report the dekatherms, the dollar amount and the account(s) debited in Column (n) for the sources of gas reported in column (a).
9. On lines 66 and 67, report forwardhaul and backhaul volume in Dths of throughput.
10. Where appropriate, provide a full explanation of the allocation process used in reported numbers in a footnote.

Line No.	Item (a)	Month 1 Discounted Rate Dth (b)	Month 1 Negotiated Rate Dth (c)	Month 1 Recourse Rate Dth (d)	Month 1 Total Dth (e)
1	**Shipper Supplied Gas (Lines 13 and 14 , Page 520)**				
2	Gathering				
3	Production/Extraction/Processing				
4	Transmission				
5	Distribution				
6	Storage				
7	**Total Shipper Supplied Gas**				
8	**Less Gas Used For Compressor Station Fuel (Line 28, Page 520)**				
9	Gathering				
10	Production/Extraction/Processing				
11	Transmission				
12	Distribution				
13	Storage				
14	**Total gas used in compressors**				
15	**Less Gas Used For Other Deliveries And Gas Used For Other Operations (Line 29, Page 520) (footnote)**				
16	Gathering				
17	Production/Extraction/Processing				
18	Transmission				
19	Distribution				
20	Storage				
21	Other Deliveries (specify) (footnote details)				
22	**Total Gas Used For Other Deliveries And Gas Used For Other Operations**				
23	**Less Gas Lost And Unaccounted For (Line 32, Page 520)**				
24	Gathering				
25	Production/Extraction/Processing				
26	Transmission				
27	Distribution				
28	Storage				
29	Other Losses (specify) (footnote details)				
30	**Total Gas Lost And Unaccounted For**				

Name of Respondent	This Report is: (1) ☐☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Shipper Supplied Gas for the Current Quarter (Continued)

Line No.	Item (a)	Month 1 Discounted Rate Dth (b)	Month 1 Negotiated Rate Dth (c)	Month 1 Recourse Rate Dth (d)	Month 1 Total Dth (e)
31	**Net Excess Or (Deficiency)**				
32	Gathering				
33	Production/Extraction				
34	Transmission				
35	Distribution				
36	Storage				
37	**Total Net Excess Or (Deficiency)**				
38	**Disposition Of Excess Gas:**				
39	Gas sold to others				
40	Gas used to meet imbalances				
41	Gas added to system gas				
42	Gas returned to shippers				
43	Other (list)				
44					
45					
46					
47					
48					
49					
50					
51	**Total Disposition Of Excess Gas**				
52	**Gas Acquired To Meet Deficiency:**				
53	System gas				
54	Purchased gas				
55	Other (list)				
56					
57					
58					
59					
60					
61					
62					
63					
64					
65	**Total Gas Acquired To Meet Deficiency**				
	SEPARATION OF FORWARDHAUL AND BACKHAUL THROUGHPUT				
66	**Forwardhaul Volume in Dths for the Quarter**				
67	**Backhaul Volume in Dths for the Quarter**				
68	**TOTAL**				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Shipper Supplied Gas for the Current Quarter (continued)

Amount Collected (Dollars)				Volume (in Dth) Not Collected					
Month 1 Discounted Rate Amount (f)	Month 1 Negotiated Rate Amount (g)	Month 1 Recourse Rate Amount (h)	Month 1 Total Amount (i)	Month 1 Waived Dth (j)	Month 1 Discounted Dth (k)	Month 1 Negotiated Dth (l)	Month 1 Total Dth (m)	Month 1 Account(s) Debited (n)	Month 1 Account(s) Credited (o)

FERC FORM NO. 2 (REVISED 12-10)
FERC FORM NO. 2-A (REVISED 12-10)
FERC FORM NO. 3-Q (REVISED 12-10)

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[FR Doc. 2011–1493 Filed 1–25–11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1126]

RIN 1625–AA00

Safety Zone; Underwater Hazard, Gravesend Bay, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Gravesend Bay, Brooklyn, New York. This rule is necessary to provide for the safety of life and property on the navigable waters. This rule is intended to restrict unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of Gravesend Bay until recently discovered military munitions are rendered safe and removed from the area.

DATES: This rule is effective from January 26, 2011 until 11:59 p.m. on June 30, 2011. This rule has been enforced with actual notice since December 18, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1126 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1126 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590,

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant William George, Waterways Management Division, Coast Guard Sector New York; telephone 718–354–4114, e-mail *William.J.George@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of the public in the vicinity of munitions recently discovered in Gravesend Bay by civilian divers. U.S. Navy underwater surveys confirmed the location of unexploded ordnance in Gravesend Bay. In the interest of public safety the U.S. Navy has requested that the Coast Guard restrict access to the area in which the munitions are located until the munitions can be rendered safe and removed. Immediate action is required to ensure that no unauthorized persons and vessels travel through or conduct underwater activities that may disturb the current location of the unexploded ordnance, such as dive operations or anchoring within close proximity to the unexploded munitions. Publishing a NPRM and waiting 30 days for comment would be contrary to the public interest because any delay in the effective date of this rule would expose mariners, the boating public, and divers to the potential hazards associated with unexploded ordnance. Furthermore, a separate notice of proposed rulemaking will be pursued, where the public will have the opportunity to provide comment.

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

Basis and Purpose

In response to media reports of military munitions found in Gravesend Bay by civilian divers, U.S. Navy Explosive Ordnance Disposal divers from Naval Weapons Station Earle conducted underwater surveys and confirmed the location of munitions on the bottom of Gravesend Bay. The munitions consist of approximately 1,500 rounds of 20mm ammunition, one 3-inch diameter projectile and two cartridge casings.

In the interest of public safety, the U.S. Navy has requested that the Coast Guard limit access to the location in Gravesend Bay where the munitions are located until the ordnance could be rendered safe and removed.

This temporary safety zone is necessary to ensure the safety of mariners, vessels, and civilian divers from the potential hazards associated with unexploded military munitions. This temporary final rule is an interim measure while a long-term rulemaking process is pursued separately under docket number USCG–2010–1091.

Discussion of Rule

The Captain of the Port New York is establishing a temporary safety zone around the location of the unexploded ordnance site to ensure the safety of mariners and vessels transiting in the vicinity of unexploded ordnance as well as divers intending to dive in the area.

The safety zone will encompass all waters of Gravesend Bay within 110-yard radius of a point at the approximate position 40°36′30″ N, 074°02′14″ W (NAD 83), approximately 70 yards southeast of the Verrazano Bridge Brooklyn tower.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, anchoring, or diving within the safety zone is prohibited unless authorized by the Captain of the Port New York, or the on-scene representative. The Captain of the Port or the on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule temporarily restricts access to a small portion of Gravesend Bay until unexploded military ordnance are rendered safe and removed. The safety zone is located in an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation. This rule is intended to protect the public from the hazards associated with unexploded ordnance. Furthermore, vessels will be able to safely transit around the area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Gravesend Bay, in the vicinity of the Verrazano Bridge, Brooklyn, NY.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely transit around the zone. The rule limits access to a relatively small portion of the waterway where there is a known hazard until the hazard is rendered safe. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T01–1126 is added as follows:

§ 165.T01–1126 Safety Zone; Underwater Hazard, Gravesend Bay, Brooklyn, NY.

(a) *Regulated area.* The following area is a temporary safety zone: All waters of Gravesend Bay within 110-yard radius of a point at the approximate position 40°36′30″ N, 074°02′14″ W (NAD 83), approximately 70-yards southeast of the Verrazano Bridge Brooklyn tower.

(b) *Effective period.* This regulation is effective from 12:01 a.m. on December 18, 2010 until 11:59 p.m. June 30, 2011.

(c) *Regulations.* (1) The general regulation contained in 33 CFR 165.23 apply.

(2) Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port New York.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port New York or the designated on-scene-patrol personnel. These designated on-scene-patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

Dated: December 17, 2010.

L.L. Fagan,

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

[FR Doc. 2011–1660 Filed 1–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1120]

RIN 1625–AA00

Safety Zone; 500 Yards North and South, Bank to Bank, of Position 29°48.77′ N 091°33.02′ W, Charenton Drainage and Navigation Canal, St. Mary Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone extending 500 yards North and South, bank to bank, of position 29°48.77′ N 091°33.02′ W, Charenton Drainage and Navigation Canal, St. Mary Parish, LA. This Safety Zone is needed to protect the general public, vessels and tows from destruction, loss or injury due to a sunken vessel and associated hazards.

DATES: This rule is effective in the CFR on January 26, 2011 through June 30, 2011. This rule is enforceable with actual notice January 7, 2011. This rule will remain in effect until June 30, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1120 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1120 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant (LT) Russell Pickering, Coast Guard; telephone 985–380–5334, e-mail *russell.t.pickering@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable, since immediate action is needed to protect the general public, vessel and tows from a sunken vessel and associated hazards in position 29°48.77′ N 091°33.02′ W, in the Charenton Drainage and Navigation Canal.

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**. Publishing an NPRM and delaying its effective date would be impracticable since immediate action is needed to protect the general public, vessel and tows from destruction, loss or injury due to a sunken vessel and associated hazards in position 29°48.77′ N 091°33.02′ W.

Background and Purpose

A Mobile Inshore Drilling Rig (Hercules Rig 61) scheduled for scrap sank in the Charenton Navigation and Drainage Canal. A safety zone is needed to protect the general public, vessels and tows from destruction, loss or injury from a sunken vessel and associated hazards during the response action.

Discussion of Rule

The Coast Guard is establishing a temporary Safety Zone 500 yards North and South, bank to bank, of position 29°48.77′ N 091°33.02′ W within the Charenton Drainage and Navigation Canal. The temporary Safety Zone is established for the period from January 7, 2011, through June 30, 2011. Vessels and tows may not enter this zone unless authorized by the Captain of the Port Morgan City.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule will only be in effect for a limited period of time and notifications to the marine community will be made through broadcast notice to mariners and Local Notice to Mariners. Vessels needing to transit the area can request permission from the Captain of the Port. The impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the Safety Zone from January 7, 2011 to June 30, 2011. This Safety Zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time, and vessels that need to transit the area while the safety zone is effective can request permission from the Captain of the Port.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

Because this rule involves an emergency situation and will be in effect for over one week, an environmental analysis checklist and a categorical exclusion determination will be provided and made available at the docket as indicated in the **ADDRESSES** section.

List of Subjects in 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 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. 1226, 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0979 to read as follows:

§ 165.T08–0979 Safety Zone.

500 yards North and South, bank to bank, of position 29°48.77′ N 091°33.02′ W, Charenton Drainage and Navigation Canal, St. Mary Parish, LA.

(a) *Enforcement Areas.* 500 yards North and South, bank to bank, of position 29°48.77′ N 091°33.02′ W, Charenton Drainage and Navigation Canal.

(b) *Enforcement dates.* This rule will be enforced from January 7, 2011 through June 30, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Morgan City.

(2) Vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port Morgan City, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (985) 380–5320.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Morgan City and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: January 7, 2011.

J.C. Burton,

Captain, U.S. Coast Guard, Captain of the Port, Morgan City, Louisiana.

[FR Doc. 2011–1645 Filed 1–25–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0788; FRL–9256–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Flat Wood Paneling Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). This SIP revision includes amendments to Maryland's regulation for Volatile Organic Compounds from Specific Processes, and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for flat wood paneling coatings. These amendments will reduce emissions of volatile organic compound (VOC) emissions from flat wood coating facilities. Therefore, this revision will help Maryland attain and maintain the national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on March 28, 2011 without further notice, unless EPA receives adverse written comment by February 25, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0788, by one of the following methods:

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

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0788, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0788. 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 e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 23, 2010, MDE submitted to EPA SIP revision # 10–05 concerning the adoption of the EPA CTG for flat wood paneling coatings.

I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

The CTG for flat wood paneling coatings is intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOCs from flat wood paneling coating. In developing this CTG, EPA, among other things, evaluated the sources of VOC emissions from the flat wood paneling coating industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provides recommendations for RACT for flat wood paneling coating.

In June 1978, EPA published a final CTG for flat wood paneling coatings, entitled "Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VII, Factory Surface Coating of Flat Wood Paneling," EPA–450/2–78–034 (June 1978). In September 1979, EPA published guidance to provide assistance to State and local air pollution control agencies in preparing RACT regulations for a variety of categories, including flat wood paneling. In 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) covering surface coating of wood building products (including flat wood paneling). See 68 FR 31746 (May 28, 2003).

Under section 183(e) of the CAA, EPA conducted a study of VOC emissions from the use of consumer and commercial products to assess their potential to contribute to levels of ozone that violate the NAAQS for ozone, and to establish criteria for regulating VOC emissions from these products. Section 183(e) of the CAA directs EPA to list for

regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone (i.e., ozone nonattainment areas), and to divide the list of categories to be regulated into four groups.

EPA published the original list of product categories and the original schedule that established the four groups of categories in the **Federal Register** on March 23, 1995 (60 FR 15264). Flexible package printing materials was included in that list. EPA noted in that notice that EPA may amend the list of products for regulation, and the groups of products for regulation, and the groups of product categories, in order to achieve an effective regulatory program in accordance with the Agency's discretion under CAA section 183(e). EPA published a revised schedule and grouping on March 18, 1999 (64 FR 13422). EPA again revised the list to regroup the product categories on November 17, 2005 (70 FR 69759). On May 16, 2006 (71 FR 28320), EPA modified the section 183(e) list and schedule for regulation by adding one category and removing one category of consumer and commercial products. Flat wood paneling coatings are included on the current section CAA183(e) list.

Flat wood paneling products are used in construction and can be classified as three main product types: decorative interior panels, exterior siding, and tileboard. A typical flat wood coating facility applies stains and varnishes to natural plywood panels used for wall coverings. This CTG applies to facilities that apply flat wood paneling coatings that emit at least 6.8 kg/day (15 lb/day) of VOC before consideration of controls. Flat wood paneling coatings means wood paneling products that are any interior, exterior or tileboard (class I hardboard) panel to which a protective, decorative, or functional material or layer has been applied. There are several approaches to reducing VOC emissions from flat wood coating facilities: (1) The use of low-VOC, waterborne coatings, (2) the use of ultraviolet cure and electron beam cure coatings, (3) adding/improving add-on controls, and (4) the implementation of work practice standards.

II. Summary of SIP Revision

On April 23, 2010, Maryland Department of the Environment (MDE) submitted to EPA a SIP revision concerning the adoption of the EPA CTG for flat wood paneling coatings. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. MDE is adopting EPA's CTG standards for flat wood paneling coatings (*see* EPA–450/2–78–034, June 1978). This SIP revision includes amendments to a new regulation .33 under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. This action affects facilities that apply stains and varnishes to natural plywood panels used for wall coverings.

New regulation COMAR 26.11.19.33—Control of Volatile Organic Compounds (VOCs) Emissions from Flat Wood Paneling Coatings contains the following requirements and standards:

(1) *Section .33(A):* Includes definitions for the following terms pertaining to flat wood paneling coatings: (1) "Class II finishes on hardboard panels," "Exterior siding," "Flat wood paneling," "Hardwood plywood," "Natural finish hardwood plywood panels," "Printed interior panels," "Thin particleboard," and "Tileboard."

(2) *Section .33(B):* Incorporates by reference ANSI A135.5–2004, Prefinished Hardwood Paneling and ANSI A135.4–2004, Basic Hardboard.

(3) *Section .33(C):* Describes the applicability of this regulation.

(4) *Section .33(D):* Includes the requirements for flat wood paneling coating. Any person who applies flat wood paneling coatings, including inks and adhesives, where total precontrol VOC emissions from all flat wood paneling coating operations at a premises is 15 pounds or more per day (6.8 kg/day) shall meet the coating standards or overall control efficiency specified in Table 1.

TABLE 1—RECOMMENDED EMISSION LIMITS FOR FLAT WOOD PANELING COATING OPERATIONS

Surface coatings, inks, or adhesives applied to the following flat wood paneling categories	Should meet one of these emission limits:		
	lb VOC per gallon material (grams VOC per liter material) [excluding water and exempt compounds]	lb VOC per gallon solids (grams VOC per liter solids)	Overall control efficiency using an add-on control device (%):
Printed interior panels made of hardwood, plywood, or thin particleboard	2.1 (250)	2.9 (350)	90
Natural finish hardwood plywood panels	2.1 (250)	2.9 (350)	90
Class II finishes on hardboard panels	2.1 (250)	2.9 (350)	90
Tileboard	2.1 (250)	2.9 (350)	90
Exterior siding	2.1 (250)	2.9 (350)	90

III. Final Action

Maryland's April 23, 2010 SIP revision meets the CAA requirement to include RACT for sources covered by the EPA CTG for flat wood paneling coating. Therefore, EPA is approving the Maryland SIP revision that adopts the CTG standards for flat wood paneling coating. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 28, 2011 without further notice unless EPA receives adverse comment by February 25, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments 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.

IV. Statutory and Executive Order Reviews

A. General Requirements

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 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action pertaining to Maryland's adoption of the CTG standards for flat wood paneling coating may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 5, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

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 VB—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding an entry for COMAR 26.11.19.33 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.19	Volatile Organic Compounds from Specific Processes			
*	*	*	*	*
26.11.19.33	Control of Volatile Organic Compounds (VOCs) from Flat wood Paneling Coatings.	4/19/10	1/26/11 [Insert page number where the document begins].	New Regulation.
*	*	*	*	*

* * * * *

[FR Doc. 2011–1489 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0882; FRL–9255–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of the Revised Lead Standards and Related Reference Conditions, and Update of Appendices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The revisions add the primary and secondary lead standards of 0.15 micrograms per cubic meter (μg/m^3), related reference conditions, and update the list of appendices under "Documents Incorporated by Reference." Virginia's SIP revisions for the national ambient air quality standards (NAAQS) for lead are consistent with the Federal lead standards. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on March 28, 2011 without further notice, unless EPA receives adverse written comment by February 25, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0882 by one of the following methods:

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

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0882, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0882. 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 e-mail. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 27, 2010, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of revisions pertaining to the ambient air quality standards for lead and related reference conditions. The CAA specifies that EPA must re-evaluate the appropriateness of its various air quality standards every five years. As part of the process, EPA reviewed the latest research and determined that revised standards for lead were necessary to protect public health and welfare. EPA revised the level of the primary lead standard to a level of 0.15 micrograms per cubic meter (μg/m^3) to provide increased protection for children and other "at risk" populations. The secondary standard was also revised to a level of 0.15 μg/m^3 to afford increased protection for the environment. EPA promulgated the more stringent primary and secondary NAAQS for lead on November 12, 2008 (73 FR 66964).

II. Summary of SIP Revision

On September 27, 2010, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of an amendment which includes the revised primary and secondary ambient air quality standards for lead and related reference conditions. Virginia's revision incorporates the Federal lead standards into the Code of Virginia (9VAC5 Chapter 30). In addition, the list of appendices to 40 CFR Part 51 was updated under "Documents Incorporated by Reference" (9VAC5–20–21).

The following are the specific sections that are being modified or amended:

- 9VAC5–20–21: Documents Incorporated by Reference (modified)
- 9VAC5–30–15: Reference Conditions (modified)
- 9VAC5–30–80: Lead (amended)

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the

violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving Virginia's SIP revision for the lead NAAQS and related reference conditions, as well as the updated list of appendices to 40 CFR Part 51 under documents incorporated by reference. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 28, 2011 without further notice unless EPA receives adverse comment by February 25, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 March 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action pertaining to Virginia's adoption of the revised lead standards of 0.15 μg/m^3 and related reference conditions 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, Lead, Reporting and recordkeeping requirements.

Dated: January 5, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Section 5–30–15 and 5–30–80. The table in paragraph (e) is amended by adding an entry for "Documents Incorporated by Reference" after the ninth existing entry for "Documents Incorporated by Reference." The amendments read as follows:

52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* *	*	*	*	* *
9 VAC 5, Chapter 30 Ambient Air Quality Standards [Part III]				
* *	*	*	*	* *
5–30–15	Reference conditions	6/24/09	1/26/11 [Insert page number where the document begins].	Revised section.
* *	*	*	*	* *
5–30–80	Lead	6/24/09	1/26/11 [Insert page number where the document begins].	Revised paragraphs A. and B.; added paragraph C.
* *	*	*	*	* *

* * * * * (e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional Explanation
* *	*	*	*	* *
Documents Incorporated by Reference (9 VAC 5–20–21, Sections E.1.a.(1)(q) and E.1.a.(1)(r)).	Statewide	9/27/10	1/26/11 [Insert page number where the document begins].	Revised sections.
* *	*	*	*	* *

* * * * *

[FR Doc. 2011–1466 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1033; A–1–FRL–9209–3]

Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving a State Implementation Plan (SIP) revision submitted by the State of Colorado regarding its Regulation 1. Regulation 1 provides certain emission controls for opacity, particulates, carbon monoxide and sulfur dioxide. The revision involves the deletion of obsolete, the adoption of new, and the clarification of ambiguous provisions within Regulation 1. The intended effect of EPA's action is to make Federally enforceable the revised portions of Colorado's Regulation 1 that EPA is approving and to disapprove portions of the regulation that EPA deems are not consistent with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective February 25, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2007–1033. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number (303) 312–6022, fax number (303) 312–6064, *komp.mark@epa.gov*.

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

(v) The words *Provision* or *Regulation* refer to Colorado's Regulation 1.

(vi) The initials SO_2 mean or refer to sulfur dioxide, *HC* mean or refer to hydrocarbons and *CO* mean or refer to Carbon Monoxide.

(vii) The initials *RACT* mean or refer to Reasonably Available Control Technology.

Table of Contents

I. Background Information Regarding Colorado's Submittal

On July 31, 2002, the State of Colorado submitted a formal revision to its SIP. The July 31, 2002 revision deleted obsolete provisions in Sections II.A.6, A.7, A.9 and C.3 [1] regarding, respectively, alfalfa dehydrating plant drum dryers, wigwam burners, the static firing of Pershing missiles and a notice regarding waste materials. The provisions were deleted from the regulation because these sources no longer exist in the State and the notice regarding waste materials appears in other Colorado regulations.

Colorado added language to its open burning provisions (Section II.C.2.d) to clarify that the open burning of animal parts and carcasses are not exempt from permit requirements. However, a special allowance to conduct open burning activities without a permit is provided where the State Agricultural Commission declares a public health emergency or a contagious or infectious outbreak of disease that imperils livestock is evident. Such activities require a telephone notice to State and local health departments prior to conducting such open burning activities. All necessary safeguards must be used to minimize impacts on public health or welfare.

The State revised the method in Section III.A.1.d for calculating emissions from multiple fuel burning units ducting to a common stack. Emissions are to be calculated on a pound per million British thermal unit (lbs/mmBtu) input and must be based on a weighted average of the individual allowable limits for each unit.

The State added clarifying language in several provisions of Regulation 1 stating that alternative performance test methods may be used with approval from the State. It also specified that ASTM or equivalent methods approved by the State may be used for fuel sampling from sources subject to Regulation 1.

In sections VI A.3.e. and VI.B.4.g. regarding SO_2 emissions, the State changed the overall emission limit for petroleum and oil shale refineries from 0.3 lbs per barrel of oil processed per day to 0.7 lbs per barrel of oil processed per day. The State also added new language that modifies the method for calculating compliance with emission limits for petroleum refining and cement manufacturing. The State deleted Section VI.B.5, which stipulates that new sources of SO_2 emissions that do not fall in specific source categories are subject to a 2 ton per day emission limit and are to utilize best available control technology.

II. Response to Comments

EPA did not receive comments on our July 21, 2010 **Federal Register** proposed action regarding the partial approval and partial disapproval of Colorado's SIP revisions to their Regulation 1.

III. Section 110(l) of the CAA

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirement of the Act. Those portions of the revision to Colorado's Regulation 1 that we are approving satisfy section 110(l), because those portions do not relax existing SIP requirements. Instead, the portions of the July 31, 2002 submittal EPA is

[1] All references in this notice to particular section numbers are to the designated sections within Regulation 1.

approving increase stringency of existing requirements, clarify existing requirements, or remove obsolete requirements. Therefore, section 110(l) is satisfied.

IV. Final Action

EPA is approving revisions to the following provisions in Regulation 1: (1) Deletion of Sections II.A.6, II.A.7, and II.A.9 regarding emission limits for sources that no longer exist in the State and the deletion of Section II.C.3 regarding an obsolete notice involving the disposal of waste materials. The deletion of Sections II. A6, A.7 and A.9 will cause a numbering change of subsequent paragraphs within Sections II.A. EPA is adopting the new numbering scheme for section II.A.; (2) revisions to Section II.C.2.d. regarding the burning of diseased animal carcasses to prevent a public health emergency; (3) revision of Section III.A.1.d involving the State's method for calculating emissions from multiple fuel burning units ducted to a common stack; (4) the deletion of Section III.C.2 regarding the deletion of process weight emission standards for alfalfa drum dryers. The deletion of Section III.C.2 will cause a numbering change of subsequent paragraphs within Section III.C. EPA is adopting the new numbering scheme for section III.C.; (5) Federal adoption of Section V regarding emission standards for electric arc furnaces, except for a portion of Section V.A.2 where the State has specified that their director has discretion to approve other credible methods for determining emission rates; and (6) revisions to Sections VI.A.3.e, VI.A.3.f, VI.B.4.e, and VI.B.4.g.(ii) regarding the methods used for the averaging of emissions over a 24 hour period.

EPA is disapproving revisions to the following provisions in Regulation 1: (1) Revisions to Section III.A.2. and Section III.C.3 involving director's discretion regarding the method for conducting performance tests; (2) the revision within Section V.A.2. where the State gives its director's discretion regarding the method used to determine compliance with electric arc furnaces' emission standards; (3) revisions to Sections VI.B.4.e and VI.B.4.g(ii) regarding changes in the SO_2 emission limits for petroleum and oil shale refining; (4) revisions to Section VI.B.5 regarding SO_2 emission limits for new sources not falling in specified source categories; and (5) revisions to Sections VI.C. and VI.F. regarding the use of director's discretion for alternative methods to show compliance with fuel sampling plans and alternative compliance procedures respectively.

V. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2011. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 23, 2010.

Carol Rushin,

Deputy Regional Administrator, Region 8.

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 G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(115) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(115) On July 31, 2003, the State of Colorado submitted revisions to Colorado's 5 CCR 1001–3, Regulation 1, that deleted Sections II.A.6, A.7, A.9 and C.3, regarding, respectively, alfalfa dehydrating plant drum dryers, wigwam burners, the static firing of Pershing missiles and a notice regarding waste materials. The State also deleted emission limitations for alfalfa plant drum dyers by removing Section III.C.2. Colorado's deletion of Sections II. A6, A.7 and A.9 and Section III.C.2 will cause a numbering change of subsequent paragraphs within Sections II.A and III.C. EPA is adopting the new numbering scheme for sections II.A. and III C. Section II.C.2.d. regarding agricultural open burning is modified to include the burning of diseased animal carcasses to prevent a public health emergency. Section III.A.1.d is modified for incorporation of new State's method for calculating emissions from multiple fuel burning units ducted to a common stack. Section V is added regarding emission standards for electric arc furnaces, except for the director's discretion provision provided for in Section V.A.2. Sections VI.A.3.e, VI.A.3.f, VI.B.4.e, and VI.B.4.g(ii) are modified regarding the methods used for the averaging of emissions over a 24 hour period.

(i) Incorporation by reference.

(A) 5 CCR 1001–3, Regulation 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, Section II, Smoke and Opacity, Section II.C.2.d, effective March 2, 2002.

(B) 5 CCR 1001–3, Regulation 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, Section III, Particulate Matter, Fuel Burning Equipment, Section III.A.1.d, effective September 30, 2001.

(C) 5 CCR 1001–3, Regulation 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, Section V, Emission Standard for Existing Iron and Steel Plant Operations, effective September 30, 2001.

(1) The submittal contains Section V.A.2 with the language:

"Emissions from gas-cleaning device shall not exceed a mass emission rate of 0.00520 gr/dscf of filterable particulates maximum two-hour average, as measured by EPA Methods 1–4 and the front half of Method 5 (40 CFR 60.275, and Appendix A, Part 60), or by other credible method approved by the Division. This particulate emissions standard does not include condensable emissions, or the back half emissions of Method 5". The language "or by other credible method approved by the Division" is disapproved. The language "Appendix A, Part 60" is changed to "appendices A1 through A3, Part 60" in order to comply with the current nomenclature of Part 60.

(D) 5 CCR 1001–3, Regulation 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, Section VI, Sulfur Dioxide Emission Regulations, Sections VI.A.3.e, VI.A.3.f, VI.B.4.e, and VI.B.4.g(ii), effective September 30, 2001.

(1) Sections VI.B.4.e and VI.B.4.g(ii) list an emission rate of 0.7 lbs. sulfur dioxide, for the sum of all SO_2 emissions from a given refinery per barrel of oil processed, per day. This emission rate is disapproved. The emission rate remains unchanged at 0.3 lbs. All remaining language within Sections VI.B.4.e and VI.B.4.g(ii) is approved.

[FR Doc. 2011–1497 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0713; FRL–8855–1]

Mefenoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of mefenoxam in or on multiple commodities which are identified and discussed later in this document. This regulation additionally removes the individual tolerance on lingonberry, as it will be superseded by inclusion in bushberry subgroup 13–07B. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 26, 2011. Objections and requests for hearings must be received on or before March 28, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see* also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0713. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7509P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0713 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 28, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0713, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-for Tolerances

In the **Federal Register** of October 7, 2009 (74 FR 51597) (FRL–8792–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7591) by IR–4, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.546 be amended by establishing tolerances for residues of the fungicide mefenoxam, (*R*)- and (*S*)-2-[(2,6-dimethyl(phenyl)-methoxyacetylamine]-propionic acid methyl ester, and its metabolites containing the 2,6 dimethylaniline moiety, and *N* -(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as mefenoxam equivalents, in or on bean, snap, succulent at 0.35 parts per million (ppm); caneberry subgroup 13–07A at 0.80 ppm; bushberry subgroup 13–07B at 2.0 ppm; onion, bulb, subgroup 3–07A at 3.0 ppm; onion, green, subgroup 3–07B at 10.0 ppm; and spinach at 8.0 ppm. The notice additionally requested to remove the individual tolerance for lingonberry at 2.0 ppm, as it will be superseded by inclusion in bushberry subgroup 13–07B. That notice referenced a summary of the petition prepared on behalf of IR–4 by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels for several commodities. EPA has also revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Mefenoxam, is the *R*-enantiomer of metalaxyl which is a racemic mixture that contains approximately 50% each of the *R*- and *S*-enantiomers. EPA conducted a side-by-side comparison of the available toxicity data for mefenoxam and metalaxyl and concluded that mefenoxam has similar toxicity to that of metalaxyl. Therefore, metalaxyl data may be used to support the registration of mefenoxam.

The database for mefenoxam/metalaxyl indicates that the liver is the major target organ. Liver effects observed in oral studies in rats, mice, and dogs include increased liver enzymes (alanine amino-transferase, aspartate amino-transferase, and alkaline phosphatase), increased incidence of pathological observations in the liver (hepatocyte hypertrophy, vacuolation of hepatocytes, and fatty infiltration) and increased relative and absolute liver weights. In guideline studies, the dog appears to be the most sensitive species.

The developmental toxicity studies in rat and rabbit and the multigeneration reproduction study did not show metalaxyl/mefenoxam to be a developmental or reproductive toxicant. There was no indication of increased susceptibility in pups following prenatal and postnatal exposures to mefenoxam. In the rat and rabbit developmental toxicity studies, in which animals were administered metalaxyl by gavage at relatively high doses, both rat and rabbit dams exhibited clinical signs (ataxia, body tremors, reduced activity, and righting reflex). These clinical signs are believed to result from metalaxyl/mefenoxam induced bradycardia mediated through alpha-adrenoreceptors and not from neurotoxicity.

Metalaxyl has been classified as "not likely to be carcinogenic to humans" based on the results of a carcinogenicity

study in mice and the combined chronic toxicity and carcinogenicity studies in rats. Based on the classification of metalaxyl, mefenoxam is also considered "not likely to be carcinogenic to humans." Mutagenicity studies do not indicate increased mutagenic potential following exposure to metalaxyl/mefenoxam.

Specific information on the studies received and the nature of the adverse effects caused by mefenoxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Mefenoxam. Human Health Risk Assessment for Proposed Uses on Snap Beans and the Caneberry Subgroup, Expanded Uses on the Bulb and Green Onion Subgroups and the Bushberry Subgroup, and Amended Use on Spinach." at pages 51–53 in docket ID number EPA–HQ–OPP–2009–0713.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for mefenoxam used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR MEFENOXAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age and the general population including infants and children).	None. No appropriate endpoint attributable to a single dose was identified.		
Chronic dietary (All populations)	NOAEL = 7.41 mg/kg/day, UF_A = 10x, UF_H = 10x, FQPA SF = 1x.	Chronic RfD = 0.074 mg/kg/day. cPAD = 0.074 mg/kg/day.	6-Month Feeding (Metalaxyl) Study in Dog, LOAEL = 39 mg/kg/day, based on increased liver weights and clinical chemistry (alkaline phosphatase).
Incidental oral short-term (1 to 30 days)	NOAEL = 50 mg/kg/day, UF_A = 10x, UF_H = 10x, FQPA SF = 1x.	LOC for MOE = 100.	Developmental Toxicity in Rat (Metalaxyl), LOAEL = 250 mg/kg/day based on clinical signs of toxicity including post-dosing convulsions.
Incidental oral intermediate-term (1 to 6 months).	NOAEL = 7.41 mg/kg/day, UF_A = 10x, UF_H = 10x, FQPA SF = 1x.	LOC for MOE = 100.	6-Month Feeding (Metalaxyl) Study in Dog, LOAEL = 39 mg/kg/day based on increased liver weights and clinical chemistry (alkaline phosphatase).
Inhalation short-term (1 to 30 days)	Inhalation (or oral) study NOAEL = 50 mg/kg/day (inhalation absorption rate = 100%), UF_A = 10x, UF_H = 10x, FQPA SF = 1x.	LOC for MOE = 100.	Developmental Toxicity in Rat (Metalaxyl), LOAEL = 250 mg/kg/day based on clinical signs of toxicity including post-dosing convulsions.
Cancer (Oral, dermal, inhalation)	Classification: "Not likely to be carcinogenic to humans" based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies.		

UF_A = extrapolation from animal to human (interspecies).
UF_H = potential variation in sensitivity among members of the human population (intraspecies).
FQPA SF = Food Quality Protection Act Safety Factor.
PAD = population adjusted dose (a = acute, c = chronic).
RfD = reference dose.
MOE = margin of exposure.
LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to mefenoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing mefenoxam tolerances in 40 CFR 180.546 and metalaxyl tolerances in 40 CFR 180.408. EPA assessed dietary exposures from mefenoxam/metalaxyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies

for mefenoxam; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues for most commodities. Additional factors derived from available residue chemistry data were applied to the tolerance values for leafy vegetables, grain seed (including dried beans), with the exception of flour cereal grains, nut commodities, succulent snap beans, and caneberries to address concerns regarding the adequacy of the residue analytical method to determine all metalaxyl/mefenoxam residues of concern, including metabolites, in plant and animal commodities. This was accomplished by calculating parent and metabolite to parent ratios to residue levels of concern for risk assessment purposes.

Additionally, EPA used DEEM default processing factors except where specific mefenoxam/metalaxyl tolerances exist for processed commodities or where metabolism and processing data are available to establish specific processing factors. Tolerances were used for dried apricot, tomato paste, tomato puree, and potato processed commodities and a data-derived processing factor was applied for fruit juices based on available metabolism and processing data. Finally, the dietary assessment incorporated average percent crop treated (PCT) information, when available, for mefenoxam because it showed higher estimates than metalaxyl. One hundred PCT was used for all other commodities, including the proposed uses.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that mefenoxam does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Almond, 1%	Honeydew, 5%
Apple, 1% 5%	Lemon, 5%
Artichoke; 5%	Lettuce, 10%
Asparagus, 10%	Onion, 30%
Avocado, 2.5%	Orange, 5%
Blueberry, 1%	Peach, 1%
Broccoli, 10%	Peanut, 1%
Cabbage, 10%	Pea, green, 2.5%
Cantaloupe, 10%	Pepper, 15%
Tomato, 15%	Potato, 20%
Carrot, 35%	Pumpkin, 5%
Cauliflower, 5%	Rice, 1%
Celery, 5%	Soybean, 10%
Cherry, 1%	Squash, 10%
Cotton, 5%	Strawberry, 10%
Cucumber, 10%	Sugar beet, 1%
Dry bean and pea, 1%	Sweet corn, 1%
Garlic, 15%	Tangerine, 10%
Grapefruit, 5%	Walnut, 1%
Grape, 1%	Watermelon, 15%

In most cases, EPA uses available data from the USDA/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6-7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which mefenoxam may be applied in a particular area.

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

Based on the Tier II Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Tier I Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of mefenoxam for chronic exposures for non-cancer assessments are estimated to be 36.7 parts per billion (ppb) for surface water and 1.72 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 36.7 ppb was used to assess the contribution to drinking water.

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

such as golf courses and athletic fields. EPA assessed residential exposure using the following assumptions: Exposure to adults may occur from handling mefenoxam, and to children from postapplication contact with treated areas. Therefore, adult handlers were assessed for short-term inhalation exposure resulting from residential application of mefenoxam; intermediate-term handler exposure is not expected. For children, short- and intermediate-term postapplication oral exposures (hand-to-mouth, object-to-mouth, and incidental ingestion of soil) were assessed. Dermal toxicity endpoints were not identified for any mefenoxam use pattern and chronic residential exposure is not expected; therefore, these exposure scenarios were not assessed. It was also determined that postapplication mefenoxam exposures to adults and children at recreational use sites would be similar to those assessed for residential use sites and, therefore, a separate recreational exposure assessment is not necessary.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

EPA has not found mefenoxam to share a common mechanism of toxicity with any other substances, and mefenoxam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that mefenoxam does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence that mefenoxam results in increased susceptibility from *in utero* exposure to rats or rabbits in the prenatal developmental studies or exposure to young rats in the 2-generation reproduction study.

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

i. The toxicity database for mefenoxam is complete except for immunotoxicity, acute neurotoxicity, and subchronic neurotoxicity testing. Recent changes to 40 CFR part 158 require acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200), and immunotoxicity testing (OPPTS Guideline 870.7800) for pesticide registration. However, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. The available studies do not indicate potential for immunotoxicity, as evidenced by the lack of effects seen in the spleen, thymus, or hematological parameters. Also, metalaxyl and mefenoxam do not belong to a class of compounds (*e.g.,* the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be toxic to the immune system.

ii. With respect to neurotoxicity, clinical signs (ataxia, body tremors, reduced activity, and righting reflex) were observed in maternal animals in rat and rabbit developmental studies at relatively high doses (≥ 150 mg/kg/day), where metalaxyl was administered by gavage only. These clinical signs were unlikely neurotoxically mediated, but rather resulted from the bradycardia mediated through alpha-adrenoreceptors. Therefore, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that mefenoxam results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. Although one additional field trial with residue decline measures is needed to complete the geographic distribution for caneberry crops, there are no uncertainties in the exposure database due to the fact that: (1) There is no significant difference in residues in blackberry/raspberry samples from field trials conducted in four regions including the major production region (~70%) and relatively low production (6–15%) in the remaining regions; and (2) existing decline data indicate that residues decline with increasing sampling intervals.

The chronic dietary food exposure assessment was somewhat refined, using estimated average PCT data, when available, and 100 PCT for all other commodities. The assessment was also performed based on tolerance-level residues or additional factors to address concerns regarding the adequacy of the residue analytical method in some commodities and DEEM default processing factors unless specific tolerances were established for processed commodities or metabolism and processing data were available to establish specific processing factors. These assumptions are based on reliable data which will not underestimate potential dietary exposures. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to mefenoxam in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by mefenoxam.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was

selected. Therefore, mefenoxam is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to mefenoxam from food and water will utilize 60% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of mefenoxam is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mefenoxam is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to mefenoxam.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 2,500 for the general U.S. population; 920 for children 3–5 years old; and 880 for children 1–2 years old. Because EPA's level of concern for mefenoxam is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mefenoxam is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to mefenoxam.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 150 for children 3–5 years old and 140 for children 1–2 years old. Because EPA's level of concern for mefenoxam is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, mefenoxam is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

For the purposes of this tolerance action, adequate enforcement methodologies including a gas-liquid chromatography with alkali flame-ionization detection (GLC/AFID) (Method AG–348) and a GLC with nitrogen-phosphorus detection (NPD) (Method AG–395) are available to enforce the tolerance expression for plant commodities. However, the Agency determined that the current residue analytical methods available for tolerance enforcement will not adequately recover all of the metalaxyl/mefenoxam residues of concern in the revised tolerance expression. For this action, therefore, the Agency applied additional factors derived from available residue chemistry data to certain commodities to account for all residues of concern for dietary risk assessments, as previously described in Unit III.C.ii.

Neither Method AG–348 nor Method AG–395 distinguish between the *R*- and *S*-enantiomers of metalaxyl/mefenoxam; however, a confirmatory high performance liquid chromatography method with mass spectrometric detection that utilizes a chiral column (chiral LC/MS), Method 456–98, is available for the enantioselective determination of the *D*- and *L*-enantiomers of metalaxyl in crops. Therefore, EPA has determined for future actions that the multiresidue method Protocol D, which completely recovers metalaxyl/mefenoxam *per se,* is an adequate enforcement method for the determination of metalaxyl/mefenoxam *per se* in plant and livestock commodities; and analysis using a 2,6–DMA common moiety method, including recovery data for parent, CGA-62826, and CGA-94689, can be used in order to refine dietary risk assessments.

Method AG–;348 may be found in PAM Vol. II; Method AG–395 and Method 456–98 have been submitted for inclusion in PAM Vol. II; and Multiresidue method Protocol D may be found in PAM, Vol. I Section 302. Methods not published in PAM may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

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

Pending revocation of Codex MRLs for metalaxyl, Codex MRLs for metalaxyl-m (mefenoxam) have not been advanced to final status. Therefore, there are currently no Codex MRLs established for residues of mefenoxam in or on the commodities associated with this petition. However, with the adoption of the revised tolerance expression, the U.S. tolerance expression will be harmonized with the tolerance expression for Codex.

Canadian MRLs for mefenoxam (metalaxyl-m) are covered by MRLs established for metalaxyl, and Canadian MRLs have been established for residues of metalaxyl in or on spinach at 10 ppm, bulb onion at 3.0 ppm, green onion at 10 ppm, bean at 0.2 ppm, raspberry at 0.2 ppm, and blueberry at 2.0 ppm. The Canadian MRLs are harmonized with U.S. tolerance levels in or on the commodities associated with this petition, with the exception of caneberry subgroup 13–07A, which is being established at 0.70 ppm (the Canadian MRL for raspberry is 0.2 ppm). The U.S. tolerance on caneberry subgroup 13–07A cannot be harmonized with the Canadian MRL on raspberry at this time because the field trial data supporting the U.S. tolerance result in residues above 0.2 ppm. Additionally, with the adoption of the revised tolerance expression for mefenoxam, the U.S. tolerance expression will not be in harmonization with Canadian MRLs.

C. Revisions to Petitioned-for Tolerances

Based on analysis of the residue field trial data supporting the petition, EPA revised the proposed tolerances on bean, snap, succulent from 0.35 ppm to

0.20 ppm; caneberry subgroup 13–07A from 0.80 ppm to 0.70 ppm; and spinach from 8.0 ppm to 10 ppm. The Agency revised these tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data.* Additionally, EPA has revised the tolerance expression to clarify: (1) That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of mefenoxam not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of mefenoxam, including its metabolites and degradates, in or on bean, snap, succulent at 0.20 ppm; caneberry subgroup 13–07A at 0.70 ppm; bushberry subgroup 13–07B at 2.0 ppm; onion, bulb, subgroup 3–07A at 3.0 ppm; onion, green, subgroup 3–07B at 10 ppm; and spinach at 10 ppm. Compliance with the specified tolerance levels is to be determined by measuring only metalaxyl (methyl *N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)-*DL*-alaninate). Additionally, this regulation deletes the individual tolerance in or on lingonberry at 2.0 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 13, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.546 is amended by revising paragraph (a) introductory text; removing the entry for "Lingonberry" from the table; and alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.546 Mefenoxam; tolerances for residues.

(a) *General.* Tolerances are established for residues of mefenoxam, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only metalaxyl (methyl *N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)-*DL*-alaninate).

Commodity	Parts per million
* * * * *	
Bean, snap, succulent	0.20
Bushberry subgroup 13–07B	2.0
Caneberry subgroup 13–07A	0.70
* * * * *	
Onion, bulb, subgroup 3–07A	3.0
Onion, green, subgroup 3–07B	10
* * * * *	
Spinach	10
* * * * *	

* * * * *

[FR Doc. 2011–1655 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2007–0531; FRL–8862–6]

RIN 2070–AD16

Testing of Certain High Production Volume Chemicals; Second Group of Chemicals; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** issue of January 7, 2011, concerning testing of certain high production volume (HPV) chemical substances to obtain screening level data for health and environmental effects and chemical fate. This document is being issued to correct a typographical error concerning the required date of submission for letters of intent to test and exemption applications. The correct date by which EPA must receive a letter of intent to test or an exemption application from manufacturers (including importers) in Tier 1 is March 9, 2011.

DATES: This final rule is effective February 7, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2007–0531. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

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

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult either technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What does this technical correction do?

The codified text for FR Doc. 2010–33313, published in the **Federal Register** issue of January 7, 2011 (76 FR 1067) (FRL–8846–9) is corrected to fix a typographical error concerning the required date of submission for letters of intent to test and exemption applications. The correct date by which EPA must receive a letter of intent to test or an exemption application from manufacturers (including importers) in Tier 1 is March 9, 2011 (not February 7, 2011, as stated in § 799.5087, paragraphs (c)(2) and (c)(4) of the initial publication).

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because this is a correction of a typographical error, not a change in the regulation as intended by EPA. Notice and comment are not necessary to correct a typographical error, especially when the corrected text gives persons subject to the rule more time to file a letter of intent and an exemption application. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and executive order reviews apply to this action?

No. As described previously, this final rule corrects a typographical error in the original final rule concerning the required date by which EPA must receive a letter of intent to test or an exemption application from manufacturers (including importers) in Tier 1. As a technical correction, this action is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This action does not impose or change any information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538). Nor does this action significantly or uniquely affect small governments. This final rule does not have Tribal implications, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), or federalism implications as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Since this action is not economically significant under Executive Order 12866, it is not subject to Executive Orders 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and 13211, *Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) do not apply. For the reasons already stated, the Agency is not required to and has not considered environmental justice-related issues as specified in Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income*

Populations (59 FR 7629, February 16, 1994). The Agency's actions regarding these requirements in relation to the original final rule, are discussed in the preamble to that rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 799

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

Dated: January 19, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR part 799 is corrected as follows:

PART 799—[AMENDED]

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

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

■ 2. In § 799.5087, revise paragraphs (c)(2) and (c)(4) to read as follows:

§ 799.5087 Chemical testing requirements for second group of high production volume chemicals (HPV2).

* * * * *

(c) * * *

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you must, for each test required under this section for that chemical substance, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than March 9, 2011.

* * * * *

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section on or before March 9, 2011, EPA will publish a **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted and notify manufacturers in Tier 2A of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

* * * * *

[FR Doc. 2011–1635 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

DATES: *Effective Date:* This rule is effective as of January 26, 2011.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295–1624; *mcohan@lsc.gov*.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(c) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The figures for 2010 set out below are equivalent to 125% of the current Federal Poverty Guidelines as published on August 3, 2010 (75 FR 45628).

In addition, LSC is publishing charts listing income levels that are 200% of the Federal Poverty Guidelines. These charts are for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 200% of the applicable Federal Poverty Guidelines amount, but less than 200% of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

LSC notes that these 2010 Income Guidelines are substantively unchanged from the 2009 Income Guidelines. This is because HHS' Poverty Guidelines for the remainder of 2010 are unchanged from the 2009 Poverty Guidelines which have been in place since last year.

List of Subjects in 45 CFR Part 1611

Grant programs—Law, Legal services.

For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

■ 2. Appendix A of part 1611 is revised to read as follows:

Appendix A of Part 1611

LEGAL SERVICES CORPORATION 2010 INCOME GUIDELINES *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$13,538	$16,913	$15,575
2	18,213	22,763	20,950
3	22,888	28,613	26,325
4	27,563	34,463	31,700
5	32,238	40,313	37,075

LEGAL SERVICES CORPORATION 2010 INCOME GUIDELINES *—Continued

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
6	36,913	46,163	42,450
7	41,588	52,013	47,825
8	46,263	57,863	53,200
For each additional member of the household in excess of 8, add	4,675	5,850	5,375

* The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

REFERENCE CHART—200% OF DHHS FEDERAL POVERTY GUIDELINES

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$21,660	$27,060	$24,920
2	29,140	36,420	33,520
3	36,620	45,780	42,120
4	44,100	55,140	50,720
5	51,580	64,500	59,320
6	59,060	73,860	67,920
7	66,540	83,220	76,520
8	74,020	92,580	85,120
For each additional member of the household in excess of 8, add	7,480	9,360	8,600

Mattie Cohan,

Senior Assistant General Counsel.

[FR Doc. 2011–1656 Filed 1–25–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–XA159

Hawaii Crustacean Fisheries; 2011 Northwestern Hawaiian Islands Lobster Harvest Guideline

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

ACTION: Notification of lobster harvest guideline.

SUMMARY: NMFS announces that the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2011 is established at zero lobsters.

DATES: Effective January 1, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS Pacific Islands Region, 808–944–2108.

SUPPLEMENTARY INFORMATION: The NWHI commercial lobster fishery is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago. The regulations at 50 CFR 665.252(b) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI. Regulations governing the Papahanaumokuakea Marine National Monument in the NWHI prohibit the unpermitted removal of monument resources (50 CFR 404.7), and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)). Accordingly, NMFS establishes the harvest guideline at zero lobsters for the NWHI commercial lobster fishery for calendar year 2011. Thus, no harvest of NWHI lobster resources is allowed.

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

Dated: January 21, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–1640 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XA177

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Harvesting Pacific Cod for Processing by the Offshore Component 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 directed fishing for Pacific cod by non-American Fisheries Act (AFA) crab vessels that are subject to sideboard limits harvesting Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2011 Pacific cod sideboard limit established for non-AFA crab vessels harvesting Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2011, through 1200 hrs, A.l.t., September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2011 Pacific cod sideboard limit established for non-AFA crab vessels that are subject to sideboard limits harvesting Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA is 502 metric tons (mt), as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010) and inseason adjustment (76 FR 469, January 5, 2011).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2011 Pacific cod sideboard limit established for non-AFA crab vessels harvesting Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance of 492 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels that are subject to sideboard limits harvesting Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The 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 the sideboard directed fishing closure of Pacific cod for non-AFA crab vessels that are subject to sideboard limits harvesting Pacific cod for processing by the offshore component 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 January 20, 2011.

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 § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: January 21, 2011.

James P. Burgess,

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

[FR Doc. 2011–1634 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA176

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2011 Pacific cod total allowable catch (TAC) specified for pot catcher/processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 24, 2011, through 1200 hrs, A.l.t., September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 A season allowance of the 2011 Pacific cod TAC allocated as a directed fishing allowance to pot catcher/processors in the BSAI is 1,551 metric tons as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) and inseason adjustment (76 FR 467, January 5, 2011).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2011 Pacific cod TAC allocated as a directed fishing allowance to pot catcher/processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The 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 the closure of Pacific cod by pot catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment

because the most recent, relevant data only became available as of January 20, 2011.

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 is exempt from review under Executive Order 12866.

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

Dated: January 21, 2011.

James P. Burgess,

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

[FR Doc. 2011–1643 Filed 1–24–11; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 17
Wednesday, January 26, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Doc. No. AMS–LS–10–0080]

Notice of Establishment of the Wholesale Pork Reporting Negotiated Rulemaking Committee; Notice of Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Establishment of Advisory Committee and notice of meeting.

SUMMARY: As required by section 564 of the Negotiated Rulemaking Act, the Department of Agriculture (USDA), Agricultural Marketing Service (AMS) is giving notice of the establishment of the Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee) to develop proposed language to amend the Livestock Mandatory Reporting regulations to implement mandatory pork price reporting. USDA has determined that the establishment of this Committee is in the public interest and will assist AMS in performing its duties under the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) (Pub. L. 111–239). This document also announces the first meeting of the Committee.

DATES: The committee meeting will be held Tuesday, February 8, 2011, through Thursday, February 10, 2011. On all three days, the meeting will begin at 8:30 a.m. and is scheduled to end at 5 p.m.

ADDRESSES: The meeting will take place at the Sheraton Clayton Plaza Hotel, 7730 Bonhomme Avenue, St. Louis, Missouri 63105; Phone (314) 863–0400.

FOR FURTHER INFORMATION CONTACT: Michael Lynch, Chief; USDA, AMS, LS, LGMN Branch; 1400 Independence Ave., SW., Room 2619–S; Washington, DC 20250; Phone (202) 720–6231; Fax (202) 690–3732; or e-mail at *Michael.Lynch@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 24, 2010, AMS published a notice of intent to establish a Wholesale Pork Reporting Negotiated Rulemaking Committee (75 FR 71568). In that notice, AMS requested comments on the establishment of the Committee and nominations from any interested party that desired membership on the Committee. AMS received 7 comments, which all focused on membership on the Committee.

Two of the comments were from organizations identified by AMS in the original Notice (75 FR 71568) as being potential Committee members. Both organizations, the National Meat Association (NMA) and the American Meat Institute (AMI), confirmed their participation on the Committee and requested multiple seats to represent their interests. While the Negotiated Rulemaking Act (NRA) [5 U.S.C. 561–570] does not specifically prohibit one organization from having multiple seats on a negotiated rulemaking committee, AMS believes this Committee will best function with each organization having one representative. While AMS recognizes that organizations such as AMI and NMA have diverse membership, AMS believes that the interests of each organization's members can be adequately represented on the Committee by one seat. It should be noted that each organization represented on the Committee may be accompanied by other individuals serving in an advisory capacity to assist the representative in effectively negotiating on behalf of all the interests of its organization. In addition, AMS believes that diversity of the Committee membership as a whole ensures that all interested parties in this matter are represented. Finally, Committee meetings will be open to the public and time will be allotted for public comment on Committee proceedings.

Four comments were from organizations that were not identified in the original Notice, but were responding to the Agency's request for nominations from other organizations who believed their interests could be affected by mandatory pork reporting. One of these comments was jointly submitted by the North American Meat Processors Association (NAMP), the American Association of Meat Processors (AAMP), and the Southeastern Meat Association (SEMA) and requested one seat on the Committee to represent all three organizations. AAMP submitted a separate comment to the same effect. AMS believes a joint representative from NAMP, AAMP, and SEMA will provide valuable input on the Committee, and has sufficient interest in the processing of pork. Therefore, they will have one member on the Committee. Another organization, the National Livestock Producers Association, also submitted a comment requesting a seat on the Committee. AMS believes NLPA membership has sufficient interest as swine producers, and therefore will be represented on the Committee. Lastly, one comment was received from the United Food and Commercial Workers International Union (UFCW). UFCW stated in its petition that a substantial number of its members are employed in the food processing and retail sectors and depend on their plants and stores receiving an adequate supply of pork at a fair price. AMS believes that UFCW's members have interest in the production of swine or pork; therefore, UFCW will have a member on the Committee.

In addition, one comment requested that half of the Committee members be consumer representatives. However, consumers do not participate in swine or pork production, nor any of the other categories or organizations listed in the 2010 Reauthorization Act. Therefore, this request is denied.

Two organizations—the American Farm Bureau Federation and the American Frozen Foods Institute—that were identified by AMS in the original Notice declined to participate on the Committee without comment.

USDA believes that using a negotiated rulemaking committee to make specific recommendations regarding the implementation of a mandatory wholesale pork reporting program would help the agency in developing rulemaking. Therefore, USDA is establishing the Wholesale Pork Reporting Negotiated Rulemaking Committee.

II. Statutory Provisions

The Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561–570); the Mandatory Price Reporting Act of 2010 (Pub. L. 111–239); the Livestock Mandatory Reporting Act of 1999 (7 U.S.C. 1635–1636i); and 7 CFR part 59.

III. The Committee and Its Process

In a negotiated rulemaking, a proposed rule is developed by a committee composed of representatives of government and the interests that will be significantly affected by the rule. Decisions are made by "consensus." For the purpose of this Committee's proceedings, "consensus" has been statutorily defined in the NRA as unanimous concurrence among the interests represented unless the Committee agrees to a different definition.

The negotiated rulemaking process is initiated by the Agency's identification of interests potentially affected by the rulemaking under consideration. To facilitate the process of identifying Committee members in accordance with guidelines established by the 2010 Reauthorization Act, AMS proposed a list of organizations to serve on the Committee to adequately represent the stakeholders affected by mandatory pork reporting. AMS also requested additional nominations from organizations or individuals whose interests would not adequately be represented by the list of organizations it identified.

IV. Membership of the Committee

AMS believes that the interests significantly affected by this rule will be represented by the organizations listed below:

American Meat Institute;
Chicago Mercantile Exchange;
Food Marketing Institute;
Grocery Manufacturers Association;
Livestock Marketing Information Center;
National Farmers Union;
National Livestock Producers Association;
National Meat Association;
National Pork Producers Council;
North American Meat Processors Association, American Association of Meat Processors, and Southeastern Meat Association (1 combined representative for all three per organizations' request);
United Food and Commercial Workers International Union; and
USDA, Agricultural Marketing Service.

V. Negotiated Rulemaking Committee Meeting

This document announces the first meeting of the Committee. The meeting will take place as described in the **DATES** and **ADDRESSES** sections of this notice. The agenda planned for the meeting includes the discussion of protocols, timeframes, and scope of the rulemaking process, as well as setting of future meetings. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be given opportunities to make statements during the meeting at the discretion of the Committee, and will be able to file written statements with the Committee for its consideration. Written statements may be submitted in advance to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Notice of future meetings will be announced in the **Federal Register**.

Certification

I hereby certify that the Wholesale Pork Reporting Negotiated Rulemaking Committee is in the public interest.

Dated: January 21, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–1647 Filed 1–25–11; 8:45 am]

BILLING CODE 3410–02–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Part 1310

RIN 4030–AA00

Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies

AGENCY: Financial Stability Oversight Council.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "DFA") provides the Financial Stability Oversight Council (the "Council") the authority to require that a nonbank financial company be supervised by the Board of Governors of the Federal Reserve System ("Board of Governors") and be subject to prudential standards in accordance with Title I of the DFA if the Council determines that material financial distress at such a firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the firm, could pose a threat to the financial stability of the United States. The proposed rule describes the criteria that will inform, and the processes and procedures established under the DFA for, the Council's designation of nonbank financial companies under the DFA. The Council, on October 6, 2010, issued an advance notice of proposed rulemaking regarding the designation criteria in section 113.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice of proposed rulemaking according to the instructions below. All submissions must refer to the document title. The Council encourages the early submission of comments.

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 Council 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. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Send comments to Financial Stability Oversight Council, *Attn:* Lance Auer, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Note: To receive consideration as public comments, comments must be submitted through the method specified above. Again, all submissions must refer to the title of the notice.

Public Inspection of Public Comments. All properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional Instructions. In general comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Lance Auer, Deputy Assistant Secretary (Financial Institutions), Treasury, at (202) 622–1262, or Jeff King, Senior Counsel, Office of the General Counsel, Treasury, at (202) 622–1978. All responses to this Notice should be submitted via *http://www.regulations.gov* to ensure consideration.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the DFA (12 U.S.C. 5321) established the Financial Stability Oversight Council. Among the purposes of the Council under section 112 of the DFA (12 U.S.C. 5322), are: "(A) * * * identify[ing] risk to the financial

stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) * * * promot[ing] market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) * * * respond[ing] to emerging threats to the stability of the United States financial system."

In the recent financial crisis, financial distress at certain nonbank financial companies contributed to a broad seizing up of financial markets, stress at other financial firms, and a deep global recession with a considerable drop in employment, the classic symptoms of financial instability. These nonbank financial companies were not subject to the type of regulation and consolidated supervision applied to bank holding companies, nor were there effective mechanisms in place to resolve the largest and most interconnected of these firms without causing further instability. To address the risks posed by these companies, the DFA authorizes the Council to designate nonbank financial companies for enhanced prudential standards and consolidated supervision by the Board of Governors.

Specifically, section 113 of the DFA (12 U.S.C. 5323) gives the Council the authority to require that a nonbank financial company be supervised by the Board of Governors and be subject to enhanced prudential standards if the Council determines that material financial distress at such a firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the firm, could pose a threat to the financial stability of the United States.[1] Section 113 of the DFA sets forth a number of factors or criteria that the Council must consider in determining whether to designate a nonbank financial company for supervision by the Board of Governors.

Further, once a nonbank financial company is identified and made subject to supervision by the Board of Governors, section 165(d) requires the company to file a resolution plan with the Board of Governors and the FDIC that is both credible and would facilitate an orderly resolution of the company. The requirement to prepare and file a resolution plan will not only assist the Board of Governors to supervise these companies, but will also provide information essential if an orderly liquidation of the company under Title II or another resolution mechanism becomes necessary.

On October 6, 2010, the Council issued an advance notice of proposed rulemaking ("ANPR") (75 FR 61653) through which it sought public comment to gather information in developing the specific criteria and analytical framework by which it will consider designating nonbank financial companies for supervision by the Board of Governors. The ANPR posed 15 questions, all of which focused on how to apply the statutory considerations for designating a nonbank financial company as specified in section 113 of the DFA. The comment period for the ANPR closed on November 5, 2010, and comments were submitted from 50 persons. Of these, 27 were from industry trade associations, 10 from individual firms, 5 from individuals, and 8 from other groups. (Comment letters are available online at: *http://www.regulations.gov*)

These comments addressed the Council's specific questions, as well as a range of other issues. Commenters generally encouraged further development of the framework for designations under section 113, and most supported the overall direction of the ANPR. Commenters, however, raised a number of conceptual and technical issues that they believed required additional consideration. Some commenters provided specific proposed frameworks for applying the criteria in section 113, and provided feedback on particular metrics and considerations that should be used in the designation process. In addition, some commenters provided views on the process of designation itself, emphasizing transparency and clear communication surrounding all designation decisions. The questions asked by the Council in the ANPR are provided below, along with an overview of the comments received on each question.

II. Summary of Public Responses to ANPR

1. What metrics should the Council use to measure the factors it is required to consider when making determinations under Section 113 of DFA?

a. How should quantitative and qualitative considerations be incorporated into the determination process?

b. Are there some factors that should be weighted more heavily by the Council than other factors in the designation process?

Most commenters asserted that determinations should be based on a combination of qualitative and quantitative considerations. Furthermore, there was general consensus among commenters that the Council should give significant weight to the following factors in making a determination: size, leverage, dependence on short-term funding, substitutability, degree of primary regulation, and interconnectedness. However, many commenters also emphasized the importance of other factors such as concentration and diversification, balance sheet composition, complexity, off-balance sheet exposure, level of uncollateralized exposures, risk appetite, and a firm's role in payment and settlement systems. A number of commenters argued that the first filter in the determination process should be an assessment of the likelihood of a firm's failure having a material impact on the financial system, together with an assessment of the likelihood that it could experience material financial distress. Commenters also argued that the Council should consider the likelihood that the company would be resolved under an orderly liquidation procedure under Title II if it were to fail or experience material financial distress.

2. What types of nonbank financial companies should the Council review for designation under DFA? Should the analytical framework, considerations, and measures used by the Council vary across industries? Across time? If so, how?

The majority of commenters argued that no nonbank financial company should automatically be excluded from potential review for designation. Several industry groups and firms also presented arguments generally as to why they do not present a systemic risk. Commenters generally agreed that analytical frameworks for designation should be tailored to the type of industry in which the firm operated, and that the Council should focus its attention on unregulated firms and activities. Many commenters also urged the Council to focus on those types of companies that rely heavily on short-term funding, are highly interconnected with other parts of the financial system, and are not already subject to consolidated supervision or heightened reporting.

3. Since foreign nonbank financial companies can be designated, what role should international considerations play in designating companies? Are there unique considerations for foreign

[1] The Council's decision requires the vote of at least two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council (the Secretary of the Treasury).

nonbank companies that should be taken into account?

Many respondents noted that many foreign nonbank institutions may already be subject to prudential regulatory regimes within their home jurisdictions, including regimes that follow internationally recognized practices for prudential supervision. These commenters asserted that these factors should be taken into account by the Council. Many also stressed the need for outreach and coordination with the home regulators of foreign institutions, as well as the need to avoid overlapping or conflicting regulations.

4. Are there simple metrics that the Council should use to determine whether nonbank financial companies should even be considered for designation?

Many commenters asserted that the Council should not rely solely on a limited number of simple metrics in considering firms for designation, with the most common example noted as asset size. A majority of commenters argued that the Council should consider several metrics in combination. However, many of the commenters agreed on one metric that they believe should be used to exclude a firm from designation: those firms that are already subject to consolidated supervision and/or heightened reporting requirements.

5. How should the Council measure and assess the scope, size, and scale of nonbank financial companies?

a. Should a risk-adjusted measure of a company's assets be used? If so, what methodology or methodologies should be used?

b. Section 113 of DFA requires the Council to consider the extent and nature of the off-balance-sheet exposures of a company. Given this requirement, what should be considered an off-balance sheet exposure and how should they be assessed? How should off-balance sheet exposures be measured (*e.g.,* notional values, mark-to-market values, future potential exposures)? What measures of comparison are appropriate?

c. How should the Council take managed assets into consideration in making designations? How should the term "managed assets" be defined? Should the type of asset management activity (*e.g.,* hedge fund, private equity fund, mutual fund) being conducted influence the assessment under this criterion? How should terms, conditions, triggers, and other contractual arrangements that require the nonbank financial firm either to fund or to satisfy an obligation in connection with managed assets be considered?

d. During the financial crisis, some firms provided financial support to investment vehicles sponsored or managed by their firm despite having no legal obligation to do so. How should the Council take account of such implicit support?

A majority of commenters emphasized the importance of looking at the scope, size and scale of nonbank financial companies through a variety of lenses to best understand the underlying risk. However, one commenter argued that measurement tools should be kept as simple and uniform as possible across all firms.

It was generally noted by commenters that some form of risk-weighting should be used in assessing the scope, size, and scale of nonbank financial companies. However, specific methodologies were not suggested by commenters.

Asset Size Calculations—Commenters emphasized that asset size should not be looked at in isolation, and that asset size alone does not fully reflect a firm's ability to pose systemic risk.

Treatment of Off-Balance-Sheet Exposures—A majority of commenters argued that off-balance-sheet exposures should not be measured simply using notional values. In addition, several commenters argued that potential future exposures—estimated, for example, as part of stress tests—should include a firm's off-balance-sheet exposures. Commenters also suggested that off-balance-sheet exposures should include, *inter alia,* all contingent liabilities, parental guarantees, capital support arrangements, special purpose vehicle (SPV) support arrangements, and repurchase obligations.

Managed Asset Considerations—Many commenters argued that managed assets are fundamentally less risky than those directly owned by a financial company. Some commenters also suggested that asset managers are less interconnected than other significant nonbank financial companies and engage predominantly in long-only trades, which the commenters suggested greatly reduced the amount of risk they pose to the financial system.

Implicit Support—Most commenters argued that implicit support provided to investment vehicles should not be considered in calculations of potential exposure. Most noted that the nature of such support can vary widely, and that legal recourse provides a cleaner line. In contrast, one commenter argued that the Council should consider implicit support in the overall exposures of a firm, referencing the support several institutions provided to funds during the recent financial crisis, despite having no legal obligation to do so.

6. How should the Council measure and assess the nature, concentration, and mix of activities of a nonbank financial firm?

a. Section 113 of DFA requires the Council to consider the importance of the company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the United States financial system. Given this requirement, are there measures of market concentration that can be used to inform the application of this criterion? How should these markets be defined? What other measures might be used to assess a nonbank financial firm's importance under this criterion?

b. Section 113 of DFA requires the Council to consider the importance of the company as a source of credit for low-income, minority, and underserved communities. Given this requirement, are there measures of market concentration that can be used to inform the application of this criterion? How should these markets be defined? What other measures might be used to assess a nonbank financial firm's importance under this criterion?

Comments varied significantly on ways to measure a firm's market concentration and mix of activities. However, most commenters suggested that a firm's interconnectedness should be considered in evaluating the importance of a firm's activities.

Comments also varied significantly on how to define the scope of the markets referenced in section 113, with some commenters advocating for broad definitions by product, trading venue and geography, and others arguing that markets must be considered distinctly (*i.e.,* households versus business, state versus local governments) given their unique characteristics.

7. How should the Council measure and assess the interconnectedness of a nonbank financial firm?

a. What measures of exposure should be considered (*e.g.,* counterparty credit exposures, operational linkages, potential future exposures under derivative contracts, concentration in revenues, direct and contingent liquidity or credit lines, cross-holding of debt and equity)? What role should models of interconnectedness (*e.g.,* correlation of returns or equity values across firms, stress tests) play in the Council's determinations?

b. Should the Council give special consideration to the relationships (including exposures and dependencies) between a nonbank financial company and other important financial firms or markets? If so, what metrics and thresholds should be used to identify

what financial firms or markets should be considered significant for these purposes? What metrics and thresholds should be used in assessing the importance of a nonbank financial company's relationships with these other firms and markets?

Commenters suggested focusing on measures of interconnectedness by type of activity rather than by type of firm. Further, most commenters suggested focusing on those activities most prone to systemic risk through contagion.

To measure interconnectedness, commenters suggested evaluating, among other things, liquidity profile, contagion risk, counterparty credit risk, the nature of derivatives activity, levels of substitutability, and operational linkages.

8. How should the Council measure and assess the leverage of a nonbank financial firm? How should measures of leverage address liabilities, off-balance sheet exposures, and non-financial business lines? Should standards for leverage differ by types of financial activities or by industry? Should acceptable leverage standards recognize differences in regulation? Are there existing standards (*e.g.,* the Basel III leverage ratio) for measuring leverage that could be used in assessing the leverage of nonbank financial companies?

Most commenters asserted that it would be important for the Council to distinguish between different types and sources of leverage (secured versus unsecured; short-term versus long-term; operational versus financial). In addition, many commenters suggested varying the standards and tools for measuring leverage by the type of business and the amount of regulation present in that industry. One commenter, however, suggested that leverage rules should be simple and apply equally to all nonbank firms according to their size.

9. How should the Council measure and assess the amount and types of liabilities, including the degree of reliance on short-term funding of a nonbank financial firm?

a. What factors should the Council consider in developing thresholds for identifying excessive reliance on short-term funding?

b. How should funding concentrations be measured?

c. Do some nonbank financial companies have funding sources that are contractually short-term but stable in practice (similar to "stable deposits" at banks)?

d. Should the assessment link the maturity structure of the liabilities to the maturity structure and quality of the assets of nonbank financial companies?

Commenters suggested examining the liquidity profile of a firm, taking into consideration the quality and duration of funding, diversity and mix of the sources of funding, the strength of the firm's liquidity providers, the depth of secondary markets in the firm's assets, and degree of maturity mismatch. Many also suggested risk-weighting liabilities to better evaluate the quality and strength of the liquidity source. One commenter suggested looking at historical industry trends in capital raising for additional color on the stability of liabilities for a particular industry.

10. How should the Council take into account the fact that a nonbank financial firm (or one or more of its subsidiaries or affiliates) is already subject to financial regulation in the Council's decision to designate a firm? Are there particular aspects of prudential regulation that should be considered as particularly important (*e.g.,* capital regulation, liquidity requirements, consolidated supervision)? Should the Council take into account whether the existing regulation of the company comports with relevant national or international standards?

Commenters argued that firms already subjected to consolidated regulation are less likely to pose systemic risk than those that operate in "regulatory shadows", and thus are less likely to need additional oversight. Many commenters also argued against designating a firm that is already subject to some form of regulation, as this could result in inconsistencies, interference, and duplication of regulatory effort. However, one commenter argued that the degree of current regulation should not be a factor in evaluating whether a firm is systemically important; it should be a factor in deciding the appropriate degree of regulation for a designated firm.

Several respondents suggested distinguishing firms by industry and avoiding imposing bank-centric standards on other industries. The quality or extent of existing regulation was also cited by some commenters as a factor to be considered. Some commenters also suggested that the Council seek to follow international standards, where applicable, in designating firms and seek to prevent regulatory arbitrage within a particular industry.

Commenters indicated that the Council has the ability to obtain necessary information and data through either prudential regulators or the Office of Financial Research to make its determinations.

11. Should the degree of public disclosures and transparency be a factor in the assessment? Should asset valuation methodologies (*e.g.,* level 2 and level 3 assets) and risk management practices be factored into the assessment?

Comments related to public disclosures and transparency varied. Many commenters favored public disclosure, noting that shareholders, other investors and other stakeholders benefit when rules and regulations provide adequate protections to owners and ensure that important information is promptly and transparently provided to the marketplace. Other commenters asserted that public disclosures do not have any direct bearing on risk to financial stability, and therefore should not be a factor in the designation process.

Among the commenters, there was a consensus that risk management practices be factored into the assessment of a nonbank financial company, because they are a key factor in determining the probability of material financial distress. Particular aspects of risk management practices that were highlighted include: Culture; transparency; risk appetite; and management philosophy. One commenter in particular cited that effective firm-wide risk management practices in large part distinguished companies that experienced the greatest material financial distress during the financial crisis from those that weathered the crisis.

Most commenters were silent on asset valuation methodologies except for one, which stated that valuation methodologies should not be a material factor in the assessment process.

12. During the financial crisis, the U.S. Government instituted a variety of programs that served to strengthen the resiliency of the financial system. Nonbank financial companies participated in several of these programs. How should the Council consider the Government's extension of financial assistance to nonbank financial companies in designating companies?

Some commenters argued that the extension of financial assistance to nonbank financial companies should not be considered determinative of which entities present systemic risk. Instead, these commenters argued that the assistance must be viewed in light of the facts and circumstances under which it was provided; whether the assistance was drawn upon; whether such assistance was permitted to expire;

and any new regulatory changes that have been implemented since the assistance was initially extended.

Other commenters argued that those entities receiving federal assistance should be held to a higher standard of supervision and oversight, and that the receipt of federal assistance should serve as a threshold question for the Council in evaluating nonbank financial institutions. One commenter in particular stated that nonbank financial institutions that received government support during the crisis should automatically be regulated under section 113 from the outset.

13. Please provide examples of best practices used by your organization or in your industry in evaluating and considering various types of risks that could be systemic in nature.

a. How do you approach analyzing and quantifying interdependencies with other organizations?

b. When and if important counterparties or linkages are identified, how do you evaluate and quantify the risks that a firm is exposed to?

c. What other types of information would be effective in helping to identify and avoid excessive risk concentrations that could ultimately lead to systemic instability?

Responses to this question were few in number, but generally grouped the types of risk they faced into credit or counterparty risk, and enterprise risk. Suggested approaches in analyzing and managing risk were specific to those two categories, and within them, to industry type.

14. Should the Council define "material financial distress" or "financial stability"? If so, what factors should the Council consider in developing those definitions?

There was broad consensus that the Council should define "material financial distress" and "financial stability."

Commenters suggested that a company be considered to be in "material financial distress" if it has substantial difficulty meeting its financial obligations to its creditors and counterparties, or faces capital impairment or insolvency. One commenter warned against keeping the concept of financial distress so broad as to cover significant problems with a company's business model, a history of financial losses that have not resulted in failure of the company, or a significant loss of market value or market share of the company. This commenter suggested that such concerns should be resolved through normal operations of the financial markets.

Commenters suggested that "financial stability" means a condition in which financial intermediaries, markets and market infrastructures can withstand shocks to the financial system. Others suggested that "financial stability" is characterized by a stable market defined as when there are stable prices, an efficient allocation of capital, availability of short-term funding, and low rates of failure of financial intermediaries and markets. Commenters also encouraged the Council to look to widely-used definitions of "financial stability" used by the Financial Stability Board, the International Monetary Fund, the European Central Bank, and the Bank of England.

15. What other risk-related considerations should the Council take into account when establishing a framework for designating nonbank financial companies?

Other suggested risk-related considerations are as follows:

- *Legislative intent.* Some commenters argued that a determination should be based on the legislative history and intent of the DFA, and whether the treatment of certain industries was discussed when the legislation was drafted.
- *Cyclicality.* One commenter noted that those least affected by the cyclical nature of the economy are less likely to be systemically important. This commenter argued that risks are greatest at peaks and troughs of economic and market cycles and there is a need for diverse and countercyclical behavior.
- *Holistic/enterprise-view of risk management.* Some commenters asserted that an evaluation of a firm should take a holistic view of the enterprise and consider how it is managing risks. That analysis should consider the characteristics of the firm, its culture, risk tolerance and its risk management to help determine the probability of its material distress. The four firm-wide risk management practices that commenters identified as differentiating good from bad performance were: (a) Effective firm-wide risk identification and analysis; (b) consistent application of independent and rigorous valuation practices across the firm; (c) effective management of funding liquidity, capital, and the balance sheet; and (d) informative and responsive risk measurement and management reporting.
- *Considering the cost of designation.* Some commenters argued that designation of a nonbank would subject it to regulatory burdens without providing the company the same benefits that a regulated bank would enjoy. Thus, the commenters argued, the cost of designation could reduce the competitiveness of the designated nonbank institution and could also potentially cause an exit or flight of businesses to less regulated products or jurisdictions.

III. Overview of Proposed Rule

The proposed rule lays out the framework that the Council proposes to use to determine whether a nonbank financial company could pose a threat to the financial stability of the United States. It also implements the process set forth in the DFA that the Council would use when considering whether to subject a firm to supervision by the Board of Governors and prudential standards.

A. Considerations for Determination

As discussed in Part I, there were several themes in the ANPR commentary regarding how the Council should analyze these factors in the designation process.

One broad theme was that any analytical framework for designation should be tailored to the type of industry in which a firm operates, and that different metrics are needed for different industries. From the commentary provided, there was clear support for the need to weigh qualitative considerations in addition to quantitative factors.

With respect to the criteria for designation, one theme was that that the Council should give significant weight to the following factors in making a determination: leverage, liquidity risk, interconnectedness, degree of primary regulation, and substitutability. Further, responses emphasized the importance of looking at the scope, size and scale of nonbank financial companies through a variety of lenses to best understand the underlying risk.

Commenters also noted leverage for its importance and encouraged the Council to distinguish between different types and sources of leverage (secured versus unsecured; short-term versus long-term; operational versus financial), and to use varying standards for measuring leverage by type of business.

Almost all commenters emphasized the importance of examining the liquidity profile of a firm, taking into consideration the quality and tenor of funding, diversity and mix of the sources of funding, the strength of the liquidity providers, and the degree of maturity mismatch. Many also suggested risk-weighting liabilities to better evaluate the quality and strength of the liquidity sources.

Commenters viewed both the degree to which a firm is already subjected to regulation or consolidated regulation, as well as the substitutability of an institution and its activities, as important factors in making a determination. It was generally argued that firms already subject to prudential regulation are less likely to pose systemic risk than those that operate outside a formal regulatory umbrella.

B. Statutory and Analytical Framework for Designations

As discussed previously, section 113 of the DFA provides the Council the authority to require that a nonbank financial company be supervised by the Board of Governors and subject to prudential standards if the Council determines that material financial distress at such a firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the firm, could pose a threat to the financial stability of the United States.

Pursuant to the provisions of the DFA, the considerations that the Council must use in making a determination on whether the company should be subject to supervision by the Board of Governors are as follows:

(A) The extent of the leverage of the company;

(B) The extent and nature of the off-balance-sheet exposures of the company;

(C) The extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) The importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) The importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) The extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

(G) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) The degree to which the company is already regulated by 1 or more primary financial regulatory agencies;

(I) The amount and nature of the financial assets of the company;

(J) The amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and

(K) Any other risk-related factors that the Council deems appropriate.

The Council shall consider similar factors in determining whether a foreign nonbank financial company should be designated. In addition, the Council shall consider the factors relevant to a U.S. or foreign nonbank financial company in determining whether a U.S. or foreign company, respectively, should be designated for supervision by the Board of Governors under the special anti-evasion provisions in section 113(c) of the DFA.

The proposed rule incorporates each of the statutory factors that must be considered in determining whether a U.S. or foreign nonbank financial company should be designated. The Council proposes to use a framework for applying the statutory considerations to its analysis. In developing the proposed framework, the Council has taken account of the comments received on the ANPR. If adopted in a final rule, this framework would be used by the Council in meeting its statutory obligations of assessing the threat a nonbank financial company may pose to the financial stability of the United States, taking into consideration the factors set forth in the DFA. The proposed framework for assessing systemic importance is organized around six broad categories. Each of the proposed categories reflects a different dimension of a firm's potential to experience material financial distress, as well as the nature, scope, size, scale, concentration, interconnectedness and mix of the company's activities. The six categories are as follows:

1. Size;

2. Lack of substitutes for the financial services and products the company provides;

3. Interconnectedness with other financial firms;

4. Leverage;

5. Liquidity risk and maturity mismatch; and

6. Existing regulatory scrutiny

Each of the specific statutory factors is relevant to, and would be considered as part of, one or more categories within this analytical framework. In addition, the Council would consider any other risk-related factors that the Council deems appropriate, either by regulation or on a case-by-case basis, under section 113(a)(2)(K) or (b)(2)(K) in accordance with this analytical framework. The same categories and framework would be used in the case of a foreign nonbank financial company, although the statutory factors included as part of this analysis would be adjusted to reflect the focus of certain of those factors on the U.S. operations of the foreign nonbank financial company.

The six categories can be divided into two groups. The criteria in the first group—size, lack of substitutes, and interconnectedness—seek to assess the potential for spillovers from the firm's distress to the broader financial system or real economy. Firms that are larger, that provide critical financial services for which there are few substitutes, and that are highly interconnected with other financial firms or markets are more likely to create spillovers if they fall into financial distress and hence pose a greater systemic threat to the financial stability of the United States. The criteria in the second group—leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny—seek to assess how vulnerable a company is to financial distress. Firms that are highly leveraged, that have a high degree of liquidity risk or maturity mismatch, and that are under little or no regulatory scrutiny are more vulnerable to financial distress and hence pose a greater systemic threat to the financial stability of the United States.

The Council would evaluate nonbank financial companies in each of the six categories, using quantitative metrics where possible. The Council expects to use its judgment, informed by data on the six categories, to determine whether a firm should be designated as systemically important and supervised by the Board of Governors. This approach incorporates both quantitative measures and qualitative judgments. As part of the qualitative judgment, the Council would consider potential spillovers that could occur from financial distress or failure of the company in normal times, as well as those that could occur in times of widespread financial stress.

As noted above, each of the statutory factors in sections 113(a)(2) and (b)(2) of the DFA would be considered as part of one or more the six analytical categories. This is reflected in the following table, using the factors relevant to a U.S. nonbank financial company for illustrative purposes.[2]

[2] The corresponding statutory factors for a foreign nonbank financial company would be considered under the relevant category or categories indicated in the table.

Statutory factors	Category or categories in which this factor would be considered
(A) the extent of the leverage of the company;	Leverage.
(B) the extent and nature of the off-balance-sheet exposures of the company;.	Size; Interconnectedness.
(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;.	Interconnectedness.
(D) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;.	Size; Lack of substitutes.
(E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;.	Lack of substitutes.
(F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;.	Size; Interconnectedness.
(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;.	Size; Lack of substitutes; Interconnectedness.
(H) the degree to which the company is already regulated by 1 or more primary financial regulatory agencies;.	Existing regulatory scrutiny.
(I) the amount and nature of the financial assets of the company;	Size; Interconnectedness.
(J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;.	Liquidity risk and maturity mismatch; Size; Interconnectedness.
(K) any other risk-related factors that the Council deems appropriate	Appropriate category or categories based on the nature of the additional risk-related factor.

Any determinations of the Council made under the proposed rule using this analytical framework would be based on whether the firm's material financial distress, or the nature, scope, size, scale, concentration, interconnectedness or mix of its activities, could pose a threat to the financial stability of the United States in accordance with sections 113(a)(1) and (b)(1), as relevant.

Under the proposal, the Council would use the same six categories embodied in the framework in assessing the systemic importance of companies in different industry sectors, although the application of the framework would be adapted for the risks presented by a particular industry sector and the business models present in each sector. For example, the metrics that are best suited to measure the six categories of systemic importance likely will differ across industry sectors. The Council will review these metrics on a periodic basis and revise them as appropriate.

The proposed framework is consistent with the international approach to identifying systemically important firms that is currently under development by the Basel Committee on Banking Supervision and the Financial Stability Board, reducing concerns about an unlevel global playing field and regulatory arbitrage. Receipt of previous federal assistance as a criterion to identify a systemically significant firm will not be considered as a separate criteria in the proposed framework as that assistance should be viewed in light of the facts and circumstances under which it was provided. Furthermore, the framework described above incorporates the concepts of "material financial distress" and "financial stability" without the need to explicitly define them in the rule.

The Council expects to begin assessing the systemic importance of nonbank financial companies under the proposed framework shortly after adopting a final rule. Subsequently, and on a regular basis, the Council expects to screen nonbank financial companies using the six categories to identify companies whose material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of activities, could pose a threat to the financial stability of the United States. In addition, under the DFA, the Council must review each designation of a nonbank financial company at least once a year. The review would follow the same framework as the initial designation and would consider current data on the six categories described above.

C. Other Aspects of Proposed Rule

The proposed rule also implements the other provisions of section 113 of the DFA, including (i) the anti-evasion authority of the Council set forth in section 113(c) of the DFA; (ii) the provisions governing notice of, and the opportunity for a hearing on, a proposed determination; and (iii) the provisions regarding consultation, coordination and judicial review in connection with a determination.

Given the importance of this rulemaking and the fact that the Council already published and received comment on the ANPR, we are providing a 30-day comment period for this NPR.

IV. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The rule would apply only to nonbank financial companies whose failure could pose a threat to the financial stability of the United States. Size is an important factor, although not the exclusive factor, in assessing whether a company's failure could pose a threat to financial stability. The Council does not expect the rule to directly affect a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

V. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Financial Stability Oversight Council, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Michael Tae, Department of the Treasury, Washington, DC 20220. Comments on the collection of information must be received by March 28, 2011. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Council, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations are found in § 1310.20, § 1310.21 and § 1310.22.

Estimated total annual reporting burden: 500 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

VI. Executive Order 12866

It has been determined that this regulation is a significant regulatory action as defined in section 3 of Executive Order 12866 ("Regulatory Planning and Review") and it has been reviewed by the Office of Management and Budget.

List of Subjects in 12 CFR Part 1310

Nonbank financial companies.

Financial Stability Oversight Council

Authority and Issuance

For the reasons set forth in the preamble, the Financial Stability Oversight Council proposes to establish a new chapter XIII consisting of part 1310 in Title 12 of the Code of Federal Regulations, to read as follows:

CHAPTER XIII—FINANCIAL STABILITY OVERSIGHT COUNCIL

PART 1310—SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES

Subpart A—General

Sec.

Subpart B—Determinations

Subpart C—Information Collection and Hearings

Authority: 12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5323.

Subpart A—General

§ 1310.1 Authority and purpose.

(a) *Authority.* This part is issued by the Financial Stability Oversight Council (Council) under sections 111, 112 and 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") (12 U.S.C. 5321, 5322 and 5323).

(b) *Purpose.* The principal purposes of this part are to set forth the standards and procedures governing Council determinations whether to require that a nonbank financial company be supervised by the Board of Governors and be subject to prudential standards because the company could pose a threat to the financial stability of the United States.

§ 1310.2 Definitions.

The terms used in this part have the following meanings:

Board of Governors. The term 'Board of Governors' means the Board of Governors of the Federal Reserve System.

Commission. The term "Commission" means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

Council. The term 'Council' means the Financial Stability Oversight Council.

Foreign nonbank financial company. The term 'foreign nonbank financial company' means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

(1) Incorporated or organized in a country other than the United States; and

(2) Predominantly engaged in financial activities as defined by regulation of the Board of Governors under section 102(a)(6) of the Dodd-Frank Act, including through a branch in the United States.

Member agency. The term 'member agency' means an agency represented by a voting member of the Council.

Primary financial regulatory agency. The term 'primary financial regulatory agency' means—

(1) The appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), except to the extent that an institution is or the activities of an institution are otherwise described in paragraphs (2), (3), (4), or (5) of this definition;

(2) The Securities and Exchange Commission, with respect to—

(i) Any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) Any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) Any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) Any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) Any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) Any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) Any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) Any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) Any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) The Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) The Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 *et seq.*);

(xii) The Securities Investor Protection Corporation established under the Securities Investor Protection

Act of 1970 (15 U.S.C. 78aaa *et seq.*); and

(xiii) Any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(3) The Commodity Futures Trading Commission, with respect to—

(i) Any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) Any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) Any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading adviser or introducing broker to be registered under that Act;

(iv) Any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) Any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(vi) Any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(vii) Any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) Any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) Any registered entity under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(4) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(5) The Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Prudential standards. The term "prudential standards" means enhanced supervision and regulatory standards developed by the Board of Governors under section 165 of the Dodd-Frank Act.

Significant companies. The terms "significant nonbank financial company" and "significant bank holding company" have the meanings ascribed to such terms by regulation of the Board of Governors.

U.S. nonbank financial company. The term 'U.S. nonbank financial company' means a company (other than a bank holding company, a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*), or a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission, or a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository registered with the Commodity Futures Trading Commission), that is—

(1) Incorporated or organized under the laws of the United States or any State; and

(2) Predominantly engaged in financial activities as defined by regulation of the Board of Governors under section 102(a)(6) of the Dodd-Frank Act.

Subpart B—Determinations

§ 1310.10 Council determination regarding U.S. nonbank financial companies.

(a) *Determination.* The Council may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards if the Council determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section shall—

(1) Be made by the Council and may not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c) *Considerations.* In making a proposed or final determination with respect to a U.S. nonbank financial company under this section, the Council shall consider:

(1) The extent of the leverage of the company and its subsidiaries;

(2) The extent and nature of the off-balance-sheet exposures of the company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the company and its subsidiaries as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the company and its subsidiaries as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the company and its subsidiaries, and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company and its subsidiaries;

(8) The degree to which the company and its subsidiaries are already regulated by 1 or more primary financial regulatory agencies;

(9) The amount and nature of the financial assets of the company and its subsidiaries;

(10) The amount and types of the liabilities of the company and its subsidiaries, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

(d) *Consultations.* The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company that is being considered for supervision by the Board of Governors under this § 1310.10 and with the primary financial regulatory agency, if any, of any subsidiary of such nonbank financial company before the Council makes any final determination under this § 1310.10 with respect to such nonbank financial company.

(e) *Back-up examination by the Board of Governors.* (1) If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company, including a U.S. nonbank financial company that is owned by a foreign nonbank financial company, pose a threat to the financial stability of the United States, based on information or reports otherwise obtained by the Council, including discussions with management and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company and its subsidiaries for the sole purpose of determining whether the nonbank financial company or foreign nonbank financial company should be designated under this section or § 1310.11, as applicable, for supervision by the Board of Governors.

(2) The Council shall review the results of the examination of a nonbank financial company (including its subsidiaries) conducted by the Board of Governors under this subsection in connection with any determination by the Council under paragraph (a) of this section or § 1310.11 with respect to the company.

(f) *International coordination.* In exercising its duties under this section with respect to cross-border activities and markets the Council, acting through its Chairperson or other authorized designee, shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

§ 1310.11 Council determination regarding foreign nonbank financial companies.

(a) *Determination.* The Council may determine that a foreign nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards if the Council determines that material financial distress at the foreign nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the foreign nonbank financial company, could pose a threat to the financial stability of the United States.

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section shall—

(1) Be made by the Council and may not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c) *Considerations.* In making a proposed or final determination under this section with respect to a foreign nonbank financial company, the Council shall consider:

(1) The extent of the leverage of the company and its subsidiaries;

(2) The extent and nature of the United States related off-balance-sheet exposures of the company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the company and its subsidiaries as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the company and its subsidiaries as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the company and its subsidiaries and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company and its subsidiaries;

(8) The extent to which the company and its subsidiaries are subject to prudential standards on a consolidated basis in the company's home country that are administered and enforced by a comparable foreign supervisory authority;

(9) The amount and nature of the United States financial assets of the company its subsidiaries;

(10) The amount and nature of the liabilities of the company and its subsidiaries used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and;

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

(d) *Consultation.* The Council shall consult with the primary financial regulatory agency, if any, for each foreign nonbank financial company that is being considered for supervision by the Board of Governors under this § 1310.11 and with the primary financial regulatory agency, if any, of any subsidiary of such foreign nonbank financial company before the Council makes any final determination under this § 1310.11 with respect to such foreign nonbank financial company.

(e) *International coordination.* In exercising its duties under this section with respect to foreign nonbank financial companies, the Council, acting through its Chairperson or other authorized designee, shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

§ 1310.12 Anti-evasion provision.

(a) *Determinations.* In order to avoid evasion of this part, the Council, on its own initiative or at the request of the Board of Governors, may require that the financial activities of a company shall be supervised by the Board of Governors and subject to prudential standards if the Council determines that:

(1) Material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in—

(i) Section 1310.10(b) if the company is incorporated or organized under the laws of the United States or any State; or

(ii) Section 1310.11(b) if the company is incorporated or organized in a

country other than the United States; and

(2) The company is organized or operates in such a manner as to evade the application of Title I of the Dodd-Frank Act or this part;

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section shall—

(1) Be made by the Council and may not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c) *Establishment of an intermediate holding company.* (1) Upon a determination under this section, the company that is the subject of the determination may establish, subject to such regulations, orders and guidance as the Board of Governors may issue, an intermediate holding company in which the financial activities of such company and its subsidiaries shall be conducted in compliance with any regulations or guidance provided by the Board of Governors. Such intermediate holding company shall be subject to the supervision of the Board of Governors and to prudential standards as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(2) To facilitate the supervision of the financial activities conducted by a company that is the subject of a determination under this section, the Board of Governors may require the company to establish, subject to such regulations, orders and guidance as the Board of Governors may issue, an intermediate holding company that will be subject to the supervision of the Board of Governors and to prudential standards, as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(d) *Definition of covered financial activities.* For purposes of this section, the term 'financial activities'—

(1) Means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

(2) Includes the ownership or control of one or more insured depository institutions; and

(3) Does not include internal financial activities conducted for the company or any affiliate thereof, including internal treasury, investment, and employee benefit functions, as such activities may be defined by the Board of Governors.

(e) *Consultation.* The Council shall consult with the primary financial regulatory agency, if any, for each company or subsidiary of a company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such company.

(f) *International coordination.* In exercising its duties under this section with respect to a company that is incorporated or organized in a country other than the United States, the Council, acting through its Chairperson or other authorized designee, shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

Subpart C—Information Collection and Hearings

§ 1310.20 Council information collection and coordination.

(a) Information Collection regarding Nonbank Financial Companies from the Office of Financial Research, Member Agencies, the Federal Insurance Office, and Other Federal and State Financial Regulatory Agencies. The Council may receive, and may request the submission of, such data or information from the Office of Financial Research, member agencies, the Federal Insurance Office, and other Federal and State financial regulatory agencies as the Council deems necessary or appropriate to carry out the duties of the Council under Title I of the Dodd-Frank Act or this part.

(b) *Information Collection from Nonbank Financial Companies.* (1) The Council may, to the extent the Council determines appropriate, direct the Office of Financial Research to require the submission of periodic, special or other reports concerning one or more nonbank financial companies, including a nonbank financial company that is being considered for potential designation by the Council under § 1310.10, § 1310.11, or § 1310.12, for the purpose of assessing whether a nonbank financial company poses a threat to the financial stability of the United States.

(2) Before requiring the submission of reports under this paragraph (b) of this section from any nonbank financial company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agency or agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agency or agencies.

(3) Before requiring the submission of reports under this paragraph (b) from a company that is a foreign nonbank financial company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

§ 1310.21 Notice and opportunity for a hearing and final determination.

(a) *Written notice of Council consideration of determination.* Before providing a nonbank financial company written notice of a proposed determination under paragraph (b) of this section, the Council shall provide the nonbank financial company—

(1) Written notice that the Council is considering whether to make a proposed determination with respect to the company under this part; and

(2) An opportunity to submit written materials, within such time as the Council determines to be appropriate, to the Council concerning whether, in the company's view, material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States. The Council shall fix a time (not later than 30 days after the Council's notice under this subsection) and place for the nonbank financial company to submit written materials. The Council, in its discretion, may also provide the nonbank financial company additional time to submit written materials under this paragraph.

(b) *Written notice of proposed determination.* If the Council determines under § 1310.10, § 1310.11, or § 1310.12 that a nonbank financial company or the financial activities of a company should be supervised by the Board of Governors and be subject to prudential standards, the Council shall provide to the nonbank financial company or company written notice of the proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council.

(c) *Hearing.* (1) Not later than 30 days after the date of receipt of the notice of a proposed determination under paragraph (b) of this section, the nonbank financial company or company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination.

(2) Any such request from a nonbank financial company or company for an opportunity for a written or oral hearing before the Council shall be transmitted to the Council's Legal Counsel.

(3) Upon receipt of a timely request under this paragraph (c), the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument) concerning whether material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.

(d) *Final determination.* If the nonbank financial company or company makes a timely request for a hearing under paragraph (c) of this section, the Council shall, not later than 60 days after the date of the hearing under paragraph (c)—

(1) Make a final determination under § 1310.10, § 1310.11, or § 1310.12 regarding whether the nonbank financial company or the financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards; and

(2) Notify the nonbank financial company or company, in writing, of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(e) *No hearing requested.* If a nonbank financial company or company does not make a timely request for a hearing under paragraph (c) of this section, the Council shall, not later than 10 days after the date by which the company could have requested a hearing under paragraph (c)—

(1) Make a final determination under § 1310.10, § 1310.11, or § 1310.12 regarding whether the nonbank financial company or the financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards; and

(2) Notify the nonbank financial company or company, in writing, of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

§ 1310.22 Emergency exception to § 1310.21.

(a) *Exception to § 1310.21.* Notwithstanding § 1310.21, the Council may waive or modify any or all of the notice, hearing and other requirements of § 1310.21 with respect to a nonbank financial company or company if—

(1) The Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company or the financial activities of the company, as appropriate, to the financial stability of the United States;

(2) The Council provides notice of the waiver or modification under this section and the proposed determination of the Council under § 1310.10, § 1310.11, or § 1310.12 to the nonbank financial company or company as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(b) *Opportunity for hearing.* (1) If the Council pursuant to paragraph (a) of this section waives or modifies the requirements of § 1310.21 with respect to a nonbank financial company or company, the Council shall allow the nonbank financial company or company, not later than 10 days after the date of receipt of the notice described in paragraph (a)(2) of this section, to request, in writing, an opportunity for a written or oral hearing before the Council to contest—

(i) The waiver or modification under this section; and

(ii) The proposed determination of the Council under § 1310.10, § 1310.11, or § 1310.12, as applicable

(2) Any request from a nonbank financial company or other company under paragraph (b)(1) of this section for an opportunity for a written or oral hearing before the Council shall be transmitted to the Council's Legal Counsel.

(3) Upon receipt of a timely request under paragraph (b)(2) of this section, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument) regarding—

(i) The waiver or modification granted under this section; and

(ii) Whether material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.

(c) *Notice of final determination.* (1) If the nonbank financial company or other company makes a timely request for a hearing under paragraph (b) of this section, the Council shall, not later than 30 days after the date of the hearing under paragraph (b)—

(i) Make a final determination regarding—

(A) Any waiver or modifications under this § 1310.22; and

(B) Whether the nonbank financial company or the financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards under § 1310.10, § 1310.11, or § 1310.12, as applicable; and

(ii) Notify the nonbank financial company or company of the final determinations of the Council described in paragraph (e)(1) of this section, which shall contain a statement of the basis for the decision of the Council.

(2) The Council may not make a final determination regarding any waiver or modifications under this § 1310.22 or whether the nonbank financial company or the financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards under § 1310.10, § 1310.11, or § 1310.12, as applicable, prior to the earlier of—

(i) The date by which the company could have requested a hearing under paragraph (b); or

(ii) The date on which the company notifies the Council in writing that it does not intend to request a hearing;

(d) *Vote required.* Any determination by the Council under paragraph (a)(1) of this section to waive or modify the requirements of § 1310.21 shall—

(1) Be made by the Council and may not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

§ 1310.23 Council reevaluation and rescission of determinations.

(a) The Council shall, not less frequently than annually:

(1) Reevaluate each currently effective determination made under § 1310.10(a), § 1310.11(a), or § 1310.12(a); and

(2) Rescind any such determination, if the Council determines that the nonbank financial company no longer meets the standards under § 1310.10(a), or § 1310.11(a), as applicable.

(b) *Vote required.* Any decision by the Council under paragraph (a)(2) of this section to rescind a determination made with respect to a nonbank financial company or the financial activities of a company shall—

(1) Be made by the Council and may not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

§ 1310.24 Judicial review of Council's final determination.

(a) In accordance with 12 U.S.C. 5323(h), if the Council makes a final

determination under this part that a nonbank financial company, or the financial activities of a company, shall be subject to supervision by the Board of Governors and subject to prudential standards, such nonbank financial company or company may, not later than 30 days after the date of receipt of the notice of final determination under § 1310.21(d) or (e) or § 1310.22(e), or § 1310.23(a)(2), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company or company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded.

(b) *Review of a final determination by the Council* by the court shall be limited to whether the final determination made under this part was arbitrary and capricious.

Dated: January 19, 2011.

Alastair Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–1551 Filed 1–25–11; 8:45 am]

BILLING CODE 4810–25–P–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0032; Directorate Identifier 2010–NM–236–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require an inspection of the orientation of both sides of the coil cord connector keyways of the number 2 windows on the flight deck, re-clocking the connector keyways to 12 o'clock if necessary; and replacing the coil cord assemblies on both number 2 windows on the flight deck. This proposed AD was prompted by reports of arcing and smoke at the number 2 window in the flight deck. We are proposing this AD to prevent arcing, smoke, and fire in the flight deck, which could lead to injuries to or incapacitation of the flight crew.

DATES: We must receive comments on this proposed AD by March 14, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* 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, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* 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: Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office; phone: 425–917–6478; fax: 425–917–6590; e-mail: *elias.natsiopoulos@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–2011–0032; Directorate Identifier 2010–NM–236–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 arcing and smoke at the left number 2 window in the flight deck. The arcing and smoke were traced to mechanical damage of the heat-coil assembly at the 90-degree connector back shell. It appears that the wires are being stressed at the back shell when the window is cycled open and closed. The repeated cycles are causing the wires to fatigue and break resulting in arcing, smoke, and fire in the flight deck. This condition, if not corrected, could lead to injuries to or incapacitation of the flight crew.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010. The service information describes procedures for inspecting the orientation of both sides of the coil cord connector keyways, re-clocking the connector keyways to the 12 o'clock position if necessary; and replacing the existing coil cord assemblies with new assemblies on both sides of the flight deck.

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 the 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 will affect 687 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
Keyway inspection and installation of new cord assemblies on both sides of the flight deck.	6 work-hours × $85 per hour = $510.	$1,608	$2,118	$1,455,066

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(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–2011–0032; Directorate Identifier 2010–NM–236–AD.

Comments Due Date

(a) We must receive comments by March 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

Unsafe Condition

(e) This AD was prompted by reports of arcing and smoke at the left number 2 window in the flight deck. We are issuing this AD to prevent arcing, smoke, and fire in the flight deck, which could lead to injuries to or incapacitation of the flight crew.

Compliance

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

Replacement

(g) Within 48 months after the effective date of this AD, do the actions in paragraphs (g)(1) and (g)(2) of this AD.

(1) Do a general visual inspection of the orientation of the coil cord connector keyways on the captain's and first officer's side of the flight compartment, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010. If the orientation is not at the 12 o'clock position, before further flight, re-clock the connector keyways to the 12 o'clock position, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010.

(2) Replace the coil cord assemblies with new assemblies on both sides of the flight deck, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions done before the effective date of this AD, in accordance with a service bulletin identified in table 1 of this AD, are acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1—ACCEPTABLE PREVIOUS SERVICE INFORMATION

Boeing Service Bulletin	Revision	Dated
737–30–1058	Original	July, 27, 2006.
737–30–1058	1	June 18, 2007.
737–30–1058	2	February 13, 2009.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, 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 e-mailed 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.

Related Information

(j) For more information about this AD, contact Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO); phone: 425–917–6478; fax: 425–917–6590; e-mail: *elias.natsiopoulos@faa.gov.*

(k) 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; e-mail *me.boecom@boeing.com;* 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 January 12, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–1438 Filed 1–25–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 165

RIN Number 3038–AD04

Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act

Correction

In proposed rule document 2010–29022, beginning on page 75728 in the issue of Monday, December 6, 2010, make the following correction:

On page 75727, in the cover for Part II, the agency name "Commodity Futures Trading Corporation" should read "Commodity Futures Trading Commission."

[FR Doc. C1–2010–29022 Filed 1–25–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–20–000]

Market-Based Rate Affiliate Restrictions

AGENCY: Federal Energy Regulatory Commission.

ACTION: Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The Federal Energy Regulatory Commission (Commission) withdraws a notice of proposed rulemaking, which proposed to amend its regulations governing market-based rates for public utilities pursuant to section 205 of the Federal Power Act (FPA) to include in the regulatory text the clarification that employees that determine the timing of scheduled outages or that engage in economic dispatch, fuel procurement or resource planning may not be shared under the market-based rate affiliate restrictions codified in Order No. 697.

DATES: *Effective Date:* This withdrawal will become effective February 25, 2011.

FOR FURTHER INFORMATION CONTACT:

Michelle Barnaby (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8407.

Stephen J. Hug (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8009.

SUPPLEMENTARY INFORMATION:

Issued January 20, 2011.

1. On April 15, 2010, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.[1] For the reasons set forth below, we are exercising our discretion to withdraw the NOPR and terminate this rulemaking proceeding.

[1] *Market-Based Rate Affiliate Restrictions,* 75 FR 20796 (Apr. 21, 2010), Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,567 (2010).

I. Background

2. In Order No. 697,[2] the Commission adopted affiliate restrictions that govern the relationship between franchised public utilities with captive customers and their "market-regulated" power sales affiliates, i.e., affiliates whose power sales are regulated in whole or in part on a market-based rate basis. These market-based rate affiliate restrictions govern the separation of functions, the sharing of market information, sales of non-power goods or services, and power brokering. The Commission requires that, as a condition of receiving and retaining market-based rate authority, sellers comply with these affiliate restrictions unless explicitly permitted by Commission rule or order. Failure to satisfy the conditions set forth in the affiliate restrictions constitutes a violation of a seller's market-based rate tariff.[3]

3. On March 9, 2009, the Compliance Working Group [4] submitted a request for clarification in the Commission's market-based rate rulemaking proceeding regarding which employees can be shared for purposes of compliance with the Commission's market-based rate affiliate restrictions. On October 28, 2009, the Compliance Working Group submitted an amended request for clarification. In response to the Compliance Working Group's request, the Commission provided clarification regarding which employees may not be shared under the affiliate

[2] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010).

[3] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 549–550.

[4] The Compliance Working Group stated that it consists of 27 energy companies, which include integrated electric businesses, merchant generators, marketing and trading businesses, and natural gas distributors, and explains that the group was formed in mid-2008 "to develop a model [Commission] compliance program guide." Compliance Working Group Request for Clarification, Docket No. RM04–7–007, at 2 (filed Mar. 9, 2009); Compliance Working Group Amended Request for Clarification, Docket No. RM04–7–007, at 3 (filed Oct. 28, 2009). The members of the Compliance Working Group taking part in its request for clarification are: Allegheny Energy, Inc., American Electric Power Company, Inc., Cleco Corporation, Consumers Energy Company, Dominion Resources, Inc., Duke Energy Corporation, Edison International, El Paso Electric Company, Energy East Corp., Entergy Corporation, Exelon Corporation, FirstEnergy Corp., FPL Group, Inc., Pacific Gas and Electric Co., Progress Energy, Inc., Public Service Enterprise Group Incorporated, and Westar Energy, Inc.

restrictions.[5] Concurrently with the April 15 Clarification Order, the Commission issued the NOPR, in which it proposed to revise the text of the separation of functions and information sharing provisions of the affiliate restrictions contained in § 35.39 of the Commission's regulations in order to reflect the clarification provided in response to the Compliance Working Group's request.

4. In the April 15 Clarification Order, the Commission denied the Compliance Working Group's request that the Commission interpret the market-based rate affiliate restrictions to permit the sharing of employees who are neither transmission function employees nor marketing function employees under the Standards of Conduct. However, in order to address the Compliance Working Group's concerns regarding compliance with the market-based rate affiliate restrictions, the April 15 Clarification Order provided guidance regarding which employees may not be shared under the affiliate restrictions.[6] Specifically, the Commission rejected the Compliance Working Group's interpretation of the market-based rate affiliate restrictions because the Compliance Working Group's interpretation would permit the sharing of employees who are prohibited from being shared under the market-based rate affiliate restrictions (for instance, employees that make economic dispatch decisions or that determine the timing of scheduled outages). Thus, the Commission explained that granting the Compliance Working Group's requested interpretation would permit market-based rate sellers to share employees that may not currently be shared under the affiliate restrictions.

5. The April 15 Clarification Order explained that "marketing function employee" is not a defined term in the market-based rate regulations adopted in Order No. 697, and explained that the restrictions on which employees may be shared under the market-based rate affiliate restrictions are not limited to those employees who are engaged in sales.[7] It stated that, as clarified in Order No. 697–A, under the market-based rate affiliate restrictions, "shared employees may not be involved in decisions regarding the marketing or sale of electricity from the facilities, may not make economic dispatch decisions, and may not determine the timing of scheduled outages for facilities."[8] In this regard, the April 15 Clarification Order explained that responsibility for economic dispatch or the timing of scheduled outages, for example, is not a "marketing function" under the Standards of Conduct and, therefore, employees engaging in economic dispatch or that determine the timing of scheduled outages would not be marketing function employees under the Standards of Conduct. Therefore, those employees could be shared under the Standards of Conduct, despite the fact that sharing of such employees is prohibited under the affiliate restrictions. Thus, consistent with the Commission's determinations in Order No. 697–A, the April 15 Clarification Order clarified that, for purposes of compliance with the market-based rate affiliate restrictions, a franchised public utility with captive customers and its market-regulated power sales affiliates may not share employees that make economic dispatch decisions or that determine the timing of scheduled outages.[9]

6. The April 15 Clarification Order also explained that franchised public utilities with captive customers should be prohibited from sharing employees that engage in resource planning or fuel procurement with their market-regulated power sales affiliates. The Commission explained that if the franchised public utility and its market-regulated power sales affiliate are permitted to share employees that make strategic decisions about future generation supply, such as deciding when and/or where to build or acquire generating capacity, such strategic decision making by a shared employee could result in generation being built or acquired for the benefit of the market-regulated power sales affiliate, and at the expense of the captive customers of the franchised public utility. The April 15 Clarification Order also explained that a shared employee that procures fuel for both the franchised public utility and the market-regulated power sales affiliate may have the incentive to allocate purchases of lower priced fuel supplies to the market regulated power sales affiliate while allocating purchases of higher priced fuel supplies to the franchised public utility. Therefore, given that the definition of marketing function employee under the Standards of Conduct does not specifically address employees that determine the timing of scheduled outages or that engage in economic dispatch, fuel procurement, or resource planning,[10] the April 15 Clarification Order clarified that employees engaging in these activities are prohibited from being shared under the market-based rate affiliate restrictions, absent an explicit waiver from the Commission.

7. In order to reflect these clarifications, the Commission proposed in the NOPR to revise § 35.39 of its regulations in order to clarify that employees that determine the timing of scheduled outages or that engage in economic dispatch, fuel procurement, or resource planning may not be shared under the market-based rate affiliate restrictions. Accordingly, the Commission proposed to revise the separation of functions provision contained in § 35.39(c)(2)(ii) of the regulations to include the provision that franchised public utilities with captive customers are prohibited from sharing employees that determine the timing of scheduled outages or that engage in economic dispatch, fuel procurement, or resource planning with their market-regulated power sales affiliates.

8. The Commission also proposed to revise the information sharing provision contained in § 35.39(d)(2) of the regulations to include the provision that employees that determine the timing of scheduled outages or that engage in economic dispatch, fuel procurement, or resource planning may not have access to information covered by the prohibition of § 35.39(d)(1).

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[5] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services By Public Utilities*, 131 FERC ¶ 61,021 (2010) (April 15 Clarification Order).

[6] April 15 Clarification Order, 131 FERC ¶ 61,021 at P 39–42.

[7] Under the Standards of Conduct regulations, "marketing function employee" is defined as "an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions." 18 CFR 358.3(d) (2010). "Marketing functions" means "in the case of public utilities and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort. * * *" 18 CFR 358.3(c) (2010). As the Commission stated in the April 15 Clarification Order, the Standards of Conduct definition of "marketing function employee" may be read to be limited to those employees engaged in sales.

[8] April 15 Clarification Order, 131 FERC ¶ 61,021 at P 37 (citing Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 253).

[9] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 253.

[10] The prohibition on sharing employees that engage in resource planning applies only to the sharing of employees between a franchised public utility and its market-regulated power sales affiliate, and is not intended to alter resource planning activities by transmission providers that are permitted under the Standards of Conduct. *See Standards of Conduct for Transmission Providers,* Order No. 717, FERC Stats. & Regs. ¶ 31,280, at P 144 (2008) (Standards of Conduct Final Rule), *order on reh'g,* Order No. 717–A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g,* Order No. 717–B, 129 FERC ¶ 61,123 (2009).

II. Comments

9. The Edison Electric Institute (EEI), Ameren Services Company (Ameren), Dominion Resources Services, Inc. (Dominion), Duke Energy Corporation (Duke), Entergy Services, Inc. (Entergy), and the Nuclear Energy Institute (NEI) [11] filed comments opposing the codification of the clarifications provided in the April 15 Clarification Order. The Transmission Access Policy Study Group (TAPS) submitted comments in support of the NOPR's proposed codification of the clarifications provided.

10. EEI contends that the April 15 Clarification Order bypassed the notice-and-comment proceeding established in the NOPR, depriving the public of an effective opportunity to provide input on the Commission's proposed changes. According to EEI, the NOPR is evidence that the April 15 Clarification Order does more than merely clarify existing restrictions. NEI also states that the April 15 Clarification Order is effectively amending the Commission's affiliate restrictions regulations without notice and comment. NEI contends that the NOPR is not a logical outgrowth of the Compliance Working Group's request for clarification or the notice associated with the request and that, as a result, the notice and comment on the Compliance Working Group's request for clarification does not satisfy the Administrative Procedure Act.[12]

11. EEI opposes adoption of the proposed changes to the market-based rate affiliate restrictions because it believes that the Commission's current regulations provide a solid and a sufficient framework to protect captive customers.[13] EEI contends that the April 15 Clarification Order could impose new obligations on a number of utilities and require reorganization and operational changes by affected entities.[14] EEI argues that the Commission should not adopt any such changes absent evidence that captive retail customers are at risk of subsidizing the activities of market-regulated power sales affiliate operations. EEI requests that the Commission find that franchised public utilities with captive customers and their market-regulated power sales affiliates may share employees who: (1) Perform economic dispatch and outage scheduling functions, but are abiding by guidance provided by the Commission or its staff permitting the sharing of these employees; (2) provide inputs and other support to the resource planning process but do not exercise decisional authority with respect to such matters; [15] or (3) provide shared fuel procurement services within the corporate family when the Commission or a state commission has approved such sharing of employees, or sharing is consistent with no-action letters or other such guidance. EEI also states that the Commission should find that franchised public utilities with captive customers and their market regulated power sales affiliates may continue to rely on waivers, no-action letters, audit reports, informal guidance, or other documents that the Commission or its staff has issued, even if those documents precede or depart from the April 15 Clarification Order or the Final Rule issued pursuant to the NOPR.

12. With respect to fuel procurement employees, EEI requests that, at a minimum, the Commission clarify that: (1) Those franchised public utilities with captive customers and their market-regulated power sales affiliates that currently rely on a shared fuel procurement unit may continue to do so; and (2) companies may seek waivers in the future to establish new shared fuel procurement units. EEI asserts that joint fuel procurement would be governed by the requirements of the regulations adopted in Order Nos. 667 and 707, and by applicable state orders and regulations, and argues that the Commission has not previously proscribed the use of joint fuel procurement units.[16]

13. Dominion, Ameren, Duke, Entergy, and NEI make arguments similar to those of EEI. Dominion, Duke, Entergy, and NEI argue that sharing of nuclear fuel procurement employees should be permitted. NEI argues that a categorical prohibition on the sharing of employees that engage in fuel procurement is unnecessary given that there is no record of abuse and that such a prohibition would negatively affect the ability of utilities to procure nuclear fuel. NEI argues that the Commission has allowed the sharing of fuel procurement employees in the past, and suggests that the Commission's concerns regarding the sharing of fuel procurement employees could be better addressed through procedural approaches, such as requiring separate contracts for each entity and auditable records to justify specific procurement actions.[17] According to Entergy, market-based rate affiliate personnel with information on regulated utility nuclear fuel prices could not use that information in electricity trading or dispatch decisions in any manner to the detriment of ratepayers, even if the no-conduit rule were ineffective in ensuring that marketing personnel do not have access to that information.[18]

14. Dominion claims that state regulation of fuel procurement protects captive ratepayers, and states that it currently uses shared fuel procurement personnel in accordance with state commission-approved affiliate agreements. Dominion proposes that the Commission create safe harbors, which Dominion describes as pre-defined categories for fast-track waiver requests that permit the sharing of resource planning and/or fuel procurement employees. Dominion argues that creating safe harbors would minimize utilities having to make a fact-specific showing that part or all of the affiliate restrictions should not apply and minimize problems with showings becoming outdated.[19]

15. Entergy argues that, particularly in the nuclear context, the prohibition on the sharing of outage schedulers should be read narrowly, so that employees that support the outage scheduling process may continue to be shared. Entergy seeks confirmation that its interpretation of the words "determine the timing of" as being limited to a small group of personnel, such as site outage managers and senior vice presidents, who are the outage decision-makers, is correct [20] and requests that the Commission clarify that after-the-fact sharing of certain information does not constitute the sharing of market information.[21]

[11] NEI represents the commercial nuclear energy industry in regulatory communications, public policy and other matters. NEI states that its members generate electricity for sale in both regulated and deregulated markets. NEI Comments at 2–3.

[12] NEI Comments at 10 (citing *Shell Oil Co.* v. *E.P.A.*, 950 F.2d 741, 747 (D.C. Cir. 1991).

[13] EEI Comments at 5.

[14] Id. at 16–17.

[15] While it is unclear what EEI means by its use of the term "inputs," EEI appears to use the term "inputs" to describe support services.

[16] EEI Comments at 13–14 (citing *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667–A, FERC Stats. & Regs. ¶ 31,213 (2006), *order on reh'g*, Order No. 667–B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667–C, 118 FERC ¶ 61,133 (2007); *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, FERC Stats. & Regs. ¶ 31,264 (2008), *order on reh'g*, Order No. 707–A, 124 FERC ¶ 61,047 (2008)).

[17] NEI Comments at 4–7 (citing *Entergy Corp.*, No-Action Letter, Docket No. NL07–4–000 (Feb. 8, 2007)).

[18] Entergy Comments at 15, 17.

[19] Dominion Comments at 8, 19–22.

[20] Entergy Comments at 20–21.

[21] Specifically, Entergy argues that the sharing of information concerning the causes of forced outages, system weakness or equipment failures, other potential concerns, and best practices should be permitted. *Id.* at 21–22.

16. Ameren argues that the use of shared employees allows the utilities to avoid having to hire duplicate sets of employees, and asserts that the Commission has found the sharing of resource planning and fuel procurement personnel appropriate in other circumstances.[22] Ameren also argues that the proposed prohibitions against the sharing of resource planning or fuel procurement employees would contradict the findings in *National Fuel Gas Supply Corp.* v. *FERC,*[23] where the court found that the record did not support the Commission's attempt to extend the Standards of Conduct to relationships between pipelines and an additional class of their affiliates. Similarly, Duke argues that the Commission has not previously prohibited sharing of employees who engage in fuel procurement, and has not provided evidence that would support imposing new restrictions.[24]

17. EEI contends that the proposed "blanket proscriptions" would run afoul of individual orders, notices, waivers, and no-action letters issued to companies that allow the sharing of employees that schedule outages or that engage in economic dispatch, resource planning or fuel procurement. Entergy argues that the Commission has previously recognized that co-owned units and plants should be excepted from certain prohibitions in the affiliate restrictions, as long as such sharing is kept to the minimum practicable level. Entergy seeks clarification as to whether the guidance provided by no-action letters and cases granting waivers to entities that co-own generation remains valid, and argues that if the Commission prefers that entities that have relied on this guidance but never submitted a waiver request, submit a waiver, it should so clarify.[25]

18. Entergy argues that in the situation where a franchised public utility with captive customers and its market-regulated power sales affiliate co-own generation, there is a significant likelihood that market information about the level of dispatch of the total plant may become known to market-based rate affiliate personnel, despite co-owners taking steps to ensure that disclosures are kept to a minimum. Entergy argues that the Commission should clarify that the unintended, incidental sharing of market information regarding economic dispatch as well as after-the-fact operational information does not violate the affiliate restrictions in the situation of co-owned generation, as long as economic dispatch decisions are made separately, and not by shared employees, and as long as the no-conduit rule is strictly followed.[26] Entergy also argues that the Commission should continue to permit sharing (for co-owned units) or coordination (for co-owned plants) of outage scheduling, to the extent necessary given the joint ownership arrangement, as well as the information sharing that inevitably results.[27] Entergy argues that the Commission should clarify that it recognizes the need for fuel procurement sharing in the situation of co-owned generation.[28]

19. With respect to employees that engage in resource planning, EEI states that it has understood that "traditional" resource planning employees who make direct resource planning decisions could not be shared under the affiliate restrictions. However, it states that the Commission's proposed proscription is written so broadly that it could inadvertently prevent the sharing of support staff, which is explicitly permitted by the Commission's regulations.[29] EEI also states that it assumes that by the term "employee," the Commission does not mean to include senior executives responsible for overseeing corporate activities from a family-wide perspective and who have fiduciary responsibilities, including responsibilities regarding the acquisition of significant assets and corporate finance.[30]

20. TAPS argues that the Commission should revise its regulations as proposed in the NOPR and should emphasize that its proposed clarifications concerning the sharing of employees are not an exhaustive listing of prohibited shared employees. TAPS states that the Commission correctly identified situations where the sharing of employees between affiliated market-based rate power sellers and franchised public utilities with captive customers could harm the captive customers of the franchised public utility.

21. EEI argues that the Commission should provide affected companies with 60 days of transition time to comply with the changes adopted in the Final Rule or to file a request for waiver.[31] Ameren argues that if the Commission adopts the changes proposed in the NOPR, the Commission should only apply the prohibition against the sharing of fuel procurement and resource planning employees prospectively, beginning no earlier than 180 days after the Final Rule becomes effective, and that the Commission should grandfather existing sharing agreements.[32] Dominion requests that the Commission provide "a significant amount of time" to undertake the structural reorganizations that will be required if the proposed changes are adopted. Dominion requests that the Commission require companies to be in compliance within one year of the later of: (1) The date of issuance of the Final Rule; (2) the date of Commission action on any waiver request filed within 30 days of the issuance of the Final Rule; or (3) the date of state commission action on any approval required in connection with a proposed restructuring to comply with the Final Rule.[33]

III. Discussion

22. Upon further consideration, we will withdraw the NOPR because the current regulations are sufficient insofar as they already require that employees of a market-regulated power sales affiliate operate separately from the employees of any affiliated franchised public utility with captive customers, to the maximum extent practical. While the NOPR was intended to provide additional clarity to the industry by identifying in the regulatory text certain employees who cannot be shared, we find that codifying these clarifications in the regulatory text is unnecessary because the separation of functions requirement in the existing regulations already requires that, "[t]o the maximum extent practical, the employees of a market-regulated power sales affiliate must operate separately from the employees of any affiliated franchised public utility."[34] The existing regulations also provide that "[a] franchised public utility with captive customers may not share market information with a market-regulated power sales affiliate if the sharing could be used to the detriment of captive customers, unless simultaneously disclosed to the public."[35] Because we find that codifying these clarifications

[22] Ameren Comments at 14–15 (citing Standards of Conduct Final Rule, FERC Stats. & Regs. ¶ 31,280 at P 146; *Entergy Services, Inc.,* No-Action Letter, Docket No. NL07–4–000 (Feb. 8, 2007); *Cinergy Services, Inc.,* No-Action Letter, Docket No. NL06–1–000 (Jan. 31, 2006)).

[23] 468 F.3d 831 (D.C. Cir. 2006).

[24] Duke Comments at 3–4 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 564–565; Order No. 697–B, 125 FERC ¶ 61,326 at P 59).

[25] Entergy Comments at 22–23.

[26] *Id.* at 23–24.

[27] *Id.* at 25 (citing *Allegheny Energy, Inc.,* 119 FERC ¶ 61,025 (2007)).

[28] *Id.* at 26–28.

[29] EEI Comments at 7–8.

[30] *Id.* at 8, n.10.

[31] *Id.* at 17.

[32] Ameren Comments at 23–25.

[33] Dominion Comments at 23–24.

[34] 18 CFR 35.39(c)(2)(i) (2010).

[35] 18 CFR 35.39(d)(1) (2010).

provided in the April 15 Clarification Order in the regulatory text is unnecessary, we conclude that it is no longer necessary to adopt the amendments to the regulations proposed in the NOPR. Sellers will be required to comply with the guidance provided in the April 15 Clarification Order within 90 days of the date of issuance of the order addressing EEI's request for rehearing of the April 15 Clarification Order in Docket No. RM04–7–009, which is being issued concurrently with this order.[36]

23. We find that commenters' arguments objecting to the amendments to the regulatory text proposed in the NOPR and their arguments that adequate notice and opportunity for comment were not provided on the amendments to the regulatory text are rendered moot by our withdrawal of this NOPR. We address below commenters' remaining arguments.

24. A number of commenters request that we clarify that franchised public utilities with captive customers may share employees with their market-regulated power sales affiliates where they are abiding by guidance provided by the Commission or by a state commission or in certain circumstances, such as in the case of co-owned generation facilities. We decline to grant such clarification on a generic basis.

25. While the Commission has granted waiver of its market-based rate affiliate restrictions to permit the sharing of certain employees in certain circumstances, such as employees that schedule outages at co-owned generation facilities, these waivers were based on case-specific circumstances and representations made by the specific applicants in those cases. For example, in *Cleco Power LLC,* the waiver of certain affiliate restrictions was limited to three employees, was limited to the "specific facts and circumstances" presented by the applicants, and was conditioned on the requirement that the applicants maintain sufficient records to allow the Commission to audit their compliance with the conditions of the waiver.[37] We believe that the Commission, for purposes of the affiliate restrictions, should retain its authority to review on a case-by-case basis circumstances where affiliates seek to share employees or market information. Accordingly, we clarify that prior orders granting waiver are case specific and apply only to the entities that were specifically granted waiver in those cases. Therefore, entities that have relied on this previous guidance but who have not submitted a waiver request themselves should submit such a request. Entities that have previously obtained waiver of certain of the affiliate restrictions may continue to rely on those waivers as long as the facts and circumstances relied upon by the Commission in granting the waiver remain true and accurate, and as long as any conditions set forth in the order granting waiver continue to be satisfied.

26. Similarly, we clarify that an entity may rely on the guidance provided by Commission staff in a no-action letter if the letter was issued in response to that entity's request, and if the specific facts and representations relied on by Commission staff in responding to the no-action letter request remain true and accurate.[38]

27. While we reject the notion that the Commission should rely on determinations made by state commissions with respect to the sharing of employees, we clarify that to the extent that an affected entity believes that a state commission's determination supports waiver of our market-based rate affiliate restrictions, the Commission will consider this argument on a case-by-case basis if this argument is presented in a request for a no-action letter regarding specific proposed transactions, practices or situations, or in a case-specific request for waiver of the affiliate restrictions.

28. Similarly, in response to commenters' arguments that sharing of nuclear fuel procurement and other fuel procurement employees should be permitted, an entity can seek waiver of the affiliate restrictions to permit the sharing of certain employees based on case-specific circumstances.

29. We deny Entergy's request that the Commission confirm which of Entergy's personnel determine the timing of scheduled outages, and its request as to whether after-the-fact sharing of certain information constitutes the sharing of market information, and whether unintended sharing of market information regarding economic dispatch and operational information violates the affiliate restrictions when such sharing occurs in the context of co-owned generation.[39] As we explain above, prior orders granting waiver of the affiliate restrictions are case specific, and apply only to the entities that were specifically granted waiver in those cases. Further, Entergy does not provide sufficient detail regarding the activities of its personnel that determine the timing of scheduled outages, or sufficient detail regarding the facts and circumstances of the information sharing that it believes is permitted for the Commission to confirm whether Entergy's sharing of employees and market information is permitted.[40] To

[36] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* 134 FERC ¶ 61,046, at P 27 (2011).

[37] 130 FERC ¶ 61,102, at P 22–25 (2010) (granting limited waiver to permit sharing of employees that determine the timing of scheduled outages based on the conjoined nature of the facilities and the applicants" representations that the waiver was necessary to allow for the practical and efficient operation of the conjoined facilities); *see also Allegheny Energy Inc.*, 119 FERC ¶ 61,025 at P 20, 22 (granting waiver of the market-based rate code of conduct information sharing provision (the market-based rate code of conduct was the predecessor to the affiliate restrictions codified in Order No. 697) based on the applicants' representations that the waiver was necessary to allow for the practical and efficient operation of the conjoined facilities); *American Electric Power Service Corp.*, 119 FERC ¶ 61,064, at P 20 (2007) (granting waiver of the market-based rate code of conduct (the market-based rate code of conduct was the predecessor to the affiliate restrictions codified in Order No. 697) to allow sharing of a senior executive officer based on the applicants' representations that the senior executive officer was not involved in the daily functions of directing, organizing and executing business decisions).

Further, the Commission has granted waiver of the affiliate restrictions where a seller demonstrates and the Commission agrees that the seller has no captive customers. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 552, 589. Likewise, sellers have the option of seeking waiver of the separation of functions requirement to allow the sharing of employees that engage in fuel procurement or resource planning.

[38] *See Interpretative Order Modifying No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance*, 123 FERC ¶ 61,157, at P 10–12 (2008) (explaining that no-action letters "can offer useful guidance to the industry," however, are non-binding on the Commission, and must relate to a specific, actual transaction, practice or situation in which the applicant is or may be involved, and that the applicant must explain the specific details of the transaction, practice or situation).

[39] The Commission has adopted an exception to the independent functioning requirement and the information sharing restrictions for emergency circumstances affecting system reliability, provided that the subsequent reporting provisions are followed. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 568; 18 CFR 35.39(c)(2)(iii) (2010). The Commission has also explained that, while shared field and maintenance employees may not make economic dispatch decisions or determine when scheduled maintenance outages will occur, they may do so during emergency forced outages. *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 253; Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 568. In addition, the Commission has explained that it permits the sharing of information to enable nuclear power plants to comply with the requirements of the Nuclear Regulatory Commission (NRC) as described in the NRC's February 1, 2006 Generic Letter 2006–02, Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power. Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at n.339 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 581).

[40] With respect to Entergy's request that the Commission confirm that Entergy's interpretation of employees that determine the timing of scheduled outages is limited to a small group of personnel, such as site outage managers and senior vice presidents, who are the outage decision-makers, we note that the Commission has previously clarified "that companies may share employees and supervisors who have the authority to curtail or

Continued

the extent that Entergy seeks clarification concerning whether it is complying with the market-based rate affiliate restrictions, or seeks waiver of certain affiliate restrictions, it may submit a request for a no-action letter regarding specific proposed transactions, practices or situations, or a case-specific request for waiver of the affiliate restrictions.

30. For the reasons discussed above, the Commission withdraws the NOPR and terminates this rulemaking proceeding.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1488 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0803]

Drawbridge Operation Regulations; Oakland Inner Harbor Tidal Canal, Oakland/Alameda, CA, Schedule Change

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking (NPRM), to change the operation of the Alameda County and the Army Corps of Engineers owned drawbridges crossing the Oakland Inner Harbor Tidal Canal, between Oakland and Alameda, California. The proposed change would have allowed the drawbridges to open for vessels upon four hours advance notice for openings between the hours 4:30 p.m. and 9 a.m. daily. With the exception of Federal Holidays, openings at all other times would have been on signal except during interstate rush hours, 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday, when the drawbridges need not be opened for vessels. The proposed change was requested by Alameda County to reduce the drawbridge staffing requirements during periods of reduced openings. The NPRM is being withdrawn because of the opposing comments received from the various sources including the primary waterway users that transit the drawbridges.

DATES: The notice of proposed rulemaking is withdrawn on January 26, 2011.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0803 in the "Keyword" box and then clicking "Search".

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or e-mail David H. Sulouff, Chief, Bridge Section, Waterways Management Branch, 11th Coast Guard District, telephone 510–437–3516, *e-mail address: David.H.Sulouff@USCG.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2010, we published a Notice of Proposed Rulemaking entitled "Drawbridge Operation Regulation; Oakland Inner Harbor Tidal Canal, Oakland/Alameda, CA, Schedule Change" in the **Federal Register** (75 FR 29693–29695). The proposed change would have allowed the drawbridge owner/operator to reduce the hours of staffing on the drawbridges and would have required a four hour advance notice from mariners to the bridge operator for vessel transits requiring drawbridge openings, during the specified times. A test period of the proposed regulation was not performed. A Coast Guard Public Meeting was determined unnecessary due to the outreach provided by Alameda County, the response to the NPRM and the actions of local concerned citizens.

The Coast Guard received twenty-nine (29) response to the NPRM. Of these two (2) were in support of the proposal and twenty-seven (27) either opposed or recommended additional review of the proposal. Some of the opposing entries contained input from multiple sources including petitions against the proposal and letters providing consolidated input from various organizations in opposition. We conducted a lengthy and thorough investigation including a review of statistical information on vessel transits provided by Alameda County, site visits at the drawbridges and waterfront facilities along the Oakland Inner Harbor, presentations to and request for input from the San Francisco Harbor Safety Committee, requests for input from the Cities of Alameda and Oakland, CA, and dissemination of the **Federal Register** to most of the local marine related establishments along the waterway. Local groups representing waterway users and property owners along the waterway provided additional dissemination of the Federal Register NPRM for the proposed change. The bridge operator (Alameda County) held a public meeting on April 1, 2010 to present the proposal to the local public. The Coast Guard directly contacted the primary waterway users to obtain their input.

The proposed change was submitted by Alameda County. Alameda County indicated that the proposed regulation change would meet their minimum needs for reducing funding required for drawbridge staffing and alternatives had not been considered at the time of the request. Comments opposing the proposed change were received from the San Francisco Harbor Safety Committee, The National Boating Federation, Hanson Aggregates, Power Engineering, Harbor Bay Maritime, Dutra Group, Oakland Yacht Club, Fernside Homeowners Association, Waterfront Homeowners Association, East Shore Homeowners Association, Aeolian Yacht Club, Briar Rose Yacht Charters, Baytech Marine Service, Heinold's First and Last Chance, Aroma Restaurant, Eskelund Marine, Bocanova, Vortex Marine Construction, British Marine, The Outboard Motor Shop, Waterfront Hotel-Miss Pearl's Restaurant, Encinal Yacht Club, Marina Village Inn, Kincaid's Restaurant, Scott's Seafood Restaurant, Captain Ed Payne Technical Services, Il Pescatore Restaurant, The City of Alameda, The City of Oakland Fire Department, City of Oakland Public Works/Transportation Services Division, and numerous local residents and vessel owners. Comments received recommending additional review and possible alternative regulations included those from Mr. Tom Charron, Mr. Henry C. Lindemann and The Bay Planning Coalition recommending coordination with RBOC Recreational Boaters of California, PICYA Pacific Inter-Club Yacht Association and other key stakeholders.

stop the operation of generation facilities solely for operational reasons" and that "shared employees may not be involved in decisions regarding the marketing or sale of electricity from the facilities, may not make economic dispatch decisions, and may not determine the timing of scheduled outages for facilities." Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 253.

Withdrawal

The Notice of Proposed Rulemaking is withdrawn due to comments received in opposition and the potential negative impacts to navigation and the surrounding community. We have determined the regulation change, as proposed, would not meet the reasonable needs of navigation on the waterway.

Authority: This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: January 3, 2011.

J.R. Castillo,

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

[FR Doc. 2011–1574 Filed 1–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0992]

RIN 1625–AAOO

Safety Zone; Repair of High Voltage Transmission Lines to Logan International Airport, Saugus River, Saugus, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone on the Saugus River, Lynn, Massachusetts, within the Captain of the Port (COTP) Boston Zone to allow for repair of high voltage transmission lines to Logan Airport. This safety zone is required to provide for the safety of life on navigable waters during the repair of high voltage transmission lines. Entering into, transiting through, mooring or anchoring within this zone is prohibited unless authorized by the COTP.

DATES: Comments and related material must be received by the Coast Guard on or before February 25, 2011.

Requests for public meetings must be received by the Coast Guard on or before February 2, 2011.

See the Supplementary Information for discussion of the anticipated effective date.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0992 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail PO Trevor Hughes of the Waterways Management Division, Coast Guard; telephone 617–223–3010, e-mail *Trevor.A.Hughes@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: The Coast Guard anticipates that this proposed rule will be effective for six months following the publication of the final rule in the **Federal Register**. The Coast Guard will be enforcing this rule for less than a 48 hour period during the construction and associated activities related to the actual repair of the transmission lines.

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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0992), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0992" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. 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.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0992" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before February 2, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Petty Officer Trevor Hughes at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

This proposed rule is necessary to ensure the safety of vessels and workers from the hazards associated with work related to repairs of high voltage transmission lines over navigable waters.

Discussion of Proposed Rule

This proposed temporary safety zone is necessary to ensure the safety of vessels, workers and the public during the repair of the high voltage transmission lines that feed Logan Airport. The safety zone will be enforced immediately before, during, and after the start of the repairs. National Grid, the transmission line repair company, has not specified the exact date repairs will commence, but they have advised the Coast Guard that repairs are planned for a 48 hour period to begin each day at 9 a.m. and end at 2 p.m. We expect to receive the repair dates during this rulemaking period and will publish them in the final rule.

The COTP will inform the public about the details of the work covered by this safety zone using a variety of means, including, but not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the COTP Boston or designated on-scene representative. Entering into, transiting through, mooring or anchoring within the safety zone is prohibited unless authorized by the COTP Boston or his designated on scene representative. The COTP or his designated on scene representative may be contacted via VHF Channel 16 or by telephone at (617) 223–5750.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be of limited duration, is located in a waterway that has no deep draft traffic and is designed to avoid, to the extent possible, fishing and recreational boating traffic routes. In addition, vessels requiring entry into the area of the safety zone may be authorized to do so by the COTP.

Small Entities

Under the Regulatory Flexibility Act (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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Saugus River during a 48 hour enforcement period directly related to repairs of high voltage transmission lines to Logan Airport.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. National Grid intends to make repairs to the high voltage transmission lines running to Logan Airport during a 48 hour period between the hours of 9 a.m. and 2 p.m. This time window will allow the local lobster fishing fleet to transit to the fishing grounds and return home at night without any inconvenience. The enforcement dates will be published in the Final Rule. The local harbormasters have notified their tenants in advance of the intended repairs, thus allowing Saugus River users to plan accordingly. Vessel traffic will be allowed to pass through the zone prior to 9 a.m. and after 2 p.m. and if necessary through the zone with the permission of the COTP. Before the effective period, we will issue maritime advisories widely available to users of the river.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 PO Trevor Hughes at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. 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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this

proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

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.

Protection of Children

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.

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.

Energy Effects

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

Technical Standards

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

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

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. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety zone. 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

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVAGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01–0992 to read as follows:

§ 165.T01–0992 Safety Zone; Repair of High Voltage Transmission Lines to Logan International Airport; Saugus River, Saugus, MA.

(a) *General.* A temporary safety zone is established for the event described in paragraph (a)(1):

(1) Repair of high voltage transmission lines to Logan International Airport; Saugus River, Saugus, MA. The temporary safety zone includes all waters of the Saugus River, from surface to bottom, within a 250-yard radius of position 42°26′42″ N; 070°58′14″ W.

(2) Effective Period. This rule is effective with actual notice from: 9 a.m. to 2 p.m. (exact dates will be published in the Final Rule).

(3) *Enforcement Period.* This rule will be enforced during a consecutive 48 hour period: (exact dates will be published in the Final Rule).

(b) *Notification.*

Coast Guard Sector Boston will cause notice of the enforcement of this proposed temporary safety zone to be made by all appropriate means to affect the widest publicity among the affected segments of the public, including publication in the Local Notice to Mariners and Safety Marine Information Broadcast.

(c) *Regulations.*

(1) In accordance with the general regulations in Section 165.23 of this part, entry into, transiting or anchoring within this regulated area is prohibited unless authorized by the COTP Boston, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP Boston or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Boston is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston to act on his behalf. The on-scene representative of the COTP Boston will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The COTP or his designated on scene representative may be contacted by telephone at 617–223–5750 or on VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall request permission to do so by contacting the COTP Sector Boston by telephone at 617–223–5750 or on VHF radio channel 16.

Dated: January 4, 2011.

John N. Healey,

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

[FR Doc. 2011–1572 Filed 1–25–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0788; FRL–9256–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Flat Wood Paneling Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision includes amendments to Maryland's regulation for Volatile Organic Compounds from Specific Processes, and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) for flat wood paneling coatings. These amendments will reduce emissions of volatile organic compound (VOC) from flat wood coating facilities. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0788 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0788, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0788. 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 e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Flat Wood Paneling Coatings," that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: January 5, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–1490 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0882; FRL–9256–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of the Revised Lead Standards and Related Reference Conditions, and Update of Appendices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of adding the primary and secondary lead standards of 0.15 micrograms per cubic meter ($\mu g/m^3$), related reference conditions, and update the list of appendices under "Documents Incorporated by Reference." In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0882 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0882, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0882. 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 e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of the Revised Lead Standards and Related Reference Conditions, and Update of Appendices," that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: January 5, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–1467 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2010–1025; FRL–9253–8]

Approval and Promulgation of Air Quality Implementation Plan; New Jersey and New York; Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-Hour $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority under the Clean Air Act (CAA), EPA is proposing to disapprove the New Jersey and the New York State Implementation Plan (SIP) revisions submitted to address significant contribution to nonattainment or interference with maintenance in another State with respect to the 2006 24-hour fine particle ($PM_{2.5}$) national ambient air quality standards (NAAQS). On January 20, 2010, New Jersey submitted a SIP revision to address section 110(a)(2)(D)(i) of the CAA concerning interstate transport requirements, and sections 110(a)(1) and (2) of the CAA concerning infrastructure requirements. On March 23, 2010, New York submitted a SIP revision to address the section 110(a)(2)(D)(i) of the CAA concerning interstate transport, and sections 110(a)(1) and (2) of the CAA concerning infrastructure SIP requirements. In this action, EPA is proposing to disapprove the portion of the New Jersey and the New York SIP revisions that addresses the section 110(a)(2)(D)(i)(I) requirement prohibiting a State's emissions from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in any other State. The rationale for the disapproval action of the SIP revision is described in this proposal.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2010–1025, by one of the following methods:

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

2. *E-mail: Werner.Raymond@epa.gov.*

3. *Fax:* (212) 637–3901.

4. *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

5. *Hand Delivery or Courier.* Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official business hours are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2010–1025. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit through *http://www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin (*fradkin.kenneth@epa.gov*), Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What action is EPA taking?

We are proposing to disapprove portions of the submissions from the State of New Jersey and the State of New York that were to demonstrate that the States have adequately addressed elements of CAA section 110(a)(2)(D)(i)(I). Those elements require a State's SIP to contain adequate provisions to prohibit air pollutant emissions from sources within a State from significantly contributing to nonattainment in or interference with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other State. We are proposing to determine that the New Jersey and New York submissions do not contain adequate provisions to prohibit air pollutant emissions from within the States that significantly contribute to nonattainment in or interference with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other downwind States. The remaining elements of the submittal, including the section 110 infrastructure, and section 110(a)(2)(D)(i)(II) regarding interference with measures required in the applicable SIP for another State designed to prevention of significant deterioration of air quality and protect visibility, are not addressed in this action and will be acted on in a separate rulemaking.

II. What is the background for this action?

On December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. Section 110(a)(1) of the CAA requires States to submit infrastructure SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe.[1] As provided by section 110(k)(2), within 12 months of a determination that a submitted SIP is complete under 110(k)(1), the Administrator shall act on the plan. As authorized by section 110(k)(3) of the CAA, where the portions of the State submittals are severable, EPA may decide to approve only those severable portions of the submittals that meet the requirements of the CAA. When the deficient provisions are not severable from all of the submitted provisions, EPA must propose disapproval of the submittals, consistent with section 110(k)(3) of the CAA.

CAA section 110(a)(2) lists the elements that infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On September 25, 2009, EPA issued its "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2009 Guidance). EPA developed the 2009 Guidance to make recommendations to States for making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i), for the revised 2006 24-hour $PM_{2.5}$ NAAQS.

As identified in the 2009 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated by the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other States; (2) interfere with maintenance of the NAAQS in other States; (3) interfere with provisions to prevent significant deterioration of air quality in other States; or (4) interfere with efforts to protect visibility in other States.

In the 2009 Guidance, EPA indicated that SIP submissions from States, pertaining to the "significant contribution" and "interfere with maintenance" requirements of section 110(a)(2)(D)(i), must contain adequate provisions to prohibit air pollutant emissions from within the State that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other State. EPA further indicated that the State's submission must explain whether or not emissions from the State have this impact and, if so, address the impact. EPA stated that the State's conclusion must be supported by an adequate technical analysis. EPA recommended the various types of information that could be relevant to support the State SIP submission, such as information concerning emissions in the State, meteorological conditions in

[1] The rule for the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006 signature date.

the State and the potentially impacted States, monitored ambient concentrations in the State, and air quality modeling. Furthermore, EPA indicated that States should address independently the "interfere with maintenance" requirement. This requires an evaluation of impacts on areas of other States that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas designated nonattainment. Lastly, in the 2009 Guidance, EPA stated that States could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS.

EPA promulgated CAIR on May 12, 2005, (70 FR 25162). CAIR required States to reduce emissions of sulfur dioxide (SO2) and nitrogen oxides (NO_X) that significantly contribute to, and interfere with maintenance of the 1997 NAAQS for $PM_{2.5}$ and/or ozone in any downwind State. CAIR was intended to provide States covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another State with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many States adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIP) in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).[2] As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i)(I) requirement that emissions from sources in a State must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour $PM_{2.5}$ NAAQS by other States. The modeling performed for the proposed Transport Rule shows that New Jersey and New York significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas.

On January 20, 2010, EPA received a SIP revision from the State of New Jersey that was to address the requirements of section 110(a)(2)(D)(i) pertaining to interstate transport and sections 110(a)(1) and (2) pertaining to infrastructure for the 2006 24-hour $PM_{2.5}$ NAAQS. On March 23, 2010, EPA received a SIP revision from the State of New York that was to address the requirements of section 110(a)(2)(D)(i) pertaining to interstate transport and sections 110(a)(1) and (2) pertaining to infrastructure for the 2006 24-hour $PM_{2.5}$ NAAQS. In this rulemaking, EPA is addressing only the requirements that pertain to prohibiting sources in New Jersey and New York from emitting air pollutants that will significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other States.

In its submission, the State of New Jersey provided an analysis showing that the State significantly contributed to nonattainment or interferes with the maintenance of the 2006 24 hour $PM_{2.5}$ NAAQS in seven northeastern and Mid-Atlantic States (*i.e.* Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, and Pennsylvania). New Jersey included a list of measures that were recently adopted by the State to reduce $PM_{2.5}$, SO_2, NO_X, and volatile organic carbon (VOC) emissions.

In its submission, the State of New York provided a list of measures from the attainment SIP revision for the 1997 $PM_{2.5}$ NAAQS submitted by New York on October 27, 2009, including CAIR program rules, and the attainment SIP revision submitted by New York on February 8, 2008 for the 1997 8-hour Ozone NAAQS, that are expected to help achieve compliance with the 2006 24-hour $PM_{2.5}$ NAAQS. New York also provided a commitment to the adoption of measures identified by EPA as needed as to address the interstate transport for the 2006 $PM_{2.5}$ NAAQS upon EPA's completion of the rulemaking.

III. What is EPA's evaluation of New Jersey's submittal?

On January 20, 2010, New Jersey submitted a SIP revision to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS. New Jersey provided an analysis showing that the State significantly contributed to seven northeastern and Mid-Atlantic States (*i.e.* Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, and Pennsylvania). New Jersey based its assessment on a weight-of-evidence analysis approach using the results of four modeling analysis to determine significant contribution: EPA modeling performed for CAIR and the NO_X SIP call,[3] Regional Haze SIP modeling performed by the Northeast States for Coordinated Air Use Management (NECAUM), and State Collaborative Modeling performed by the Midwestern, Mid-Atlantic, and Northeastern States to estimate interstate impacts and assess future control programs for ozone and particulate matter standards. New Jersey included a list of measures that were recently adopted by the State to reduce $PM_{2.5}$, SO_2, NO_X, and VOC emissions. In its SIP revision, New Jersey indicated that it was confident that these actions were more than adequate to address its contribution to downwind areas. New Jersey also provided a list of measures that it was either proposing or evaluating that would further reduce $PM_{2.5}$ emissions. However, modeling conducted by EPA for the proposed Transport Rule demonstrates that emissions from New Jersey significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas. EPA's 2009 Guidance directed that a State's SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) must be supported by an adequate technical analysis. In the 2009 Guidance, EPA recommended the various types of information that could be relevant to support a State's SIP submission. EPA has determined that the New Jersey demonstration does not meet the requirements of

[2] *See* "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

[3] In October, 1998, EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"—commonly called the "NO_X SIP Call." *See* 63 FR 57356 (October 27, 1998).

110(a)(2)(D)(i)(I) because the State did not evaluate or demonstrate with a technical analysis that the emissions reduction measures provided in the SIP revision assure that New Jersey does not contribute significantly to nonattainment, or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS. Additionally, the SIP submittal did not go through public notice and comment.

The submitted provisions are severable. Therefore, EPA is proposing to disapprove those provisions which address the 110(a)(2)(D)(i)(I) demonstration and to take no action at this time on the remainder of the demonstration.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C. 7501–515) or is required in response to a finding of substantial inadequacy as described in 7410(k)(5) (SIP call) starts a sanctions clock. The provisions in the submittal we are disapproving were not submitted to meet either of those requirements. Therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered.

The full or partial disapproval of a State implementation plan revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for the State.

IV. What is EPA's evaluation of New York's submittal?

On March 23, 2010, New York submitted a SIP revision to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. New York indicated that emission reductions from measures proposed in the attainment SIP revision submitted by New York on October 27, 2009 for the 1997 $PM_{2.5}$ NAAQS, including CAIR program rules, are expected to help achieve compliance with the 2006 24-hour $PM_{2.5}$ NAAQS. New York further stated that all of the measures are expected to be adequate based on EPA's prior CAIR assessment, the effects of New York's attainment SIP revision for the 1997 $PM_{2.5}$ NAAQS, the attainment SIP revision submitted by New York on February 8, 2008 for the 1997 8-hour Ozone NAAQS, and the supporting effects of New York's permitting programs. The State of New York also commits to the adoption of measures identified by EPA as needed as to address the interstate transport for the 2006 $PM_{2.5}$ NAAQS upon EPA's completion of the rulemaking.

The modeling conducted by EPA for the proposed Transport Rule demonstrates that emissions from New York significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas. EPA's 2009 Guidance directed that a State's SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) must be supported by an adequate technical analysis. EPA recommended the various types of information that could be relevant to support a State's SIP submission. The State did not evaluate or demonstrate with a technical analysis that the emission reduction measures provided in the SIP revision assure that New York does not contribute significantly to, or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS. The State's submittal indicates that it is meeting its 110(a)(2)(D)(i)(I) obligations with respect to the 2006 $PM_{2.5}$ NAAQS in part by virtue of the continuing applicability of CAIR program requirements at both the Federal and State levels. However, CAIR was promulgated before the 24-hour $PM_{2.5}$ NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 $PM_{2.5}$ NAAQS.[4] Thus, EPA's 2009 Guidance explicitly notes that reliance on CAIR cannot be used to comply with section 110(a)(2)(D)(i)(I) for the respective 2006 NAAQS. Because New York's submittal relies on CAIR to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS this submission is deficient. Several States claim that controls planned for, or already installed on, sources within the State to meet the CAIR provisions satisfied section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. However, States will not be able to permanently rely upon the emissions reductions predicted by CAIR, because EPA needs to address the concerns of the Court as outlined in its decision remanding CAIR. For this reason, EPA cannot approve New York's SIP submission pertaining to the requirements of section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures.

[4] Further, as explained above and in the Transport Rule proposal [75 FR 45210 (August 2, 2010)], the DC Circuit in *North Carolina* v. *EPA* found that EPA's quantification of States' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

Based upon our evaluation, EPA is proposing to disapprove the New York SIP revision because it does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA.

The submitted provisions are severable from each other. Therefore, EPA is proposing to disapprove those provisions that relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the demonstration at this time.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C. 7501–7515) or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) of the Act (SIP call) starts a sanctions clock. The provisions in the submittal we are disapproving were not submitted to meet either of those requirements. Therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered.

The full or partial disapproval of a State implementation plan revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for the State.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection

burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector." EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to

make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

Statutory Authority

The statutory authority for this action is provided by sections 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: January 4, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–1624 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1012–201068; FRL–9257–6]

Approval and Promulgation of Air Quality Implementation Plans; Georgia; Disapproval of Interstate Transport Submission for the 2006 24-Hour $PM_{2.5}$ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 21, 2009, the State of Georgia, through the Georgia's Environmental Protection Division (GA EPD), provided a letter to EPA with certification that the Georgia state implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). Specifically, the interstate transport requirements under the Clean Air Act (CAA or Act) prohibit a state's emissions from significantly contributing to nonattainment or interfering with the maintenance of the NAAQS in any other state. In this action, EPA is proposing to disapprove the portion of Georgia's October 21, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1012 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. E-mail: *benjamin.lynorae@epa.gov.*
3. Fax: (404) 562–9019.
4. Mail: EPA–R04–OAR–2010–1012, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–1012." 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 e-mail, 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 e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: For information regarding the Georgia SIP, contact Mr. Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Farngalo's telephone number is (404) 562–9152; e-mail address: *farngalo.zuri@epa.gov.* For information regarding the $PM_{2.5}$ interstate transport requirements under section 110(a)(2)(D)(i), contact Mr. Steven Scofield, Regulatory Development Section, at the same address above. Mr. Scofield's telephone number is (404)

562–9034; e-mail address: *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What action is EPA proposing in today's notice?

On October 21, 2009, the State of Georgia, through GA EPD, provided a letter to EPA with certification that the Georgia SIP meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS.[1] Specifically, Georgia certified that its current SIP adequately addresses the elements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. CAA section 110(a)(2)(D)(i)(I) requires that implementation plans for each state contain adequate provisions to prohibit air pollutant emissions from sources within a state from significantly contributing to nonattainment in or interfering with maintenance of the NAAQS (in this case the 2006 24-hour $PM_{2.5}$ NAAQS) in any other state. In today's action, EPA is proposing to disapprove the portion of Georgia's October 21, 2009, submission related to interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS because EPA has made the preliminary determination that this submission does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA for this NAAQS. EPA's rationale for this proposed disapproval is provided in the Section III of this rulemaking.

II. What is the background for this proposed action?

On December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. Section 110(a)(1) of the CAA requires states to submit "infrastructure" SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe.[2] As provided by section 110(k)(2), within 12 months of a determination that a submitted SIP is complete under 110(k)(1), the Administrator shall act on the plan. As authorized in sections 110(k)(3) of the Act, where portions of the state submittals are severable, within that 12 month period EPA may decide to approve only those severable portions of the submittals that meet the requirements of the Act. When the deficient provisions are not severable from the other submitted provisions, EPA must propose disapproval of the submittals, consistent with section 110(k)(3) of the Act.

Section 110(a)(2) lists the elements that such new infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. States were required to provide submissions to address the applicable 110(a)(2) infrastructure requirements, including section 110(a)(2)(D)(i), by September 21, 2009.

On September 25, 2009, EPA issued a guidance entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2006 $PM_{2.5}$ NAAQS Infrastructure Guidance). EPA developed the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance to make recommendations to states for making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour $PM_{2.5}$ NAAQS.

As identified in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. Specifically, the SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

In the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, EPA explained that submissions from states pertaining to the "significant contribution" and "interfere with maintenance" requirements in section 110(a)(2)(D)(i)(I) must contain adequate provisions to prohibit air pollutant emissions from within the state that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state. EPA described a number of considerations for states for providing an adequate demonstration to address interstate transport requirements in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. First, EPA noted that the state's submission should explain whether or not emissions from the state contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state and, if so, address the impact. EPA stated that the state's conclusion must be supported by an adequate technical analysis. Second, EPA recommended the various types of information that could be relevant to support the state's submission, such as information concerning emissions in the state, meteorological conditions in the state and the potentially impacted states, monitored ambient concentrations in the state, and air quality modeling. Third, EPA explained that states should address the "interfere with maintenance" requirement independently which requires an evaluation of impacts on areas of other states that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas designated nonattainment. Lastly, EPA explained that states could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS. Recognizing that the demonstration required may be a challenging task for the affected states, EPA also noted in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance the Agency's intention to complete a rule to address interstate pollution transport in the eastern half of the continental United States.

EPA promulgated CAIR on May 12, 2005 (*see* 70 FR 25162). CAIR required states to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 $PM_{2.5}$ and/or ozone NAAQS in any downwind state. CAIR was intended to provide states covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address

[1] Georgia's October 21, 2009, certification letter also explained that Georgia's current SIP sufficiently addresses other requirements of section 110(a)(2) for the 2006 24-hour $PM_{2.5}$ NAAQS, however, today's proposed action only relates to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA will address the other section 110(a)(2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in relation to Georgia's SIP in rulemaking separate from today's proposed rulemaking.

[2] The rule for the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006, signature date.

significant contribution to downwind nonattainment and interference with maintenance in another state with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many states adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIPs) in their entirety. *North Carolina* v. *EPA*, 531 F.3d 836 (D.C. Circuit, July 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Circuit, December 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i)(I), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).[3] As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i)(I) requirements that emissions from sources in a state must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour $PM_{2.5}$ NAAQS by other states. The modeling performed for the proposed Transport Rule shows that Georgia significantly contributes to nonattainment or interferes with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas.

III. What is EPA's analysis of Georgia's submission for section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS?

On October 21, 2009, the State of Georgia, through GA EPD, provided a letter to EPA with certification that Georgia's SIP meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS. In its submission, Georgia states that the 110(a)(2)(D)(i)(I) requirements are addressed through several regulations and legislation, including Georgia Rule 391–3–1–.02(2)(sss)—Multi-pollutant Control for Electric Utility Steam Generating Units and Georgia Rule 391–3–1–.02(2)(uuu)—SO_2 Emissions from Electric Utility Steam Generating Units (Georgia Multi-pollutant Rule).

Georgia's October 21, 2009, submittal addresses the "significant contribution" and "interference with maintenance" requirements of 110(a)(2)(D)(i)(I) by relying on Georgia's CAIR SIP.[4] Contrary to the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance explicitly noting that reliance on CAIR cannot be used to comply with section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS, Georgia's submission indicates that it is meeting its 110(a)(2)(D)(i)(I) obligations with respect to the 2006 $PM_{2.5}$ NAAQS in part by virtue of its approved Georgia CAIR SIP. CAIR was promulgated before the 24-hour $PM_{2.5}$ NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 $PM_{2.5}$ NAAQS.[5] Because Georgia's submission relies on CAIR to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS while CAIR does not address that NAAQS, this submission is deficient. Several states claim that controls planned for or already installed on sources within the State to meet the CAIR provisions satisfied section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. However, states will not be able to permanently rely upon the emissions reductions predicted by CAIR, because CAIR was remanded to EPA and will not remain in force permanently. EPA is in the process of developing a new Transport Rule to address the concerns of the Court as outlined in its decision remanding CAIR. For this reason, EPA cannot approve Georgia's SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures.

Furthermore, EPA's 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance directed that a state's submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) must be supported by an adequate technical analysis. Additionally, EPA recommended the various types of information that could be relevant to support the state's submission. While Georgia did refer to the Georgia Multi-pollutant Rule in its submission, it did not further evaluate or demonstrate with a technical analysis that this measure and their intention to rely to the Georgia CAIR SIP addresses the "significant contribution" and "interference with maintenance" requirements of 110(a)(2)(D)(i)(I) as directed by the guidance.

The modeling conducted by EPA for the proposed Transport Rule demonstrates that emissions from Georgia significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas. Specifically, EPA's analysis shows that Georgia contributes to eleven counties containing downwind 24-hour $PM_{2.5}$ nonattainment sites and three counties containing downwind 24-hour $PM_{2.5}$ maintenance sites.

While Georgia's submittal indicates that its current SIP sufficiently addresses the 110(a)(2)(D)(i)(I) obligations with respect to the 2006 $PM_{2.5}$ NAAQS in part by virtue of the CSA and its approved CAIR SIP, EPA has made the preliminary determination that Georgia's current SIP does not meet the 110(a)(2)(D)(i)(I) requirements with respect to the 2006 $PM_{2.5}$ NAAQS. As mentioned above, Georgia did not provide sufficient analysis to demonstration to address the "significant contribution" and "interference with maintenance" requirements of 110(a)(2)(D)(i)(I). As for CAIR, this rule was promulgated before the 24-hour $PM_{2.5}$ NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 $PM_{2.5}$ NAAQS.[6] Based upon our evaluation, EPA is proposing to disapprove Georgia's certification that its SIP meets the requirements of 110(a)(2)(D)(i)(I) of the CAA for the 2006 $PM_{2.5}$ NAAQS. The submitted provisions are severable from each other. Therefore, EPA is

[3] See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

[4] Georgia explains that their October 21, 2009, submittal addresses interstate transport of pollutants that form ozone and particle pollution. EPA notes that the April 25, 2005, finding of failure to submit a plan to address interstate transport of pollutants that form ozone and particle pollution only addresses the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

[5] Further, as explained above and in the Transport Rule proposal, the D.C. Circuit in *North Carolina* v. *EPA* found that EPA's quantification of states' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

[6] Further, as explained above and in the Transport Rule proposal (75 FR 45210), the D.C. Circuit in *North Carolina* v. *EPA* found that EPA's quantification of states' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

proposing to disapprove those provisions which relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the demonstration at this time.

IV. Proposed Action

EPA is proposing to disapprove the portion of Georgia's October 21, 2009, submission, relating to section 110(a)(2)(D)(i)(I), because EPA has made the preliminary determination that the Georgia SIP does not satisfy these requirements for the 2006 $PM_{2.5}$ NAAQS. Although EPA is proposing to disapprove the portion of Georgia's October 21, 2009, submission, relating to section 110(a)(2)(D)(i)(I), EPA does acknowledge the State's efforts to address this requirement in its October 21, 2009, submission. Unfortunately, without an adequate technical analysis EPA does not believe that states can sufficiently address the section 110(a)(2)(D)(i)(I) requirement for the 2006 $PM_{2.5}$ NAAQS. The purpose of the Federal Transport Rule that EPA is developing and has proposed is to respond to the remand of CAIR by the Court and address the section 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS for the affected states. EPA is not proposing to take any action on the remaining elements of the submission, including the section 110 infrastructure, and section 110(a)(2)(D)(i)(II) portion regarding interference with measures required in the applicable SIP for another state designed to prevention of significant deterioration of air quality and protect visibility but instead will act on those provisions in a separate rulemaking.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C.A. §§ 7501–7515) or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(D)(i)(I) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the state corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Federal Transport Rule, when final, is the FIP that EPA intends to implement to satisfy the 110(a)(2)(D)(i)(I) requirement for Georgia for the 2006 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain state requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This action does not have federalism implications. It will not have substantial direct effects on the states, on the

relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: January 14, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2011–1627 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1013–201064; FRL–9257–7]

Approval and Promulgation of Air Quality Implementation Plan; Alabama; Disapproval of Interstate Transport Submission for the 2006 24-Hour $PM_{2.5}$ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 23, 2009, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), provided a letter to EPA with certification that Alabama's state implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). Specifically, the interstate transport requirements under the Clean Air Act (CAA or Act) prohibit a state's emissions from significantly contributing to nonattainment or interfering with the maintenance of the NAAQS in any other state. In this action, EPA is proposing to disapprove the portion of Alabama's September 23, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1013 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–1013, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official

hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–1013." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: For information regarding the Alabama SIP, contact Mr. Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Farngalo's telephone number is (404) 562–9152; *e-mail address: farngalo.zuri@epa.gov.* For information regarding the $PM_{2.5}$ interstate transport requirements under section 110(a)(2)(D)(i), contact Mr. Steven Scofield, Regulatory Development Section, at the same address above. Mr. Scofield's telephone number is (404) 562–9034; *e-mail address: scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What action is EPA proposing in today's notice?

On September 23, 2009, the State of Alabama, through ADEM, provided a letter to EPA with certification that the Alabama SIP meets the interstate transport requirements with regard to the 2006 24-hour fine $PM_{2.5}$ NAAQS.[1] Specifically, Alabama certified that its current SIP adequately addresses the elements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. CAA section 110(a)(2)(D)(i)(I) requires that implementation plans for each state contain adequate provisions to prohibit air pollutant emissions from sources within a state from significantly contributing to nonattainment in or interference with maintenance of the NAAQS (in this case the 2006 24-hour $PM_{2.5}$ NAAQS) in any other state. In today's action, EPA is proposing to disapprove the portion of Alabama's September 23, 2009, submission related to interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS because EPA has made the preliminary determination that this submission does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA for this NAAQS. EPA's rationale for this proposed disapproval is provided in Section III of this rulemaking.

II. What is the background for this proposed action?

On December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. Section 110(a)(1) of the CAA requires states to submit "infrastructure" SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. As provided by section 110(k)(2), within 12 months of a determination that a submitted SIP is complete under 110(k)(1), the Administrator shall act on the plan. As authorized in sections 110(k)(3) of the Act, where portions of the state submittals are severable, within that 12-month period EPA may decide to approve only those severable portions of the submittals that meet the requirements of the Act. When the deficient provisions are not severable from the other submitted provisions, EPA must propose disapproval of the submittals, consistent with sections 110(k)(3) of the Act.

Section 110(a)(2) lists the elements that such new infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. States were required to provide submissions to address the applicable 110(a)(2) infrastructure requirements, including section 110(a)(2)(D)(i), by September 21, 2009.[2]

On September 25, 2009, EPA issued a guidance entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2006 $PM_{2.5}$ NAAQS Infrastructure Guidance). EPA developed the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance to make additional recommendations to states

[1] Alabama's September 23, 2009, certification letter also explained that Alabama's current SIP sufficiently addresses other requirements of section 110(a)(2) for the 2006 24-hour $PM_{2.5}$ NAAQS, however, today's proposed action only relates to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA will address the other section 110(a)(2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in relation to Alabama's SIP in rulemaking separate from today's proposed rulemaking.

[2] The rule for the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006, signature date.

for making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour $PM_{2.5}$ NAAQS.

As identified in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. Specifically, the SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

In the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, EPA explained that submissions from states pertaining to the "significant contribution" and "interfere with maintenance" requirements in section 110(a)(2)(D)(i)(I) must contain adequate provisions to prohibit air pollutant emissions from within the state that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state. EPA described a number of considerations for states for providing an adequate demonstration to address interstate transport requirements in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. First, EPA noted that the state's submission should explain whether or not emissions from the state contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state and, if so, address the impact. EPA stated that the state's conclusion should be supported by an adequate technical analysis. Second, EPA recommended the various types of information that could be relevant to support the state's submission, such as information concerning emissions in the state, meteorological conditions in the state and the potentially impacted states, monitored ambient concentrations in the state, and air quality modeling. Third, EPA explained that states should address the "interfere with maintenance" requirement independently, which requires an evaluation of impacts on areas of other states that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas designated nonattainment. Lastly, EPA explained that states could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS. Recognizing that the demonstration required may be a challenging task for the affected states, EPA also noted in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance the Agency's intention to complete a rule to address interstate pollution transport in the eastern half of the continental United States.

EPA promulgated CAIR on May 12, 2005 (*see* 70 FR 25162). CAIR required states to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS and/or ozone in any downwind state. CAIR was intended to provide states covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another state with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many states adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIPs) in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Circuit, July 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Circuit, December 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).[3] As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i) requirements that emissions from sources in a state must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour $PM_{2.5}$ NAAQS by other states. The modeling performed for the proposed Transport Rule shows that Alabama significantly contributes to nonattainment or interferes with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas.

III. What is EPA's analysis of Alabama's submission for section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS?

On September 23, 2009, the State of Alabama, through ADEM, provided a letter to EPA with certification that Alabama's SIP meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS. In its submission, Alabama explains that section 110(a)(2)(D)(i)(I) is met through Alabama's approved CAIR provisions.

However, CAIR was promulgated before the 24-hour $PM_{2.5}$ NAAQS were revised in 2006, and as mentioned above CAIR does not address interstate transport with respect to the 2006 $PM_{2.5}$ NAAQS.[4] EPA's 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance explicitly notes that reliance on CAIR cannot be used to comply with section 110(a)(2)(D)(i)(I) for the respective 2006 $PM_{2.5}$ NAAQS. Because Alabama's submittal relies on CAIR to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS while CAIR does not address that NAAQS, this submission is deficient.

EPA also notes that several states in their submission claim that controls planned for or already installed on sources within the state to meet the CAIR provisions satisfied section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. However, states will not be able to permanently rely upon the emissions reductions predicted by CAIR, because CAIR was remanded to EPA and will not remain in force permanently. EPA is in the process of developing a new Transport Rule to address the concerns of the Court as

[3] *See* "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

[4] Further, as explained above and in the Transport Rule proposal 75 FR 45210 (August 2, 2010), the DC Circuit in *North Carolina* v. *EPA* found that EPA's quantification of states' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

outlined in its decision remanding CAIR. For this reason, EPA cannot approve Alabama's SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures. Based upon our evaluation, EPA is proposing to disapprove Alabama's certification that its SIP meets the requirements of 110(a)(2)(D)(i)(I) of the CAA for the 2006 $PM_{2.5}$ NAAQS. The submitted provisions are severable from each other. Therefore, EPA is proposing to disapprove those provisions which relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the demonstration at this time.

IV. Proposed Action

EPA is proposing to disapprove the portion of Alabama's September 23, 2009, submission, relating to section 110(a)(2)(D)(i)(I), because EPA has made the preliminary determination that Alabama SIP does not satisfy these requirements for the 2006 $PM_{2.5}$ NAAQS. Although EPA is proposing to disapprove the portion of Alabama's September 23, 2009, submission, relating to section 110(a)(2)(D)(i)(I), EPA does acknowledge the State's efforts to address this requirement in its September 23, 2009, submission. Unfortunately, EPA does not believe that states can sufficiently address the section 110(a)(2)(D)(i)(I) requirement for the 2006 $PM_{2.5}$ NAAQS by relying on CAIR. The purpose of the Federal Transport Rule that EPA is developing and has proposed is to support states efforts to address the section 110(a)(2)(D)(i)(I) requirement for the 2006 $PM_{2.5}$ NAAQS. EPA is not proposing to take any action on the remaining elements of the submission, including the section 110 infrastructure, and section 110(a)(2)(D)(i)(II) portion regarding interference with measures required in the applicable SIP for another state designed to prevention of significant deterioration of air quality and protect visibility but instead will act on those provisions in a separate rulemaking.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C.A. §§ 7501–7515) or is required in response to a finding of substantial inadequacy as described in § 7410(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(D)(i)(I) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the state corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Federal Transport Rule, when final, is the FIP that EPA intends to implement to satisfy the 110(a)(2)(D)(i)(I) requirement for Alabama for the 2006 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain state requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have

federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain state requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: January 14, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2011–1628 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1015–201067; FRL–9257–4]

Approval and Promulgation of Air Quality Implementation Plan; North Carolina; Disapproval of Interstate Transport Submission for the 2006 24-Hour $PM_{2.5}$ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 21, 2009, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), provided a letter to EPA with certification that North Carolina's state implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). Specifically, the interstate transport requirements under the Clean Air Act (CAA or Act) prohibit a state's emissions from significantly contributing to nonattainment or interfering with the maintenance of the NAAQS in any other state. In this action, EPA is proposing to disapprove the portion of North Carolina's September 21, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1015 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. E-mail: *benjamin.lynorae@epa.gov.*
3. Fax: (404) 562–9019.
4. Mail: EPA–R04–OAR–2010–1015, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–1015." 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 e-mail, 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 e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina SIP, contact Mr. Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Farngalo's telephone number is (404) 562–9152; e-mail address: *farngalo.zuri@epa.gov*. For information regarding the $PM_{2.5}$ interstate transport requirements under section 110(a)(2)(D)(i), contact Mr. Steven Scofield, Regulatory Development Section, at the same address above. Mr. Scofield's telephone number is (404) 562–9034; e-mail address: *scofield.steve@epa.gov*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What action is EPA proposing in today's notice?

On September 21, 2009, the State of North Carolina, through NC DENR, provided a letter to EPA with certification that the North Carolina SIP meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS.[1] Specifically, North Carolina certified that its current SIP adequately addresses the elements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. CAA section 110(a)(2)(D)(i)(I) requires that implementation plans for each state contain adequate provisions to prohibit air pollutant emissions from sources within a state from significantly contributing to nonattainment in or interfering with maintenance of the NAAQS (in this case the 2006 24-hour $PM_{2.5}$ NAAQS) in any other state. In today's action, EPA is proposing to disapprove the portion of North Carolina's September 21, 2009, submission related to interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS because EPA has made the preliminary determination that this submission does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA for this NAAQS. EPA's rationale for this proposed disapproval is provided in the Section III of this rulemaking.

II. What is the background for this proposed action?

On December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. Section 110(a)(1) of the CAA requires states to submit "infrastructure" SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe.[2] As provided by section 110(k)(2), within 12 months of a determination that a submitted SIP is complete under 110(k)(1), the Administrator shall act on the plan. As authorized in sections 110(k)(3) of the Act, where portions of the state submittals are severable, within that 12 month period EPA may decide to approve only those severable portions of the submittals that meet the requirements of the Act. When the deficient provisions are not severable from the other submitted provisions, EPA must propose disapproval of the submittals, consistent with section 110(k)(3) of the Act.

Section 110(a)(2) lists the elements that such new infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions.

[1] North Carolina's September 21, 2009, certification letter also explained that North Carolina's current SIP sufficiently addresses other requirements of section 110(a)(2) for the 2006 24-hour $PM_{2.5}$ NAAQS, however, today's proposed action only relates to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA will address the other section 110(a)(2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in relation to North Carolina's SIP in rulemaking separate from today's proposed rulemaking.

[2] The rule for the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006, signature date.

States were required to provide submissions to address the applicable 110(a)(2) infrastructure requirements, including section 110(a)(2)(D)(i), by September 21, 2009.

On September 25, 2009, EPA issued a guidance entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2006 $PM_{2.5}$ NAAQS Infrastructure Guidance). EPA developed the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance to make recommendations to states for making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour $PM_{2.5}$ NAAQS.

As identified in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. Specifically, the SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

In the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, EPA explained that submissions from states pertaining to the "significant contribution" and "interfere with maintenance" requirements in section 110(a)(2)(D)(i)(I) must contain adequate provisions to prohibit air pollutant emissions from within the state that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state. EPA described a number of considerations for states for providing an adequate demonstration to address interstate transport requirements in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. First, EPA noted that the state's submission should explain whether or not emissions from the state contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state and, if so, address the impact. EPA stated that the state's conclusion must be supported by an adequate technical analysis. Second, EPA recommended the various types of information that could be relevant to support the state's submission, such as information concerning emissions in the state, meteorological conditions in the state and the potentially impacted states, monitored ambient concentrations in the state, and air quality modeling. Third, EPA explained that states should address the "interfere with maintenance" requirement independently which requires an evaluation of impacts on areas of other states that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas designated nonattainment. Lastly, EPA explained that states could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS. Recognizing that the demonstration required may be a challenging task for the affected states, EPA also noted in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance the Agency's intention to complete a rule to address interstate pollution transport in the eastern half of the continental United States.

EPA promulgated CAIR on May 12, 2005 (*see* 70 FR 25162). CAIR required states to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 $PM_{2.5}$ and/or ozone NAAQS in any downwind state. CAIR was intended to provide states covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another state with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many states adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIPs) in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Circuit, July 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Circuit, December 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i)(I), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).[3] As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i)(I) requirements that emissions from sources in a state must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour $PM_{2.5}$ NAAQS by other states. The modeling performed for the proposed Transport Rule shows that North Carolina significantly contributes to nonattainment or interferes with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas.

III. What is EPA's analysis of North Carolina's submission for section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS?

On September 21, 2009, the State of North Carolina, through NC DENR, provided a letter to EPA with certification that North Carolina's SIP meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS. In its submission, North Carolina refers to their May 25, 2007, submittal and states that North Carolina's 110(a)(2)(D)(i)(I) requirements are addressed through several regulations and legislation, including 15A NCAC 2D .2400 "*Clean Air Interstate Rules*" and the 2002 North Carolina Clean Smokestacks Act (CSA), Session Law 2002–4, NCGS 143–215.107D. North Carolina's May 25, 2007, submittal addresses the "significant contribution" and "interference with maintenance" requirements of 110(a)(2)(D)(i)(I) by relying on North Carolina's CAIR SIP.[4] Contrary to the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance explicitly noting that reliance on CAIR cannot be used to comply with section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS, North Carolina's submission

[3] See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

[4] North Carolina explains that their May 25, 2007, submittal is in response to EPA's April 25, 2005, finding of failure to submit a plan to address interstate transport of pollutants that form ozone and particle pollution. EPA notes that the April 25, 2005, finding only addresses the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

indicates that it is meeting its 110(a)(2)(D)(i)(I) obligations with respect to the 2006 $PM_{2.5}$ NAAQS in part by virtue of its approved North Carolina CAIR SIP. CAIR was promulgated before the 24-hour $PM_{2.5}$ NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 $PM_{2.5}$ NAAQS.[5] Because North Carolina's submission relies on CAIR to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS while CAIR does not address that NAAQS, this submission is deficient. Several states claim that controls planned for or already installed on sources within the state to meet the CAIR provisions satisfied section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. However, states will not be able to permanently rely upon the emissions reductions predicted by CAIR, because CAIR was remanded to EPA and will not remain in force permanently. EPA is in the process of developing a new Transport Rule to address the concerns of the Court as outlined in its decision remanding CAIR. For this reason, EPA cannot approve North Carolina's SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures.

Furthermore, EPA's 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance directed that a state's submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) must be supported by an adequate technical analysis. Additionally, EPA recommended the various types of information that could be relevant to support the state's submission. While North Carolina did refer to the 2002 North Carolina CSA in its submission, it did not further evaluate or demonstrate with a technical analysis that this measure and their intention to rely to the North Carolina CAIR SIP addresses the "significant contribution" and "interference with maintenance" requirements of 110(a)(2)(D)(i)(I) as directed by the guidance.

The modeling conducted by EPA for the proposed Transport Rule demonstrates that emissions from North Carolina significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas. Specifically, EPA's analysis shows that North Carolina contributes to eleven counties containing downwind 24-hour $PM_{2.5}$ nonattainment sites and three counties containing downwind 24-hour $PM_{2.5}$ maintenance sites.

While North Carolina's submittal indicates that its current SIP sufficiently addresses the 110(a)(2)(D)(i)(I) obligations with respect to the 2006 $PM_{2.5}$ NAAQS in part by virtue of the CSA and its approved CAIR SIP, EPA has made the preliminary determination that North Carolina's current SIP does not meet the 110(a)(2)(D)(i)(I) requirements with respect to the 2006 $PM_{2.5}$ NAAQS. As mentioned above, North Carolina did not provide sufficient analysis to demonstration to address the "significant contribution" and "interference with maintenance" requirements of 110(a)(2)(D)(i)(I). As for CAIR, this rule was promulgated before the 24-hour $PM_{2.5}$ NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 $PM_{2.5}$ NAAQS.[6] Based upon our evaluation, EPA is proposing to disapprove North Carolina's certification that its SIP meets the requirements of 110(a)(2)(D)(i)(I) of the CAA for the 2006 $PM_{2.5}$ NAAQS. The submitted provisions are severable from each other. Therefore, EPA is proposing to disapprove those provisions which relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the demonstration at this time.

IV. Proposed Action

EPA is proposing to disapprove the portion of North Carolina's September 21, 2009, submission, relating to section 110(a)(2)(D)(i)(I), because EPA has made the preliminary determination that North Carolina SIP does not satisfy these requirements for the 2006 $PM_{2.5}$ NAAQS. Although EPA is proposing to disapprove the portion of North Carolina's September 21, 2009, submission, relating to section 110(a)(2)(D)(i)(I), EPA does acknowledge the State's efforts to address this requirement in its September 21, 2009, submission. Unfortunately, without an adequate technical analysis EPA does not believe that states can sufficiently address the section 110(a)(2)(D)(i)(I) requirement for the 2006 $PM_{2.5}$ NAAQS. The purpose of the Federal Transport Rule that EPA is developing and has proposed is to respond to the remand of CAIR by the Court and address the section 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS for the affected states. EPA is not proposing to take any action on the remaining elements of the submission, including the section 110 infrastructure, and section 110(a)(2)(D)(i)(II) portion regarding interference with measures required in the applicable SIP for another state designed to prevention of significant deterioration of air quality and protect visibility but instead will act on those provisions in a separate rulemaking.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C.A. 7501–7515) or is required in response to a finding of substantial inadequacy as described in § 7410(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(D)(i)(I) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Federal Transport Rule, when final, is the FIP that EPA intends to implement to satisfy the 110(a)(2)(D)(i)(I) requirement for North Carolina for the 2006 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction

[5] Further, as explained above and in the Transport Rule proposal, the D.C. Circuit in *North Carolina* v. *EPA* found that EPA's quantification of states' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

[6] Further, as explained above and in the Transport Rule proposal (75 FR 45210,) the D.C. Circuit in *North Carolina* v. *EPA* found that EPA's quantification of states' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain state requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain state requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to

make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: January 14, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2011–1625 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1014–201065; FRL–9257–5]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Disapproval of Interstate Transport Submission for the 2006 24-Hour $PM_{2.5}$ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 8, 2009, Kentucky's Energy and Environment Cabinet, through the Kentucky Division for Air Quality (KDAQ), provided a letter to EPA with certification that Kentucky's State implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). Specifically, the interstate transport requirements under the Clean Air Act (CAA or Act) prohibit a State's emissions from significantly contributing to nonattainment or interfering with the maintenance of the NAAQS in any other State. In this action, EPA is proposing to disapprove the portion of Kentucky's September 8, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1014 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–1014, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–1014." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: For information regarding the Kentucky SIP, contact Mr. Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Farngalo's telephone number is (404) 562–9152; e-mail address: *farngalo.zuri@epa.gov.* For information regarding the $PM_{2.5}$ interstate transport requirements under section 110(a)(2)(D)(i), contact Mr. Steven Scofield, Regulatory Development Section, at the same address above. Mr. Scofield's telephone number is (404) 562–9034; e-mail address: *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What action is EPA proposing in today's notice?

On September 8, 2009, the Commonwealth of Kentucky, through KDAQ provided a letter to EPA with certification that the Kentucky SIP meets the interstate transport requirements with regard to the 2006 24-hour fine $PM_{2.5}$ NAAQS.[1] Specifically, Kentucky certified that its current SIP adequately addresses the elements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. CAA section 110(a)(2)(D)(i)(I) requires that implementation plans for each State contain adequate provisions to prohibit air pollutant emissions from sources within a State from significantly contributing to nonattainment in or inference with maintenance of the NAAQS (in this case the 2006 24-hour $PM_{2.5}$ NAAQS) in any other State. In today's action, EPA is proposing to disapprove the portion of Kentucky's September 8, 2009, submission related to interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS because EPA has made the preliminary determination that this submission does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA for this NAAQS. EPA's rationale for this proposed disapproval is provided in the Section III of this rulemaking.

II. What is the background for this proposed action?

On December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter (μg/m^3) to 35 μg/m^3. Section 110(a)(1) of the CAA requires States to submit "infrastructure" SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. As provided by section 110(k)(2), within 12 months of a determination that a submitted SIP is complete under 110(k)(1), the Administrator shall act on the plan. As authorized in sections 110(k)(3) of the Act, where portions of the State submittals are severable, within that 12 month period EPA may decide to approve only those severable portions of the submittals that meet the requirements of the Act. When the deficient provisions are not severable from the other submitted provisions, EPA must propose disapproval of the submittals, consistent with sections 110(k)(3) of the Act.

Section 110(a)(2) lists the elements that such new infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. States were required to provide submissions to address the applicable 110(a)(2) infrastructure requirements, including section 110(a)(2)(D)(i), by September 21, 2009.[2]

On September 25, 2009, EPA issued a guidance entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2006 $PM_{2.5}$ NAAQS Infrastructure Guidance). EPA developed the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance to make additional recommendations to States for making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour $PM_{2.5}$ NAAQS.

As identified in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. Specifically, the SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other States; (2) interfere with maintenance of the NAAQS in other States; (3) interfere with provisions to prevent significant deterioration of air quality in other States; or (4) interfere with efforts to protect visibility in other States.

In the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, EPA explained that submissions from States pertaining to the "significant contribution" and "interfere with maintenance" requirements in section 110(a)(2)(D)(i)(I) must contain adequate provisions to prohibit air pollutant emissions from within the State that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other State. EPA described a number of considerations for States for providing an adequate demonstration to address interstate transport requirements in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. First, EPA noted that the State's submission should explain whether or not emissions from the State contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other State and, if so, address the impact. EPA stated that the State's conclusion should be supported by an adequate technical analysis. Second, EPA recommended the various types of information that could be relevant to support the State's submission, such as information concerning emissions in the State, meteorological conditions in the State and the potentially impacted States, monitored ambient concentrations in the State, and air quality modeling. Third, EPA explained that States should address the "interfere with maintenance" requirement independently which requires an evaluation of impacts on areas of other States that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas designated nonattainment. Lastly, EPA explained that States could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS. Recognizing that the demonstration required may be challenging task for the affected States, EPA also noted in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance the Agency's intention to complete a rule to address interstate pollution transport in the eastern half of the continental United States.

EPA promulgated CAIR on May 12, 2005 (*see* 70 FR 25162). CAIR required States to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS and/or ozone in any downwind State. CAIR was intended to provide States covered by the rule with a mechanism to satisfy their CAA section

[1] Kentucky's September 8, 2009, certification letter also explained that Kentucky's current SIP sufficiently addresses other requirements of section 110(a)(2) for the 2006 24-hour $PM_{2.5}$ NAAQS, however, today's proposed action only relates to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA will address the other section 110(a)(2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in relation to Kentucky's SIP in rulemaking separate from today's proposed rulemaking.

[2] The rule for the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006, signature date.

110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another State with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many States adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIPs) in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Circuit, July 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Circuit, December 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).[3] As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i) requirements that emissions from sources in a State must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour $PM_{2.5}$ NAAQS by other States. The modeling performed for the proposed Transport Rule shows that Kentucky significantly contributes to nonattainment or interferes with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas.

[3] *See* "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

III. What is EPA's analysis of Kentucky's submission for section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS?

On September 8, 2009, the Commonwealth of Kentucky, through KDAQ, provided a letter to EPA with certification that Kentucky's SIP meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS. In its submission, Kentucky explains that section 110(a)(2)(D)(i)(I) is met through Kentucky's CAIR provisions.

However, CAIR was promulgated before the 24-hour $PM_{2.5}$ NAAQS were revised in 2006, and as mentioned above CAIR does not address interstate transport with respect to the 2006 $PM_{2.5}$ NAAQS.[4] EPA's 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance explicitly notes that reliance on CAIR cannot be used to comply with section 110(a)(2)(D)(i)(I) for the respective 2006 $PM_{2.5}$ NAAQS. Because Kentucky's submittal relies on CAIR to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS while CAIR does not address that NAAQS, this submission is deficient.

EPA also notes that several States in their submission claim that controls planned for or already installed on sources within the State to meet the CAIR provisions satisfied section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. However, States will not be able to permanently rely upon the emissions reductions predicted by CAIR, because CAIR was remanded to EPA and will not remain in force permanently. EPA is in the process of developing a new Transport Rule to address the concerns of the Court as outlined in its decision remanding CAIR. For this reason, EPA cannot approve Kentucky's SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures. Based upon our evaluation, EPA is proposing to disapprove Kentucky's certification that its SIP meets the requirements of 110(a)(2)(D)(i)(I) of the CAA for the 2006 $PM_{2.5}$ NAAQS. The submitted provisions are severable from each other. Therefore, EPA is proposing to disapprove those provisions which relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the demonstration at this time.

[4] Further, as explained above and in the Transport Rule proposal 75 FR 45210 (August 2, 2010), the DC Circuit in *North Carolina* v. *EPA* found that EPA's quantification of States' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

IV. Proposed Action

EPA is proposing to disapprove the portion of the Commonwealth of Kentucky's September 8, 2009, submission, relating to section 110(a)(2)(D)(i)(I), because EPA has made the preliminary determination that the Kentucky SIP does not satisfy these requirements for the 2006 $PM_{2.5}$ NAAQS. Although EPA is proposing to disapprove the portion of the Commonwealth of Kentucky's September 8, 2009, submission, relating to section 110(a)(2)(D)(i)(I), EPA does acknowledge the Commonwealth's efforts to address this requirement in its September 8, 2009, submission. Unfortunately, EPA does not believe that States can sufficiently address the section 110(a)(2)(D)(i)(I) requirement for the 2006 $PM_{2.5}$ NAAQS by relying on CAIR . The purpose of the Federal Transport Rule that EPA is developing and has proposed is to support States efforts to address the section 110(a)(2)(D)(i)(I) requirement for the 2006 $PM_{2.5}$ NAAQS. EPA is not proposing to take any action on the remaining elements of the submission, including the section 110 infrastructure, and section 110(a)(2)(D)(i)(II) portion regarding interference with measures required in the applicable SIP for another State designed to prevention of significant deterioration of air quality and protect visibility but instead will act on those provisions in a separate rulemaking.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C.A. §§ 7501–7515) or is required in response to a finding of substantial inadequacy as described in § 7410(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(D)(i)(I) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Federal Transport Rule, when final, is the FIP that EPA intends to implement to satisfy the 110(a)(2)(D)(i)(I) requirement for Kentucky for the 2006 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or

adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: January 14, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2011–1626 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–1033; FRL–9257–8]

RIN 2060–AQ66

Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: On December 30, 2010, EPA published in the **Federal Register** our proposed Determination Concerning the Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding the Texas Prevention of Significant Deterioration (PSD) program. In the proposal, EPA stated that public comments were to be submitted by February 12, 2011, which falls on a Saturday. In order to avoid confusion and ensure that the public is aware that it may submit comments as late as February 14, 2011, which is a Monday, EPA is extending the public comment period until February 14, 2011.

DATES: *Comments.* Comments on the proposed rule published December 30, 2010 (75 FR 82365) must be received on or before February 14, 2011.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–1033, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2010–1033, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail code: 6102T, Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2010–1033. 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–2010–1033. 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 e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid 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 docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information on this proposed rule,

contact Ms. Cheryl Vetter, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–4391; fax number: (919) 541–5509; e-mail address: *vetter.cheryl@mailto:epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2010–1033.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will also be available on the World Wide Web (WWW). Following signature, a copy of this notice will be posted in the regulations and standards section of our EPA New Source review home page located at *http://www.epa.gov/nsr.*

Dated: January 20, 2011.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–1637 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[EPA–HQ–OPP–2010–0427; FRL–8850–4]

RIN 2070–AJ26

Declaration of Prion as a Pest Under FIFRA and Amendment of EPA's Regulatory Definition of Pests To Include Prion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to declare a prion (*i.e.*, proteinaceous infectious particle) a "pest" under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and to amend its regulations to expressly include prion within the regulatory definition of pest. EPA currently considers a prion to be a pest under FIFRA, so a product intended to reduce the infectivity of any prion on inanimate surfaces (*i.e.*, a "prion-related product") is considered to be a pesticide and regulated as such. Any company seeking to distribute or sell a pesticide product regulated under FIFRA must obtain a section 3 registration, section 24(c) registration, or a section 18 emergency exemption before it can be distributed or sold in the United States. This proposed rule would codify the Agency's current interpretation of FIFRA, and provides interested parties the opportunity to comment about how it is adding prion to the list of pests in the regulatory definition of pest. This amendment, together with the formal declaration that a prion is a pest, will eliminate any confusion about the status of prion-related products under FIFRA. Codifying the Agency's current interpretation of FIFRA will not change the manner in which EPA currently regulates prion-related products under FIFRA sections 3, 24(c) and 18. Regulating prion-related products under FIFRA is appropriate for protecting human health and the environment against unreasonable adverse effects and ensuring that such products are effective.

DATES: Comments must be received on or before March 28, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0427, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0427. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends

that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobials Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5448; fax number: (703) 308–6467; e-mail address: *kempter.carlton@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you apply for or own pesticide registrations. Potentially affected entities may include, but are not limited to:

- Producers of pesticide products (NAICS code 32532).
- Producers of antimicrobial pesticides (NAICS code 32561).
- Veterinary testing laboratories (NAICS code 541940).
- Medical pathology laboratories (NAICS code 621511).
- Taxidermists, independent (NAICS code 711510).
- Surgeons (NAICS code 621111).
- Dental surgeons (NAICS code 621210).
- Mortician services (NAICS code 812210).
- Manufacturers of medical tissue devices of human and animal origin (NAICS code undetermined).
- Manufacturers of other human cellular and tissue products (NAICS code undetermined).
- Organ banks, body (NAICS code 621991).
- Plasma, blood, merchant wholesalers (NAICS code 424210).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the Agency taking?

EPA has decided that under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) a prion is considered to be a pest, and proposes to declare a prion to be a pest and to explicitly include it in the lists of pests in 40 CFR 152.5. These actions would affirm the Agency's authority to regulate products distributed or sold for the purpose of reducing the infectivity of prions on inanimate surfaces (*i.e.,* prion-related products). Prion-related products are currently regulated under FIFRA and subject to all requirements and provisions of the Act based on EPA's September 10, 2003 decision that prions share enough characteristics of an "other micro-organism" or "form of life" (as those terms are used in FIFRA) to fall within the scope of FIFRA section 2(t) and 40 CFR 152.5(d). This proposal ensures that the regulatory definition reflects the Agency's authority to regulate products distributed or sold for the purpose of reducing the infectivity of prions on inanimate surfaces (*i.e.,* prion-related products). The primary impact of declaring that a prion is a pest and including "prion" in the regulatory definition of "pest" is to provide regulatory clarity that prion-related products must be registered or exempted under FIFRA sections 3, 24(c), or 18 before such products may be distributed or sold in the United States.

Note that not all prions and prion-related products are affected by the proposed rule. Firstly, EPA's regulations at 40 CFR 152.5(d) exclude pests "* * * in or on living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs * * * and cosmetics." Therefore, the proposed rule would not apply to those uses of prion-related products. Secondly, the definition of "pesticide" in FIFRA section 2(u) excludes new animal drugs and liquid chemical sterilants intended for use on a critical or semi-critical device. Accordingly, products which fall into those categories would not be covered by the proposed rule.

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

This action is issued under the authority of sections 2 through 34 of FIFRA (7 U.S.C. 136–136y).

III. Prion as a Pest Under FIFRA

A. What is a prion?

Prions ("proteinaceous infectious particles") may occur in the central nervous system tissues of animals as an abnormal ("misfolded"), infectious form of prion protein. Prion protein in its normal form, or conformation, can be designated PrP^{c} ("cellular" isoform) while abnormal conformations of prion proteins are generally called prions. Different types of prions are commonly designated by the type of diseases they produce, such as PrP^{Sc} (prions associated with scrapie) and PrP^{BSE} (prions associated with bovine spongiform encephalopathy—mad cow disease).

In the disease process, prions (such as PrP^{sc}) recruit normal prion proteins (PrP^{c}) and convert them into prions (*e.g.*, another copy of PrP^{Sc}). This recruitment and conversion process results in the progressive accumulation of disease-producing prions. When this process takes place in the brain, it causes disease that slowly progresses from neuronal dysfunction and degeneration to death. These neurodegenerative prion diseases are known collectively as transmissible spongiform encephalopathies (TSEs). TSEs include scrapie disease in sheep, bovine spongiform encephalopathy (BSE) in cattle, chronic wasting disease (CWD) in deer and elk, kuru and variant Creutzfeld-Jakob Disease (vCJD) in humans, and similar diseases in other animals. EPA and other agencies are concerned that animal-related prions may spread to other animals (*e.g.*, scrapie to sheep, CWD to cervids) or to humans (*e.g.*, BSE), and that human-related prions may be passed to other humans (*e.g.*, kuru or CJD). These diseases are always fatal in humans and animals alike, and there are no known treatments or cures.

B. Legal/Regulatory Background

Under section 25(c)(1) of FIFRA, the Administrator, after notice and opportunity for hearing, is authorized "to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment." Therefore, the Agency has the authority to decide whether or not a prion should be considered to be a pest under FIFRA and whether to issue a regulation implementing that decision.

On September 10, 2003, the EPA decided that a prion should be considered to be a "pest" under FIFRA and that products intended to inactivate prions (*i.e.*, "prion-related products") should be regulated under FIFRA (Ref. 1). This decision was made partly in connection with the widespread occurrence of chronic wasting disease (CWD) among deer and elk in a number of states, particularly in the Rocky Mountain region. Although CWD had been endemic to that region for a long time, concerns were growing inside and outside of EPA as to how to prevent or minimize the movement of what is believed to be the causative agent for CWD—prions—through the environment.

At the same time, EPA was receiving inquiries from states about obtaining FIFRA section 18 exemptions to allow use of a disinfectant against prions on inanimate surfaces in government and commercial laboratories. EPA was also aware that the World Health Organization (WHO) recommended the use of sodium hydroxide or sodium hypochlorite for treating surfaces potentially contaminated with prions even though those chemicals were not registered by EPA for that specific purpose. Subsequent to the September 2003 decision, EPA has granted a total of 19 quarantine exemptions under FIFRA section 18 to numerous states (California, Colorado, Maine, Minnesota, Montana, North Dakota, South Dakota, Utah, and Wyoming) and the U.S. Department of Agriculture (USDA) for the use of a commercial aqueous acid phenolic product, Environ LpH, for treatment on hard, nonporous surfaces in government and commercial laboratories contaminated with CWD and other kinds of prions.

Other Federal agencies are responsible for implementing controls to prevent the spread of prion diseases to animals and humans. For example, to eliminate scrapie within the United States, USDA's Animal and Plant Health Inspection Service (APHIS) administers the national scrapie eradication program (9 CFR parts 54 and 79). APHIS also intends to establish a herd certification program to prevent and control CWD from farmed or captive cervids in the United States (9 CFR parts 55 and 81). In addition, APHIS regulates the importation of animals and animal products into the United States to guard against the introduction of various animal diseases, including BSE (9 CFR parts 92, 93, 94, and 95). To prevent the spread of BSE through animal feed, the Food & Drug Administration (FDA) prohibits the use of most mammalian protein in the manufacture of animal feed used for ruminants and prohibits high risk cattle materials from all animal feed (21 CFR part 589). To prevent potential human exposure to the BSE agent, USDA's Food Safety and Inspection Service prohibits for use as human food cattle materials that could potentially contain the BSE agent (9 CFR 310.22). FDA has also issued an interim final rule (69 FR 42256, July 14, 2004) prohibiting the use of certain cattle materials in human food and cosmetics to address the potential risk of BSE (21 CFR 189.5 and 700.27).

C. EPA's Interpretation of FIFRA

1. *Applicable FIFRA provisions.* FIFRA section 25(c)(1) authorizes the Administrator "to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment." FIFRA section 2(t) defines a pest, in part, as "* * * any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism * * * which the Administrator declares to be a pest under section 25(c)(1)." These FIFRA sections provide EPA the authority to declare an entity to be a "pest" if it meets these statutory provisions.

2. *EPA's interpretation of FIFRA.* EPA's decision to declare a prion to be a pest under FIFRA rests on its statutory interpretation of FIFRA sections 25(c)(1) and 2(t). EPA believes that Congress intended that the phrases "any other form of plant or animal life" and "other micro-organism" be broadly interpreted to include biological entities that are injurious to humans or the environment. The following points provide EPA's rationale for this interpretation.

- In FIFRA, Congress has over the years used the term "other micro-organism" more broadly than most microbiologists currently would define the term because, as used in FIFRA, the term "micro-organism" includes viruses, which many microbiologists do not consider to be microorganisms. Therefore, the term "micro-organism," as currently defined by many microbiologists, is narrower than the potential scope of the term "other micro-organism" in FIFRA.
- As used in FIFRA, the term "other micro-organism" includes entities other than viruses and bacteria, but it is unclear which entities. It is reasonable to assume that it includes those entities that most microbiologists currently recognize as microorganisms (*i.e.*, microfungi, yeasts, and protists).

Because the statutory language explicitly includes viruses among micro-organisms in the definition of "pest," the term "other micro-organism" in its statutory context reasonably may be interpreted to include some other entities that many microbiologists may not categorize as microorganisms.

- Today, microbiologists do not generally classify viruses as microorganisms because they are not alive (*i.e.*, they cannot reproduce sexually or asexually, grow or perform self-maintenance). Therefore, the term "other micro-organism" as used in FIFRA appears broad enough to include some entities that are not alive.
- Congress' rationale for including viruses within the FIFRA definition of "pest" is not known as there is no available legislative history on this issue. However, it is reasonable to infer that Congress included viruses within the FIFRA definition of "pest" and within the scope of the meaning of "micro-organism" because viruses share important characteristics of other pests. The characteristics of a virus that make it resemble a micro-organism in the context of "pest" are pathogenicity, infectivity, transmissibility, the ability to increase in number, and the ability to evolve. EPA believes that Congress intended the terms "pest" and "other micro-organism" as used in FIFRA to be broadly inclusive.
- One entity that shares the characteristics of pathogenicity, infectivity, transmissibility, the ability to increase in number, and the ability to evolve (but which, like viruses, is not alive) is the prion. A prion is an infectious agent occurring in the tissues of animals that is widely, though not universally, believed to be composed of an abnormal (misfolded) protein without nucleic acid. Prions are also unquestionably injurious to the health of humans and other animals. They cause TSE diseases that attack the nervous system, inflict irreversible damage, and are always fatal to infected animals and humans. Once introduced into an animal or human host, prions can induce the formation of new prions in the animal or human host. Prions are considered among the most difficult of all biological entities to mitigate and few methods are available for effectively doing so. Moreover, current test methods cannot demonstrate complete destruction or inactivation of prions. For these reasons, EPA believes that the public needs assurance of the safety and efficacy of products intended to reduce the infectivity of prions.
- Congress expressly included "prion" within another statute's definition of "pest," namely in the Animal Health Protection Act of 2002.

For these reasons, EPA concluded that a prion is appropriately included in the phrase "other micro-organism." Because prions are also severely injurious to human and animal health, EPA has also concluded that a prion is appropriately included in the FIFRA definition of "pest."

D. EPA's Prion Science Evaluation and Efficacy Test Guidance Documents

To assure that this rulemaking is based on the best available scientific information, EPA reviewed and summarized the most relevant scientific studies and publications related to the issue of whether a prion is a pest in a "white paper" (Ref. 2). EPA presented the draft white paper to the FIFRA Scientific Advisory Panel (SAP) for peer review and comment on March 31 and April 1, 2009. The SAP provided comments to EPA on the draft white paper on June 29, 2009 (Ref. 3). EPA subsequently responded to the SAP's comments (Ref. 4) and made revisions to the white paper in response to the SAP comments (Ref. 5). All of these referenced documents are available in the docket for this declaration and proposed rule.

IV. FIFRA Review Requirements

In accordance with FIFRA section 25(a), EPA has submitted a draft of the proposed rule to the FIFRA SAP, the Secretary of Agriculture (USDA), and appropriate Congressional Committees. In addition, pursuant to FIFRA section 21(b), EPA submitted a draft of the proposed rule to the Secretary of Health and Human Services (HHS).

The FIFRA SAP waived its review of this proposal on June 1, 2010, because the significant scientific issues involved have already been reviewed by the SAP and additional review is not necessary. A copy of this waiver is available in the docket.

As required by FIFRA section 25(a), the written comments on the draft proposal received from USDA and HHS, along with EPA responses, are available in the docket. EPA addressed these comments as part of the interagency review process under Executive Order 12866, and changes made to the proposed rule in response to all comments received during that interagency review are documented in the docket as required by Executive Order 12866.

V. Statutory and Executive Order Reviews

A. Regulatory Review

Pursuant to Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed rule is a "significant regulatory action" because this action might raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this proposed rulemaking to OMB for review under Executive Order 12866. Any changes made in response to OMB comments have been documented in the docket for this rulemaking as required by the Executive Order.

EPA has prepared an economic analysis of the potential costs associated with this proposed action, entitled *Economic Analysis of the Notice of Proposed Rulemaking Concerning the Status of Prion as a Pest under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)* (Ref. 8). A copy of this document is available in the docket for this rulemaking, and is briefly summarized here.

The Economic Analysis (EA) presents the Agency's assessment of the potential costs and benefits expected to result from the proposed rule. In terms of benefits, the proposed rule will ensure that EPA can protect human health and the environment by subjecting prion-related products to regulation under FIFRA, including all data and labeling requirements. In terms of costs, using pre-2003 costs as the baseline, the incremental costs of the proposed rule per registration action range from $424,000 to $4.72 million.

The EA presents the costs of various types of registrations under the proposed rule and presents expected incremental costs for three product registration types. The three types of registration actions which are possible under the proposed rule are the registration of: (1) A new active ingredient, (2) a new use product, or (3) a new use amendment registration.

The EA estimates that three firms may seek registrations for major new use products in the first year. If all uses are high exposure (*e.g.,* indirect food uses), the maximum potential total cost to industry in the first year would be approximately $7.05 million, and costs per firm would be approximately $2.35 million. Given the uncertainty that characterizes the market for prion-related products at this time, the Agency did not speculate further on the

expected number of registrations in subsequent years. However, registrations that occur after the initial major new use product registrations would probably be major new use amendments. Data requirements would entail only product-specific efficacy data for major new use amendments at a cost of approximately $431,000 per registration action. Approximately 80% of the firms in the pesticide manufacturing industry are small firms with revenues of $22 million, on average. A cost of $7.05 million suggests that the incremental cost per firm of $2.35 million dollars would equal nearly 11% of annual revenues. However, after the initial three registrations, a major new use amendment at a cost of $431,000 would represent fewer than 2% of average annual revenues.

The EA identifies three categories of persons who could be affected by the proposed rule—pesticide registrants, users of prion-related products, and researchers. The registration related requirements under FIFRA, however, are imposed on the entity that registers the prion-related product. Users of prion-related products and researchers are affected indirectly. The EA summarizes potential qualitative impacts of regulating prion-related products that were expressed by product users to EPA during its outreach efforts to these users.

The EA evaluates the impacts of the data required to support the registration of a prion-related product, specifically the need for a product performance test that will measure the ability of an individual product to reduce the infectivity of prions. The Agency has developed draft test guidelines for prions which will ensure that the Agency receives the data needed to make objective and reliable determinations as to whether a prion-related product meets the Agency's efficacy data requirements for registration. Providing clear guidance on EPA's efficacy data requirements for prion-related products will benefit registrants by enabling them to submit relevant, correct and complete data submissions in support of applications for registration to the Agency.

One unintended consequence of using products approved for use under FIFRA section 18 exemptions is that at least one state, California, requires that such products be applied only by certified applicators. EPA further understands, however, that California has no such requirement for pesticide products that are registered under FIFRA section 3 or 24(c) that are not classified for restricted use. Hence, laboratories in California that use prion-related products registered under section 3 or 24(c) would not be subject to a certified applicator requirement. The initial cost of obtaining the certified applicator's license in California is $140, and the renewal fee is $60 every 2 years (*see http://www.cdpr.ca.gov/docs/license/qac.htm*). In addition, 20 hours of continuing education is required to obtain renewal. If a similar requirement is imposed by other states, the cost to laboratories for obtaining applicator licenses would probably be about the same. No such cost is associated with products registered under section 3 or 24(c).

B. Paperwork Activities

The information collection requirements, *i.e.,* the paperwork collection activities, contained in this proposal are already approved by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* Specifically, the activities contained in this proposed rule are already addressed in the following information collection requests (ICRs):

1. The activities associated with the establishment of a tolerance are currently approved under OMB Control No. 2070–0024 (EPA ICR No. 0597).

2. The activities associated with the application for a new or amended registration of a pesticide are currently approved under OMB Control No. 2070–0060 (EPA ICR No. 0277).

3. The activities associated with the generation of data in response to a Data-Call-In issued subsequent to registration (*e.g.,* as part of the review of an existing registration), are currently approved under OMB Control No. 2070–0174 (EPA ICR No. 2288).

The existing ICRs cover the paperwork activities contained in this proposal because the activities already occur as part of existing program activities. These program activities are an integral part of the Agency pesticide program and the corresponding ICRs are regularly renewed. Although this proposal involves already approved activities, the estimated frequency of those activities may increase as a result of this proposal. The total estimated average annual public reporting burden currently approved by OMB for these various activities ranges from approximately 8 hours to 3,000 hours per respondent, depending on the activity and other factors surrounding the particular pesticide product. According to EPA's EA for this proposed rule (Ref. 8), using the estimate of three major new use product registrations in the first year, the additional registration of three antimicrobial products making prion-related claims will result in an increase in new registration applications for the Agency from 140 to 143 and an increase in tolerance petitions of from 64 to 67. The increase in paperwork burden for the registrant will be nearly $38,000 (600 hours for three registrations) for registration activities and a little more than $423,000 (5,200 hours for three registrations) for paperwork for tolerance petitions (Ref. 8).

An agency may not conduct or sponsor, and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number, or is otherwise required to submit the specific information by a statute. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9 and 48 CFR chapter 15, and included on the related collection instrument (*e.g.,* form or survey).

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments are requested on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed action in the manner specified under **ADDRESSES**. In the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposed rule.

C. Small Entity Impacts

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* after considering the potential economic impacts of this proposed rule on small entities, I hereby certify that this proposed rule would not have a significant adverse economic impact on a substantial number of small

entities. This determination is based on the Agency's economic analysis (Ref. 8), and is briefly summarized here.

Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 (in this case based on maximum number of employees or sales for small businesses in each industry sector, as defined by a 6-digit NAICS code); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Since the regulated community does not include small governmental jurisdictions or small not-for-profit organizations, the analysis focuses on small businesses.

According to the Agency's economic analysis (Ref. 8), only three firms are expected to apply for registrations of prion-related products. One of these firms is known to be a large firm. Given that approximately 79% of the firms in the antimicrobial industry are small firms, it is possible that any or all of the remaining two other firms could qualify as a small entity under the SBA definition.

The incremental costs of the proposed rule could represent from 2% to 11% of the average annual revenues of a small firm. In general, the Agency does not believe that prion-related products are an important market segment for sodium hydroxide or sodium hypochlorite producing firms and does not anticipate a large number of product registrations beyond the first year the final rule would take effect. If small entities apply to register products for prion control, they would likely pursue a registration where they could likely cite a substantial amount of data and not incur 100% of the initial costs of testing (Ref. 8).

EPA continues to be interested in the potential impacts of this proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates

This action does not contain any Federal mandates for State, local, or tribal governments or the private sector under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538. EPA has determined that this regulatory action will not result in annual expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector. As described in Unit IV.A., the incremental costs for the proposed rule are estimated from $424,000 to $4.72 million. Since State, local, and tribal governments are rarely pesticide applicants, the proposed rule is not expected to significantly or uniquely affect small governments. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments. Accordingly, this action is not subject to the requirements of sections 202, 203 or 205 of UMRA.

E. Federalism Implications

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have "federalism implications" because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. As indicated previously, instances where a state is a registrant are extremely rare. Therefore, this proposed rule may seldom affect a state government. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of the Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Tribal Implications

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this proposed rule does not have "tribal implications" because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. As indicated previously, at present, no tribal governments hold, or have applied for, a pesticide registration. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of the Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Children's Health

EPA interprets Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks, and it is not designated as an "economically significant" regulatory action as defined by Executive Order 12866 (*see* Unit V.A.). To the contrary, this action will provide added protection for children from pesticide risk.

H. Energy Effects

This action is not a "significant energy action" as defined in Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because it is not likely to have an effect on the supply, distribution, or use of energy as described in the Order.

I. Technical Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, and sampling procedures) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not propose to require any technical standards that would require Agency consideration of voluntary consensus standards. This action proposes the types of data to be required to support the registration of antimicrobial pesticide products with prion-related claims but does not propose to require specific methods or standards to generate those data.

The Agency invites comment on its conclusion regarding the applicability of

voluntary consensus standards to this proposed rulemaking.

J. Environmental Justice

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency does not need to consider environmental justice-related issues.

VI. References

As indicated under **ADDRESSES**, a docket has been established for this rulemaking under docket ID number EPA–HQ–OPP–2010–0427. The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA in developing this proposed rule, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. Environmental Protection Agency. 2004. Considerations of Prions as a Pest under FIFRA. Memorandum to The Record from Susan B. Hazen, Principal Deputy Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances. April 29, 2004.

2. U.S. Environmental Protection Agency. 2009. "Scientific Information Concerning the Issue of Whether Prions Are a 'Pest' under the Federal Insecticide, Fungicide, and Rodenticide Act." Draft dated February 23, 2009.

3. U.S. Environmental Protection Agency. 2009. Transmittal of Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting Held March 31–April 1, 2009 on Scientific Issues Associated with Designating a Prion as a 'Pest' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and Related Efficacy Test Methods. Memorandum from Myrta R. Christian, Designated Federal Official, FIFRA Scientific Advisory Panel, Office of Science Coordination and Policy, to Debbie Edwards, PhD, Director, Office of Pesticide Programs. June 29, 2009. See *http://www.epa.gov/scipoly/sap/meetings/2009/march/033109panelmembers.html.*

4. U.S. Environmental Protection Agency. 2010. EPA Responses to Comments by the FIFRA Scientific Advisory Panel Concerning "Scientific Information Concerning the Issue of Whether Prions Are a 'Pest' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)." February 17, 2010.

5. U.S. Environmental Protection Agency. 2010. Scientific Information Concerning the Issue of Whether A Prion Is a "Pest" under the Federal Insecticide, Fungicide, and Rodenticide Act. February 17, 2010.

6. U.S. Environmental Protection Agency. 2009. Product Performance Test Guidelines OPPTS 810.XXXX Products with Prion Related Claims. Draft dated February 23, 2009.

7. U.S. Environmental Protection Agency. 2009. Product Performance Test Guidelines OPPTS 810.XXXX Products with Prion Related Claims. Draft dated December 8, 2009.

8. U.S. Environmental Protection Agency. 2010. Economic Analysis of the Notice of Proposed Rulemaking Concerning that Status of a Prion as a Pest under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). February 17, 2010.

List of Subjects in 40 CFR Part 152

Environmental protection, Antimicrobial pesticides, Prion.

Dated: January 14, 2011.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 152—[AMENDED]

1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y; subpart U is also issued under 31 U.S.C. 9701.

2. Section 152.5 is amended by revising paragraph (d) to read as follows:

§ 152.5 Pests.

* * * * *

(d) Any fungus, bacterium, virus, prion, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA section 201(g)(1)) and cosmetics (as defined in FFDCA section 201(i)).

[FR Doc. 2011–1636 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 17
Wednesday, January 26, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 20, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: National Survey on Recreation and the Environment 2011.

OMB Control Number: 0596–0127.

Summary of Collection: Authorizing legislation for this collection is the Forest and Rangeland Renewable Resources Planning Act, Public Law 93–378–88 Stat. 475. This collection is a multi-agency partnership. Participating Federal Agencies include the Forest Service (FS), Economic Research Service (ERS) (U.S. Department of Agriculture), National Oceanic and Atmospheric Administration (U.S. Department of Commerce) Bureau of Land Management (Department of the Interior), U.S. Coast Guard and the Environmental Protection Agency.

These Federal agencies are responsible for oversight of public lands, waterways or marine sanctuaries. Each manages for or otherwise influences recreation opportunities. The collection and analysis of public demand data is vital to defining effective policies and to implementation of programs affecting the management and use of water, forest, and wildlife resources. The National Survey on Recreation and the Environment (NSRE) 2011 will be the latest in a series of surveys begun in 1960 as the National Recreation Survey. This survey is the primary, consistent source of recreation participation data concerning the U.S. population.

Need and Use of the Information: FS will collect information nationally from the public to assess trends in recreation participation over the years since the survey was last conducted and to estimate demand for outdoor recreation among the U.S. population. In addition, the survey will collect information from the public on people's attitudes and values toward natural resources and their management. FS will use the information as well as other federal agencies to develop long-range strategic plans, adjust programs and activities to meet customer needs and expectations, and better manage federally owned lands.

Description of Respondents: Individuals or households.

Number of Respondents: 56,830.

Frequency of Responses: Reporting: Other (one time)

Total Burden Hours: 2,757.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–1543 Filed 1–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 20, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: U.S. Origin Health Certificate.

OMB Control Number: 0579–0020.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. As part of its mission to facilitate the export of U.S. animals and products, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States. Most countries require a certification that the animals are disease free. The VS form 17–140, U.S. Origin Health Certificate, and VS form 17–145, U.S. Origin Health Certificate for the Export of Horses from the United States to Canada, are used to meet these requirements. The form is authorized by 21 U.S.C. 112.

Need and Use of the Information: The U.S. Origin Health Certificate is used in connection with the exportation of animals to foreign countries and is completed and authorized by APHIS veterinarian. The information collected is used to: (1) Establish that the animals are moved in compliance with USDA regulations, (2) verify that the animals destined for export are listed on the health certificate by means of an official identification, (3) verify to the consignor and consignee that the animals are healthy, (4) prevent unhealthy animals from being exported and (5) satisfy the import requirements of receiving countries.

The collection of this information helps to prevent unhealthy animals from being exported from the United States. If these certifications were not provided, other countries would not accept animals from the United States.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 2,056.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 13,875.

Animal and Plant Health Inspection Service

Title: Brucellosis in Sheep, Goats, Horses, and Payment of Indemnity.

OMB Control Number: 0579–0185.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301), is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS). Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS' ability to compete in the world market of animal and animal product trade. Brucellosis is an infectious disease of animals and humans caused by the bacteria of the genus Brucella. It is mainly a disease of cattle, bison, and swine, sheep, goats, and horses are also susceptible, but are rarely infected. There is no economically feasible treatment for brucellosis in livestock. APHIS will collect information using APHIS forms VS 1–23, Indemnity Claim, VS 4–33, Test Records, and VS 1–27, Permit for Movement of Restricted Animals.

Need and Use of the Information: APHIS will collect information from the use of official seals and animal identification; indemnity claims, test records, and permits; and the submission of proof of destruction documentation and requests for extension of certain program-related deadlines. The information will provide indemnity to owners of sheep, goat, or horses destroyed because of brucellosis. Without the information, it would make it impossible for APHIS to administer an indemnity program for sheet, goats, and horses destroyed because of brucellosis.

Description of Respondents: Business or other for-profit; State, Local and Tribal Government.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8.

Animal Plant and Health Inspection Service

Title: Importation of Emerald Ash Borer Host Material from Canada.

OMB Control Number: 0579–0319.

Summary of Collection: The United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests and noxious weeds not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. Under the Plant Protection Act (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The regulations in 7 CFR Part 319, "Foreign Quarantine Notices," prohibit or restrict the importation of certain plants and plant products to prevent the introduction or dissemination of plant pests and noxious weeds into the United States. The Foreign Quarantine Notices regulations prohibit or restrict the importation of certain articles from Canada that present the risk of being infested with Emerald Ash Borer (EAB). EAB is a destructive wood-boring insect that attacks ash trees (Praxinus spp., including green ash, white ash, and several horticultural varieties of ash).

Need and Use of the Information: APHIS will collect information using phytosanitary certificates, permit applications, and certificates of inspection. If APHIS did not collect this information, EAB could damage ash trees and cause economic losses to nursery stock and the nursery industry.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–1545 Filed 1–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 20, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Annual Report of State Revenue Matching.

OMB Control Number: 0584–0075.

Summary of Collection: The National School Lunch Program is mandated by the National School Lunch Act, 42 U.S.C. 1751 and the Child Nutrition Act of 1966, 42 U.S.C. 1771. The Food and Nutrition Service (FNS) administer the National School Lunch Program. Under the program, States are required to match 30 percent (or a lesser percent based on per capital income) of the Federal funds made available for the School Lunch Program. Annually, the State agencies are required to report to FNS on FNS–13, Annual Report of State Revenue Matching, the total funds used in order to receive Federal reimbursement for meals served to eligible participants.

Need and Use of the Information: The information collected allows FNS to monitor State compliance with the revenue matching requirement. Without the information, States may receive Federal funds, which are not warranted. Monitoring the matching of State funds is essential to preventing fraud, waste, and abuse in the National School Lunch Program.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 57.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4,560.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–1533 Filed 1–25–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Dairy Industry Advisory Committee; Public Meeting

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, as amended, the Farm Service Agency (FSA) announces a public meeting of the Dairy Industry Advisory Committee (Dairy Committee) to review and approve the final recommendations to the Secretary of Agriculture. The Dairy Committee is responsible for making recommendations to the Secretary on policy issues impacting the dairy industry. Instructions regarding registering for and listening to the conference call meeting is provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Public meeting: The public meeting will be held via conference call on February 11, 2011, at 1 p.m. EST.

Registration: You must register by February 9, 2011.

Comments: Written comments are due by February 9, 2011.

ADDRESSES: You may submit comments online: Go to *http://www.fsa.usda.gov/DIAC.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Solomon Whitfield, Designated Federal Official; phone: (202) 720–9886; e-mail: *solomon.whitfield@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: In August 2009, USDA established the Dairy Committee. The Dairy Committee reviews issues of farm milk price volatility and dairy farmer profitability. The Dairy Committee provides recommendations to the Secretary on how USDA can best address these issues to meet the dairy industry's needs.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the dairy industry's needs. Equal opportunity practices were considered in all appointments to the Dairy Committee in accordance with USDA policies. The Secretary announced the members on January 6, 2010. Representatives include: Producers and producer organizations, processors and processor organizations, consumers, academia, a retailer, and a state representative.

The Dairy Committee will hold its final public meeting via conference call on February 11, 2011, at 1 p.m. EST. The dairy industry and public are invited to listen in to the conference call and to provide written comments, but will not be allowed to provide oral comments at the meeting. Written comments received from the public will be distributed to Dairy Committee members for consideration at the meeting.

The purpose of the meetings is for the Dairy Committee to approve its final report to the Secretary of Agriculture.

Instructions for Attending the Meeting

Available conference call-in lines for the public are limited to the first 100 registered public attendees. All persons wishing to listen to the meeting via conference call must register through *DIAC@wdc.usda.gov* by February 9, 2011. An email confirmation will be sent to each registered public listener providing call-in instructions for the meeting. Due to logistical constraints, registration will close at 11:59 p.m. EST on February 9, 2011.

Additional information about the public meeting, meeting agenda, materials and minutes, and how to provide comments is available at the Dairy Committee Web site: *http://www.fsa.usda.gov/DIAC.*

If you require special accommodations, please use the contact information above.

Notice of these meetings is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2).

Signed in Washington, DC on January 20, 2011.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2011–1644 Filed 1–25–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Community Trade Adjustment Assistance Program Fiscal Year 2010 Annual Report

AGENCY: Economic Development Administration, Commerce

ACTION: Notice.

SUMMARY: This report is provided in compliance with Section 275(f) of the Trade Act of 1974 (19 U.S.C. 2371d(f)), which directs the Secretary of Commerce to provide an annual report describing and assessing the impact of implementation grants made under the Community Trade Adjustment Assistance (CTAA) Program by the 15th of December each year. Section 275 states:

(f) Annual Report.—Not later than December 15 in each of the calendar years 2009 through 2011, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report—

(1) Describing each grant awarded under this section during the preceding fiscal year; and

(2) Assessing the impact on the eligible community of each such grant awarded in a fiscal year before the fiscal year referred to in paragraph (1).

ADDRESSES: Trade Adjustment Assistance for Firms Division, Room D100, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bryan Borlik, Director of the TAAF Program, 202–482–3901.

SUPPLEMENTARY INFORMATION:

Program Description

The CTAA Program is one of a suite of Trade Adjustment Assistance (TAA) programs designed to help the U.S. respond proactively to trade impacts. It was established by Congress under the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009, which was included as subtitle I (letter "I") of title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115, at 367). The mission of the program is to create and retain jobs by providing project grants to communities (defined under the statute as cities, counties, or other political subdivisions of a State or a consortium of political subdivisions of a State) that experienced or were threatened by job loss resulting from trade impacts. The program is administered by the Economic Development Administration (EDA), U.S. Department of Commerce.

Grants under the program are being used to support a wide range of technical, strategic planning, and infrastructure projects to help communities adapt to trade impact issues and to promote economic diversification.

To be considered eligible for CTAA, communities must have been previously certified under one or more of the following three TAA Programs: TAA for Workers, Firms, or Farmers, which are administered by the Departments of Labor, Commerce (through EDA), and Agriculture, respectively. In addition, EDA must have made a determination that the community had been significantly impacted by trade.

Funding in the amount of $40 million was appropriated for both the CTAA and the TAA for Firms Programs authorized under the Trade Act, as amended by the TGAAA. Of the $40 million appropriated for both programs, $36.8 million was made available for project grants under the CTAA Program. The TGAAA imposed certain funding limitations on the CTAA Program and in accordance with section 275(c) of the Trade Act (19 U.S.C. 2371d(c)), impacted communities did not receive more than $5 million to implement a Strategic Plan developed under section 276 of the Trade Act. Also, in accordance with section 276(c)(2) of the Trade Act (19 U.S.C. 2371e(c)(2)), no more than $25 million of the total amount appropriated for the CTAA Program was made available for grants to develop Strategic Plans. In addition to the $36.8 million in Federal funds, other public and private sector entities are leveraging program funds through local match and will contribute $28.9 million to CTAA projects for a total program investment of $65.3 million.

More than 130 applicants applied for assistance under the CTAA program, requesting $156 million dollars for a variety of projects. The full $36.8 million available was awarded on a competitive basis to 36 communities following a rigorous evaluation process. EDA used six evaluation criteria to determine the extent to which a proposed project:

1. Supports small and medium-sized communities;

2. Assists the most severely impacted communities;

3. Delivers a high return on investment;

4. Supports regionalism, innovation, and entrepreneurship;

5. Supports global trade and competitiveness; and

6. Grows the "green economy."

Description of Each Grant Awarded in FY 2010

The following is a list of projects that were awarded in FY 2010 to CTAA recipients.

- $3.5 million to the Village of Pleasant Prairie, Wisconsin to help build the 40,000-square-foot Southeast Wisconsin Innovation Center, which was certified under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program. The business incubator for biomedical, life science and biotechnology start-ups will enhance and build upon the region's entrepreneurial resources to accelerate the formation and growth of new and innovative companies. The grantee estimates that this investment will create 350 jobs.
- $3 million to the City of Danville, Illinois to construct a roadway and rail overpass bridge to support the city's industrial area by improving the transport of goods and services along major transportation routes. The grantee estimates that this investment will create 15 jobs and retain 391 jobs.
- $2.4 million to the Cowlitz Wahkiakum Council of Governments and the City of Woodland, Washington to make infrastructure improvements to expand the Woodland Light Industrial Park. The grantee estimates that this investment will create 344 jobs and retain 250 jobs.
- $2.1 million to the Jackson County Development Authority of Ripley, West Virginia for construction, water, sewer, and rail infrastructure improvements. The grantee estimates that this investment will create 45 jobs.
- $1.84 million to the City of Darlington, South Carolina to make sewer system improvements to increase sewer treatment capacity for existing and prospective industries. The grantee estimates that this investment will create 35 jobs and retain 200 jobs.
- $1.8 million to the City of Bastrop, Louisiana to fund a new industrial park in the U.S. 165 corridor.
- $1.74 million to Franklin County, North Carolina and the Kerr-Tar Regional Economic Development Corporation to build a roadway for improved access to the Triangle North Franklin Business Park. The grantee estimates that this investment will create 3,000 jobs.
- $1.66 million to the Winston County Commission, the City of Haleyville, and the Cooperative District of Winston County, Alabama to make infrastructure improvements to serve businesses locating in the Winston County Industrial Park and Haleyville's

North Industrial Park. The grantee estimates that this investment will create 168 jobs.

• $1.6 million to Lincoln County and the City of Lincolnton, North Carolina to make sewer improvements needed for the development of Phase 1 of the Airport Business Park. The grantee estimates that this investment will create 200 jobs.

• $1.5 million to the New River Valley Planning District Commission of Radford, Virginia to provide funding for the Western Virginia Transportation Equipment Manufacturing Competitiveness Initiative (TEMCI). The initiative will increase the ability of regional manufacturing and supplier firms to compete in the global marketplace by providing technical assistance to transportation equipment manufacturing and supplier firms in product development, process improvements, and the integration of green technologies and processes.

• $1.5 million to the City of Anderson, Indiana to provide funding for road infrastructure improvements and related appurtenances to the city-owned former General Motors site on both the east and west sides of the property adjacent to State Road 9 in Anderson to develop an industrial park. The grantee estimates this investment will create 250 jobs.

• $1.42 million to Washington County and the City of Eastport, Maine for the construction and rehabilitation of the Eastport Business Center and establishment of the Maine Marine Energy Center, a facility that will support manufacturing components for the emerging tidal energy generation industry. This will be the first marine renewable energy manufacturing facility of its kind in the United States. The grantee estimates that this investment will create 75 jobs.

• $1.22 million to the City of Galesburg and Knox County, Illinois to create the Entrepreneurs Innovate and Go Global Initiative aimed at helping the region support entrepreneurs and create products and services for export in the global economy. The grantee estimates that this investment will create 327 jobs and retain three jobs.

• $1.2 million to the City of Janesville, Wisconsin to construct the Rock County Small Business Incubation and Innovation Center, leveraging the competencies and intellectual capital of the region's industry clusters to create jobs and attract private investment. The grantee estimates that this investment will create 45 jobs.

• $1.2 million to Mississippi County and Blytheville-Gosnell Regional Airport Authority of Blytheville, Arkansas to expand and improve two facilities at the Blytheville-Gosnell Regional Airport. The project will advance plans to transform the former Eaker Air Force Base into a regional aeronautics testing and aviation maintenance facility, enhancing and diversifying the community's economic base. The grantee estimates that this investment will create 300 jobs.

• $1.18 million to Overton County and the City of Livingston, Tennessee to extend a water line needed to develop an industrial park in the county that will attract and accommodate new industry.

• $1.15 million to the Flathead County Economic Development Authority of Kalispell in Montana for site acquisition of the Columbia Falls Rail Park. The Park will serve manufacturers of value-added wood products and related businesses. The grantee estimates that this investment will create 88 jobs.

• $1 million to Idaho's Boise State University to build the Technology and Entrepreneurial (TECenter) Incubator. The TECenter will provide local entrepreneurs with the expertise and technological tools needed to grow their businesses and create new jobs. The grantee estimates that this investment will create 311 jobs and retain 255 jobs.

• $750,000 to McMinn County, Tennessee and the McMinn County Economic Development Authority to install broadband fiber in three county industrial parks to help attract new businesses to the area.

• $650,000 to Bedford County, Pennsylvania to expand a multi-tenant building and incubator space in Bedford County Business Park I with the goal of stimulating entrepreneurial development in the emerging I–99 Innovation Corridor in Central Pennsylvania. The grantee estimates that this investment will create 25 jobs.

• $634,130 to the Town of Eureka, Montana to fund the engineering, design, and construction of the Wood Development Center to be located at the Tobacco Valley Industrial District Business Park. The Center will focus on enhancing development of value-added wood industries, biomass, and small-diameter, specialty mill production by providing shared office resources and support to multiple entrepreneurs. The grantee estimates that this investment will create 25 jobs and retain five jobs.

• $627,000 to the Bitterroot Economic Development District, Inc., of Missoula, Montana to help create and retain jobs in the timber industry by implementing a competitive strategy to guide economic diversification efforts in a four-county region. The grantee estimates that this investment will create 83 jobs and retain 88 jobs.

• $500,000 to Orange County, California to prepare an analysis of the current Orange County economy to help target new industries, diversify the local economic base, and advance regional competitiveness. The grantee estimates that this investment will create 100 jobs and retain 300 jobs.

• $457,500 to Mifflin County and the Mifflin County Industrial Development Authority of Mifflin, Pennsylvania to make infrastructure improvements to a multi-tenant manufacturing building, the Mifflin County Industrial Development Corporation (MCIDC) Plaza, which will allow for the expansion of production, an increase in global exports, and the retention and creation of manufacturing jobs. The grantee estimates that this investment will create 50 jobs and retain 50 jobs.

• $391,468 to the City of Sterling Heights, Michigan to make technology and infrastructure improvements to the Macomb Technology Advancement Center, a business diversification center and incubator that provides support to entrepreneurs and technology transfer businesses. The grantee estimates that this investment will create 500 jobs.

• $383,965 to the City of Chicago, Illinois to develop and implement Chicago's Sustainable Industries (CSI) Project, a strategy to preserve and grow manufacturing sectors within the city that have the potential to succeed in the 21st century economy.

• $301,000 to Clinton County Government of Plattsburgh, New York to partially fund three workforce development activities in Clinton County, including marketing the North Country Workforce Investment Board's employer programs, purchasing renewable energy equipment for the Wind Energy and Turbine Training program at Clinton Community College, and funding aviation training and equipment at the Plattsburgh Aeronautical Institute.

• $200,000 to the Upper Explorerland Regional Planning Commission of Postville, Iowa to implement a 27-county, three-state regional action plan (NE Iowa, SE Minnesota, and Western Wisconsin) prepared under the direction of the Tri-State Aim2Win network.

• $170,000 to Grant County, New Mexico to develop an economic development master plan that will help target new industries and create jobs.

• $155,689 to Lane County, Oregon to enhance entrepreneurship by implementing economic gardening, business development, instructional technical assistance, and workforce

training programs. The grantee estimates that this investment will create 50 jobs and retain 50 jobs.

• $133,500 to the East Central Wisconsin Regional Planning Commission of Menasha, Wisconsin to fund a strategic plan for expanding global trade in Brown, Calumet, Fond du Lac, Manitowoc, Marinette, Outagamie, Sheboygan, Waupaca, and Winnebago counties in northeastern Wisconsin. The grantee estimates that this investment will create 200 jobs.

• $93,046 to Morris County, Texas to develop an economic development strategic plan to assess the current market in order to diversify the local economic base and create higher-skill, living-wage jobs.

• $78,102 to the Franklin Regional Council of Governments of Greenfield, Massachusetts to develop a strategic plan for the Franklin County Interconnection and Innovation District, which will leverage existing and emerging regional strengths to encourage job growth and business expansion in information technology, renewable energy, green technology, the creative economy, and advanced manufacturing.

• $75,000 to the Northwest Iowa Planning & Development Commission of Spencer, Iowa to develop a strategic plan to help the region map its future economic course, providing a precise and targeted route focused on job creation, industrial diversification, and long-term stability.

• $75,000 to the Northwest Pennsylvania Regional Planning and Development Commission of Oil City, Pennsylvania to develop a trade strategy to assist Crawford County's tooling and machining industry in boosting its competitiveness and finding new opportunities for success in the global marketplace.

• $53,194 to Barnwell County, South Carolina to support the development and implementation of a strategic plan for leveraging public-private partnerships and regional assets to enhance the specialty agribusiness sector.

Impact on Eligible Communities

Since this program is new, EDA is still in the process of collecting long-term, market-based data. However, grantee estimates suggest that 6,586 jobs will be created, and 1,892 jobs will be retained as a result of grants awarded under CTAA. As noted above, job creation projections were not provided by grantees that received funding to develop strategic plans—however, it is likely that many jobs will be created when those plans are implemented over the next few years.

The CTAA program illustrates that EDA is able to address trade impact issues effectively at the community level. It is anticipated that many businesses from across the nation will benefit from the 36 CTAA-funded projects through the development and implementation of sound regional economic recovery and development strategies. These strategies will help provide the hard and soft infrastructure needed for businesses to successfully compete in the global marketplace.

Dated: January 20, 2011.

Bryan Borlik,

Director, Trade Adjustment Assistance for Firms Program.

[FR Doc. 2011–1585 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Trade Adjustment Assistance for Firms Program Fiscal Year 2010 Annual Report

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice.

SUMMARY: This annual report is submitted in accordance with Section 1866 of the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009, which was included as subtitle I (letter "I") of title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115, at 367). Section 1866 of the TGAAA directs the Secretary of Commerce to submit to Congress an annual report on the Trade Adjustment Assistance for Firms (TAAF) Program by the 15th of December each year. The TAAF Program is one of four Trade Adjustment Assistance (TAA) Programs authorized by the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*) (Trade Act).

Administered by the Department of Commerce's Economic Development Administration (EDA), the goal of the TAAF Program is to help economically distressed U.S. businesses develop strategies to compete in the global economy. In general, the program provides cost-sharing technical assistance to eligible businesses to create and implement targeted business recovery plans, called Adjustment Proposals under the program. Firms contribute a matching share to create and implement their plan.

Technical assistance is provided through a nationwide network of eleven EDA-funded Trade Adjustment Assistance Centers (TAACs), which are either non-profits or university-affiliated. The TAACs provide assistance to firms petitioning EDA for certification of eligibility under the program and in the development and implementation of business recovery plans.

Firms that completed the TAAF Program in FY 2008 report that at completion, average sales were $10.3 million, average employment was 73, and average productivity was $140,977 (sales per employee). One year after completing the program (FY 2009), firms report that average sales increased by one percent, average employment decreased by 10 percent, and average productivity increased by 11 percent. The Bureau of Labor Statistics (BLS) reported that nationwide for the manufacturing industry in FY 2009, average employment decreased 12 percent and average productivity increased by 4 percent. Two years after completing the program (FY 2010), firms report that average sales decreased by 14 percent, average employment decreased by 16 percent, and average productivity increased by 3 percent. BLS reported that nationwide for the manufacturing industry in FY 2010, average employment decreased 12 percent and average productivity increased by 9 percent.

Overall, there has been an increase in the demand for the TAAF Program in FY 2010, as demonstrated by the increase in the number of petitions for certification and Adjustment Proposals submitted to EDA for approval. In FY 2010, EDA approved an additional 114 petitions, a 53 percent increase as compared to FY 2009; and approved an additional 93 Adjustment Proposals, a 54 percent increase as compared to FY 2009.

The addition of TAAF staff resources facilitated EDA's ability to improve processing time for petitions and Adjustment Proposals in FY 2010. Although there was a spike in petitions and Adjustment Proposals, EDA successfully met the 40-day processing deadline to make a final determination for petitions accepted for filing; and the 60-day processing deadline for approval of Adjustment Proposals as required in the TGAAA. In fact, the average processing time for petitions has started to decline below the 40-day requirement and the average processing time for Adjustment Proposals is below 30 days.

ADDRESSES: Trade Adjustment Assistance for Firms Division, Room D100, Economic Development

Administration, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bryan Borlik, Director of the TAAF Program, 202–482–3901.

SUPPLEMENTARY INFORMATION:

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Introduction

This report is provided in compliance with Section 1866 of the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009, which was included as subtitle I (letter "I") of title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115, at 367). Section 1866 of the TGAAA directs the Secretary of Commerce to provide an annual report on the Trade Adjustment Assistance for Firms (TAAF) program by the 15th of December each year. Section 1866 of the TGAAA states:

> IN GENERAL.—Not later than December 15, 2009, and each year thereafter, the Secretary of Commerce shall prepare a report containing data regarding the trade adjustment assistance for firms program provided for in chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*) for the preceding fiscal year.

This report will provide findings and results to the extent that the data is available on the following 14 measures:

1. The number of firms that inquired about the program.
2. The number of petitions filed under section 251.
3. The number of petitions certified and denied.
4. The average time for processing petitions.
5. The number of petitions filed and firms certified for each congressional district of the United States.
6. The number of firms that received assistance in preparing their petitions.
7. The number of firms that received assistance developing business recovery plans (Adjustment Proposals).
8. The number of Adjustment Proposals approved and denied by the Secretary of Commerce.
9. Sales, employment, and productivity at each firm participating in the program at the time of certification.
10. Sales, employment, and productivity at each firm upon completion of the program and each year for the two-year period following completion.
11. The financial assistance received by each firm participating in the program.
12. The financial contribution made by each firm participating in the program.
13. The types of technical assistance included in the Adjustment Proposals of firms participating in the program.
14. The number of firms leaving the program before completing the project or projects in their Adjustment Proposals and the reason the project was not completed.

Program Description

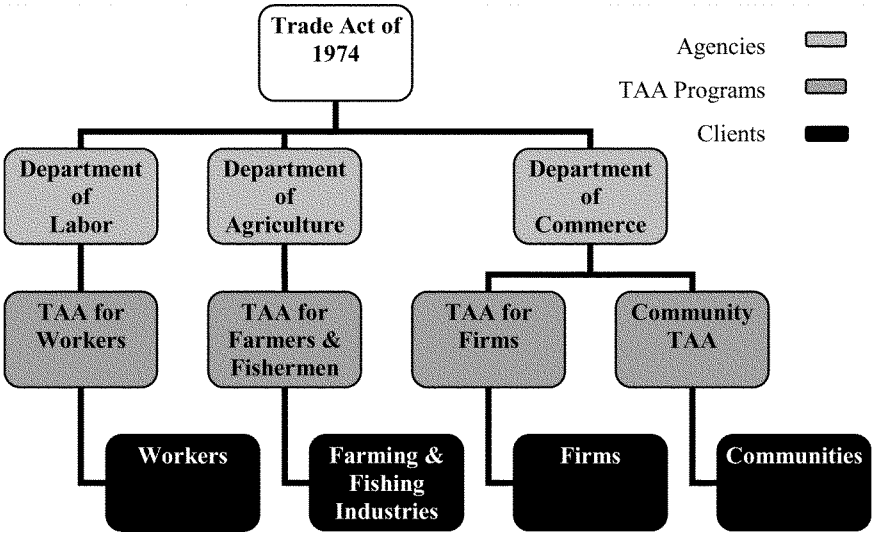
The TAAF program is one of four Trade Adjustment Assistance (TAA) programs authorized under the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*) (Trade Act). The responsibility for administering the TAAF program is delegated by the Secretary of Commerce to the Economic Development Administration (EDA). TAAF program provides technical assistance to manufacturers and service firms affected by import competition to help the firms develop and implement projects to regain global competitiveness.

The mission of the TAAF Program is to help U.S. firms regain competitiveness in the global economy. Import-impacted U.S. manufacturing, production, and service firms can receive matching funds for projects that expand markets, strengthen operations, and sharpen competitiveness through TAAF. The program provides assistance in the development of business recovery plans, which are known as Adjustment Proposals under Section 252 of the Trade Act, and matching funds to implement projects outlined in the Adjustment Proposals.

The TAAF Program supports a national network of 11 non-profit or university-affiliated Trade Adjustment Assistance Centers (TAACs) to help U.S. manufacturing, production, and service firms in all fifty states, the District of Columbia, and the Commonwealth of Puerto Rico. Firms work with the TAACs to apply for certification for TAAF assistance, and prepare and implement strategies to guide their economic recovery.

The other TAA programs are TAA for Workers, Farmers, and Communities, which are administered by the Departments of Labor, Agriculture, and Commerce through EDA, respectively.

Exhibit 1: TAA Programs



Program Initiative

As noted above, the TAAF Program provides technical assistance in the development and implementation of Adjustment Proposals. Projects are aimed at improving a firm's competitive position. Specifically, funds are applied toward the cost of consultants, engineers, designers, or industry experts for improvement projects in targeted areas that can better a firm's position, such as engineering, information technology, management, market development, marketing, new product development, quality improvement, and sales. Funds are not provided directly to firms; instead EDA funds TAACs and TAACs pay a cost-shared proportion of the cost to secure specialized business consultants.

To certify a firm as eligible to apply for adjustment assistance, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm have been or are threatened to be totally or partially separated;

2. Sales and/or production of the firm have decreased absolutely, or sales and/or production of an article or service that accounted for at least 25 percent of total production or sales of the firm during the 12, 24, or 36 months preceding the most recent 12, 24, or 36-month period for which data are available have decreased absolutely; and

3. Increased imports of articles like or directly competitive with articles produced or services provided by the firm have "contributed importantly" to both the layoffs and the decline in sales and/or production.

BILLING CODE 3510–24–P

Exhibit 2: TAACs and Their Respective Service Areas

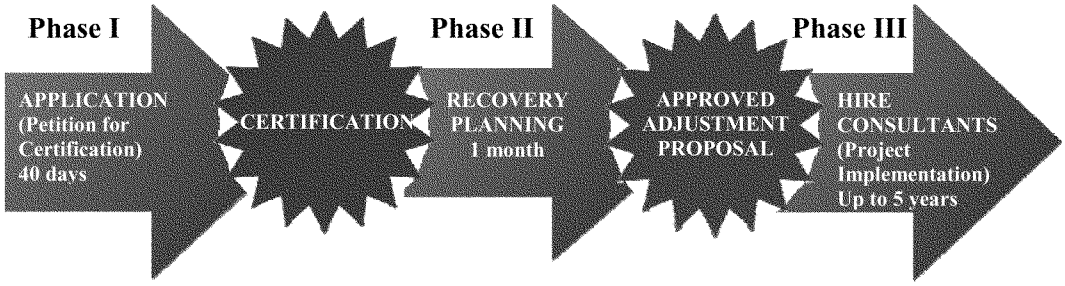
TAAC	Service Areas
Great Lakes	Indiana, Michigan, and Ohio
Mid-America	Arkansas, Kansas, and Missouri
MidAtlantic	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia
Midwest	Illinois, Iowa, Minnesota, and Wisconsin
New England	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
New York State	New York
Northwest	Alaska, Idaho, Montana, Oregon, and Washington
Rocky Mountain	Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming
Southeastern	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and the Commonwealth of Puerto Rico
Southwest	Louisiana, Oklahoma, and Texas
Western	Arizona, California, Hawaii, and Nevada

The main responsibilities of the TAACS include:

- Assisting firms in preparing their petitions for TAAF. Firms are not charged for any assistance related to preparing a petition.
- Once a petition has been approved, TAACs work closely with firm management to identify the firm's strengths and weaknesses and develop a customized Adjustment Proposal designed to stimulate recovery and growth. The program pays up to 75% of the cost of developing an Adjustment Proposal and the firm must pay the rest. EDA must approve all Adjustment Proposals to ensure they conform to statutory and regulatory requirements.
- After an Adjustment Proposal has been approved, company management and TAAC staff jointly identify consultants with the specific expertise required to assist the firm.
- Under the TAAF Program, EDA shares the cost of Adjustment Proposal task implementation. For an Adjustment Proposal in which proposed tasks total $30,000 or less, EDA will provide 75 percent of the cost and the firm is responsible for the balance. For an Adjustment Proposal in which proposed tasks total over $30,000, EDA and the firm share the implementation costs evenly; EDA pays 50 percent of the total cost and the firm pays 50 percent. Due to limited program funding, EDA limits its share of technical assistance to a certified firm to $75,000. After a competitive procurement process, the TAAC and the firm generally contract with private consultants to implement the Adjustment Proposal.

There are three main phases to receiving technical assistance under the program. The phases are (1) petitioning for certification, (2) recovery planning, and (3) project implementation.

Exhibit 3: Program Phases



Application		Recovery Planning		Hire Consultants	
Client Cost	0%	Client Cost	25%	Client Cost	50% (if total costs > $30K) 25% (if total costs = $30K
Federal Cost	100%	Federal Cost	75%	Federal Cost	50% (if total costs > $30K) 75% (if total costs = $30K

Phase I—Petitioning for Certification

The first step to receiving assistance is the submission of a petition to EDA to be certified as a trade impacted firm. This petition is Form ED–840P "Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance" and any supporting documentation. Certification specialists within the TAACs generally work with the firm at no cost to complete and submit a petition to EDA.

Upon receipt of the petition, EDA performs a thorough analysis of the petition and supporting documents to determine if the petition is complete and may be accepted. EDA is required to make a final determination on the petition within 40 days of accepting a petition.[1]

Phase II—Recovery Planning

Certified firms then work with TAAC staff to develop a customized Adjustment Proposal and submit to EDA for approval. Once an Adjustment Proposal has been submitted, EDA is required to make a final determination within 60 days.

Phase III—Adjustment Proposal Implementation

The firm works with consultants to implement projects in an approved Adjustment Proposal. As projects are implemented and if the firm is satisfied with the work, the firm will first pay their match to the consultant, and then send a notice to the TAAC stating that they are satisfied with the work and that they have paid their matching share. The TAAC will then pay the Federal matching share. Firms have up to five years from the date of an Adjustment Proposal's approval to implement it, unless they receive approval for an extension. Generally, firms complete the implementation of their Adjustment Proposals over a two-year period.

Results/Findings

Data for This Report

The data used in this report was collected from the TAACs as part of their reporting requirements, petitions for certification, and the Adjustment Proposals submitted by the TAACs on behalf of firms. Data from these sources were recorded into a central database by Eligibility Reviewers at EDA. Results for average processing times and the number of approved and denied petitions and Adjustment Proposal were derived by EDA.

(1) The Number of Firms That Inquired About the Program

In FY 2010, TAACs received 3,446 inquiries about the TAAF Program.

Exhibit 4: Inquiries about the TAAF Program by TAAC

TAAC	Number of firms that inquired about the TAAF Program
Great Lakes	106
Mid-America	137
MidAtlantic	376
Midwest	82
New England	163
New York State	134
Northwest	806
Rocky Mountain	351
Southeastern	42
Southwest	280
Western	969
Total	3,446

(2) The Number of Petitions Filed Under Section 251

(3) The Number of Petitions Certified and Denied

(4) The Average Time for Processing Petitions

In FY 2010, 305 petitions were filed under Section 251 of the Trade Act, up an additional 27 petitions, a 10 percent increase compared to the number of petitions filed in FY 2009. EDA certified 330 petitions, up an additional 114 petitions, a 53 percent increase compared to the number of certifications in FY 2009. Petitions are certified on a rolling basis throughout the year. Petitions certified in FY 2010 may be the result of those filed or accepted in FY 2009; and petitions filed or accepted in FY 2010 may not result in certification in FY 2010.

The addition of TAAF staff resources facilitated EDA's ability to improve processing time for petitions in FY 2010. Although there was a spike in petitions, EDA successfully met the 40-day processing deadline to make a final determination for petitions accepted for

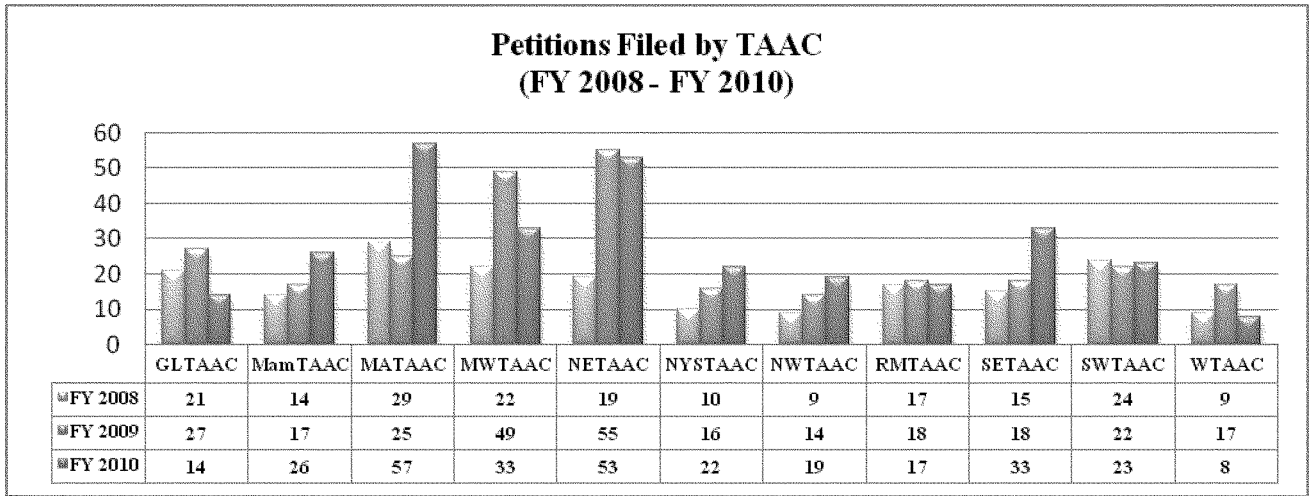
[1] As of May 17, 2009, the deadline for making a final determination is 40 days. Before May 17, 2009, EDA had 60 days to make a determination.

filing as required in the TGAAA. In fact, the average processing time for petitions has started to decline below the 40-day requirement.

Exhibit 5: Petition Activity: FY 2008–FY 2010

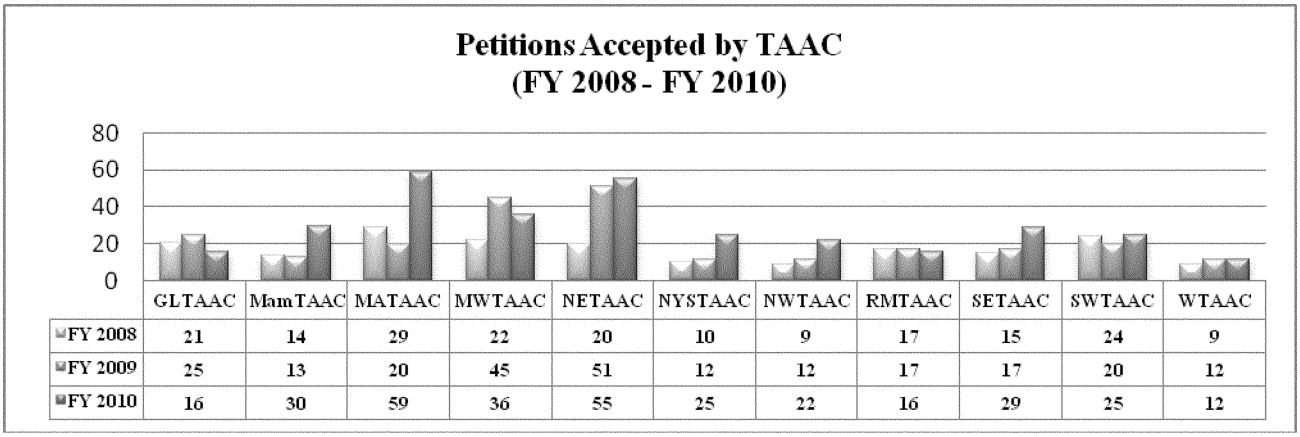
FY	Number of petitions filed	Number of petitions accepted for filing	Number of petitions certified	Number of petitions denied	Average days between acceptance and certification	Average days between filing and certification
2008	189	190	188	0	45	N/A
2009	278	244	216	1	44	89
2010	305	325	330	0	40	74
% Change (2009 to 2010)	10%	33%	53%	N/A	(9)%	(17)%

Exhibit 6: Petitions Filed by TAAC: FY 2008–FY 2010



	GLTAAC	MamTAAC	MATAAC	MWTAAC	NETAAC	NYSTAAC	NWTAAC	RMTAAC	SETAAC	SWTAAC	WTAAC
FY 2008	21	14	29	22	19	10	9	17	15	24	9
FY 2009	27	17	25	49	55	16	14	18	18	22	17
FY 2010	14	26	57	33	53	22	19	17	33	23	8

Exhibit 7: Petitions Accepted by TAAC: FY 2008–FY 2010



	GLTAAC	MamTAAC	MATAAC	MWTAAC	NETAAC	NYSTAAC	NWTAAC	RMTAAC	SETAAC	SWTAAC	WTAAC
FY 2008	21	14	29	22	20	10	9	17	15	24	9
FY 2009	25	13	20	45	51	12	12	17	17	20	12
FY 2010	16	30	59	36	55	25	22	16	29	25	12

Exhibit 8: Petitions Certified by TAAC: FY 2008–FY 2010

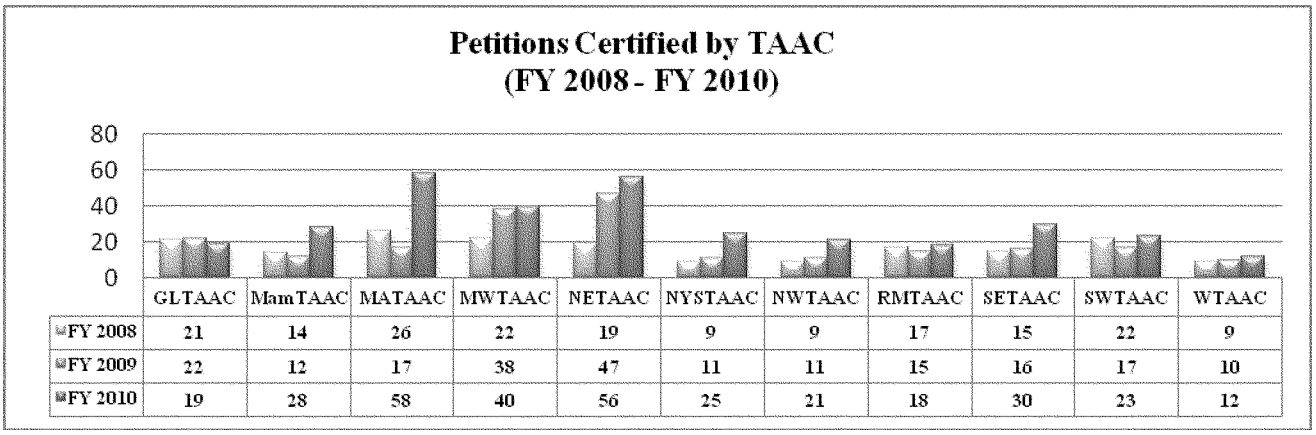
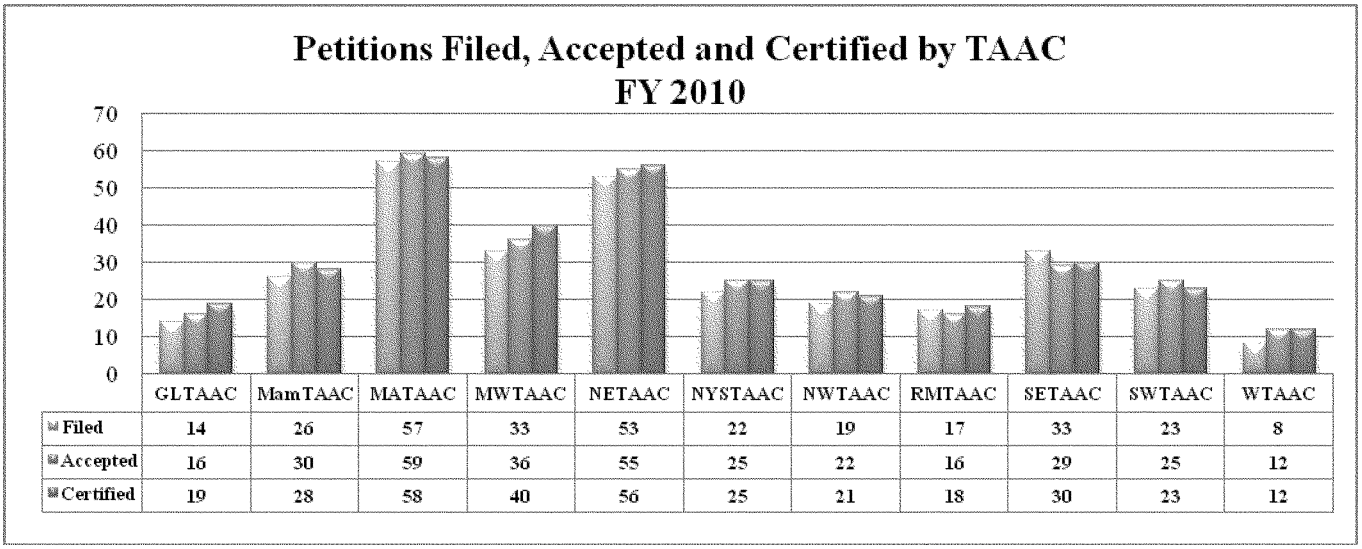


Exhibit 9: Petitions Filed, Accepted and Certified by TAAC: FY 2010 [2]

TAAC	Number of petitions filed [2]	Number of petitions accepted for filing [2]	Number of petitions certified
Great Lakes	14	16	19
Mid-America	26	30	28
MidAtlantic	57	59	58
Midwest	33	36	40
New England	53	56	56
New York State	22	26	25
Northwest	19	22	21
Rocky Mountain	17	16	18
Southeastern	33	30	30
Southwest	23	25	23
Western	8	12	12
Total	305	328	330

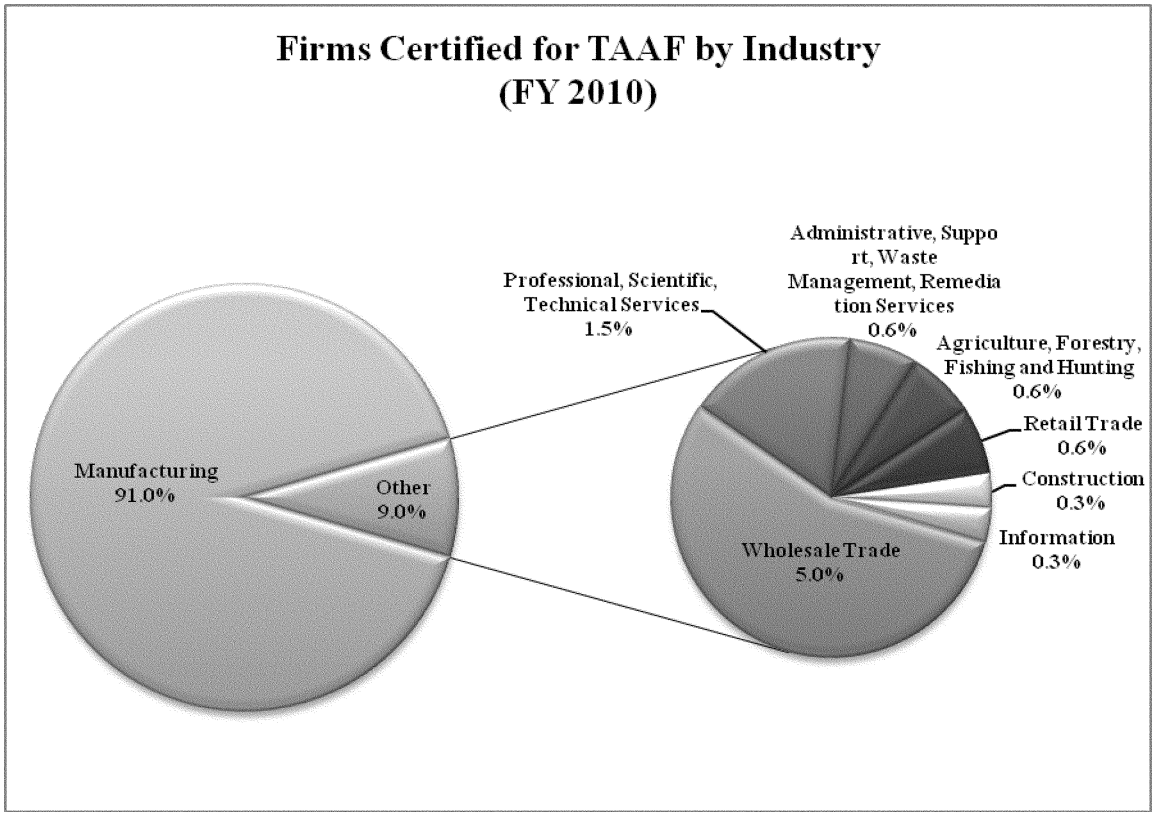
Exhibit 10: Petitions Filed, Accepted, and Certified by TAAC: FY 2010



[2] Petitions are certified on a rolling basis throughout the year, therefore activity in these categories may not result in certification within the same FY. These totals represent the activity under each category within FY 2010.

Exhibit 11: Firms Certified for TAAF by Industry: FY 2010

The majority of petitions certified for TAAF were submitted by firms in the manufacturing industry. Firms in wholesale trade and technical services rounded out the top three industries. Approximately 7 percent of firms certified in FY 2010 were service sector firms. Demand from service firms in FY 2011 is likely to increase at the same rate as FY 2010.



(5) The Number of Petitions Filed and Firms Certified for Each Congressional District of the United States

Exhibit 12: Petitions Filed by Congressional District: FY 2010

Congressional district(s)	No. of petitions filed
AK	
At Large	1
AL	
4	1
AR	
1	1
2	4
3	2
AZ	
5	1
6	1
CA	
13	1
30	1
32	1
34	1
43	1
CO	
1	2
2	2
3	3
4	1
5	1
CT	
1	2
2	2
5	1
6	1
FL	
10	1
21	1
22	1
24	1
GA	
2	2
5	1
6	1
7	1
9	1
HI	
1	1
ID	
1	3
IL	
3	2
4	1
5	3
6	3
8	1
10	1
13	1
14	4
16	1
17	1
IN	
2	1
7	1
8	1
13	1
KS	
1	2
2	2
3	1
4	2
KY	
1	1
2	2
3	1
LA	
2	2
3	3
6	1
7	1
MA	
1	4
3	3
4	3
5	3
6	3
7	3
9	4
10	2
MD	

Congressional district(s)	No. of petitions filed
2	1
4	1
ME	
1	3
2	3
MI	
1	1
7	1
9	2
11	3
12	1
MN	
3	2
4	1
5	1
6	1
7	1
MO	
1	1
2	1
4	1
5	2
6	1
7	4
8	2
MS	
1	1
MT	
At Large	3
NC	
7	2
8	1
9	1
10	1
11	1
12	1
ND	
1	3
NH	.....
1	4
NJ	
8	1
12	1
NY	
1	1
3	1
8	2
20	2
22	1
25	6
26	4
27	1
28	2
29	2
OH	
4	1
14	1
16	1
OK	
1	5
2	1
3	3
OR	
3	1
4	2
PA	
3	3
4	1
5	2
6	1
7	3
8	2
9	2
10	2
11	8
12	1
13	2
15	8
16	3
17	6
18	1
19	6
RI	
1	8
2	3
SC	
2	2
3	1
5	3
6	2
SD	
At Large	1
TN	
4	1
6	1
TX	
3	1
12	4
13	1
15	1
UT	
1	1
2	1
3	1
VA	
4	1
6	1
VT	
1	1
WA	
4	1
5	2
6	2
7	2
9	2
WI	
1	1
4	1
5	4
6	2
7	1

Exhibit 13: Petitions Certified by Congressional District: FY 2010

Congressional district(s)	No. of petitions certified
AK	
At Large	2
AL	
4	1
AR	
1	1
2	4
3	2
AZ	
4	1
CA	
7	1
20	1
26	1
30	1
31	1
32	1
34	1
43	1
48	1
CO	
1	1
2	2
3	3
4	1
5	1
6	1
CT	
1	2
2	2
5	1
6	1
FL	
10	1
22	1
24	1
GA	6
2	2
3	1
5	1
6	1
9	1
HI	
1	2
IA	
3	1
ID	
1	3
IL	
3	2
4	2
5	3
6	4
7	1
8	2
10	1
13	1
14	5
16	1
17	1
IN	
2	1
7	1
8	1
13	1
KS	
1	2
2	1
3	1
4	2
KY	
1	1
3	1
LA	
2	2
3	2
6	1
7	1
MA	
1	4
3	4
4	3
5	3
6	3
7	3
9	5
10	2
MD	
2	1

Congressional district(s)	No. of petitions certified
4	1
ME	
1	3
2	3
MI	
1	1
7	1
9	2
10	1
11	4
12	1
MN	
2	2
3	1
4	1
5	1
6	1
MO	
1	2
2	1
3	1
4	2
5	2
6	1
7	5
8	1
MS	
1	1
MT	
At Large	5
NC	
1	1
5	1
7	2
9	1
10	2
11	1
12	1
ND	
1	1
At Large	1
NH	
1	5
2	1
NY	
1	1
3	1
8	1
20	3
25	6
26	5
27	1
28	4
29	3
OH	
3	1
4	1
8	1
10	1
14	1
16	1
OK	
1	5
2	2
3	2
OR	
3	1
4	2
PA	
3	3
4	1
6	3
7	4
8	2
9	2
10	3
11	7
12	1
13	1
15	8
16	2
17	7
18	1
19	8
RI	
1	8
2	3
SC	
2	1
3	1
5	2
6	2
SD	
At Large	1
TN	
4	1
6	1
TX	
3	1
12	4
15	1
16	1
21	1
UT	
1	1
2	1
3	2
28	1
VA	
4	1
6	2
WA	
4	1
5	2
6	1
7	3
9	1
WI	
3	1
4	1
5	5
6	3

(6) The Number of Firms that Received Assistance in Preparing Their Petitions

In FY 2010, on average, 232 firms received assistance in preparing petitions per quarter. The total number of firms that received technical assistance varies each quarter as assistance is provided throughout the year. A firm receiving assistance in one quarter may continue to receive assistance in the following quarter.

Exhibit 14: Petition Assistance Activity per Quarter: FY 2010

TAAC	Average No. of firms receiving assistance with preparing petitions (per quarter)
Great Lakes	8
Mid-America	61
MidAtlantic	10
Midwest	49
New England	9
New York State	15
Northwest	15
Rocky Mountain	21
Southeastern	20
Southwest	5
Western	19
Total	232

(7) The Number of Firms That Received Assistance Developing Business Recovery Plans (Adjustment Proposals)

In FY 2010, on average, 146 firms received assistance in developing Adjustment Proposals; and 690 firms received assistance in the implementation of Adjustment Proposal plans per quarter. The total number of firms that received technical assistance varies each quarter as assistance is provided throughout the year. A firm receiving assistance in one quarter may continue to receive assistance in the following quarter.

Exhibit 15: Adjustment Proposal Development Activity per Quarter: FY 2010

TAAC	Average No. of firms receiving assistance with adjustment proposal development (per quarter)	Average No. of firms receiving assistance with adjustment proposal implementation (per quarter)
Great Lakes	4	58
Mid-America	14	63
MidAtlantic	13	85
Midwest	13	64
New England	16	103
New York State	13	30
Northwest	5	61
Rocky Mountain	18	79
Southeastern	21	54
Southwest	16	54
Western	13	39
Total	146	690

(8) The Number of Adjustment Proposals Approved and Denied by the Secretary of Commerce

In FY 2010, EDA approved all 265 Adjustment Proposals that were submitted; an additional 93 business

recovery plans, a 54 percent increase as compared to FY 2009.

Exhibit 16: Summary of Adjustment Proposals Approved: FY 2008–FY 2010

FY	Number of adjustment proposals approved	Total government share (millions)	Total firm share (millions)	Total projected adjustment proposal costs (millions)	Average government assistance per firm
2008	139	$7.9	$7.5	$15.4	$56,835
2009	172	$10.3	$9.8	$20.2	$59,884
2010	265	$16.4	$15.6	$32.1	$61,958
% Change (2009 to 2010)	54%	59%	59%	59%	3%

Exhibit 17: Adjustment Proposals Approved by TAAC: FY 2008–FY 2010

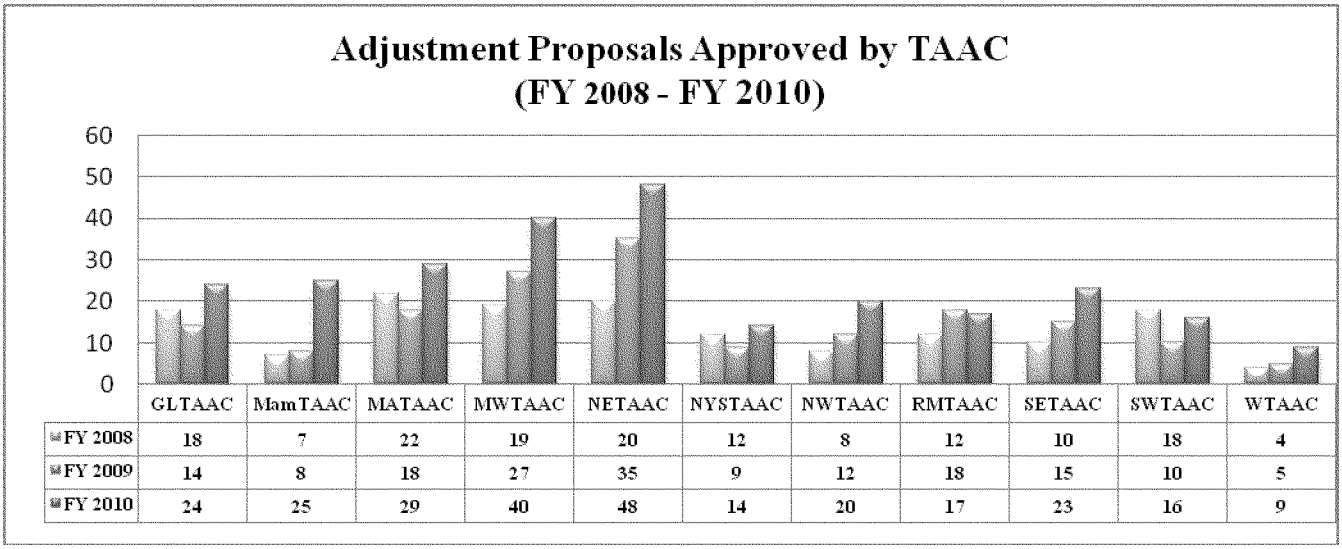


Exhibit 18: Adjustment Proposals Approved by TAAC: FY 2010

TAAC	Number of adjustment proposals approved
Great Lakes	24
Mid-America	25
MidAtlantic	29
Midwest	40
New England	48
New York State	14
Northwest	20
Rocky Mountain	17
Southeastern	23
Southwest	16
Western	9
Total	265

(9) Sales, Employment, and Productivity at Each Firm Participating in the Program at the Time of Certification

The average sales, employment and productivity of firms certified into the program in FY 2010 was higher than that of firms certified in FY 2009. For the purposes of this report, productivity is defined as net sales per employee. Since the certified firms are in various industries, which have a variety of ways to measure productivity, sales per employee was chosen as the productivity measure. This measure is used because it can be generally applied to all certified firms.

Exhibit 19: Comparison of Average Sales, Employment, and Productivity at Firms at the Time of Certification: FY 2008–FY 2010

FY	Average sales	Average employment	Average productivity
2008	$13,081,993	82	$159,537
2009	$10,338,422	79	$130,866
2010	$19,137,139	138	$138,675
% Change (2009 to 2010)	85%	74%	15%

Exhibit 20: Summary Comparison of Average Sales, Employment, and Productivity for Firms at the Time of Certification by TAAC: FY 2010

TAAC	Average sales	Average employment	Average productivity
Great Lakes	$35,127,822	177	$198,462
Mid-America	10,265,214	88	116,650
MidAtlantic	15,122,655	89	169,917
Midwest	22,062,757	114	193,533
New England	7,632,080	51	148,649
New York State	14,585,421	91	160,279
Northwest	8,720,395	72	121,117
Rocky Mountain	43,725,204	203	215,395
Southeastern	11,052,021	68	162,530
Southwest	7,529,645	366	20,573
Western	34,685,316	196	176,966
Total	19,137,139	138	138,675

Exhibit 21: Summary of Sales, Employment, and Productivity at Each Firm Participating in the Program at the Time of Certification: FY 2010

Firm No.	Sales ($)	Employment	Productivity ($)
—2118051509	$5,333,040	23	$231,871
—2111249509	1,208,258	7	172,608
—2104802926	2,455,461	39	62,961
—2103906847	1,328,000	10	132,800
—2083450313	42,874,044	185	231,752
—2073175636	16,101,898	137	117,532
—2068287522	11,938,999	31	385,129
—2059136725	60,764,758	181	335,717
—2023874564	2,518,000	21	119,905
—2010236141	3,019,178	25	120,767
—2007895508	613,906	6	102,318
—1997824464	4,171,401	41	102,795
—1990457870	7,559,350	98	77,136
—1973580510	45,487,139	457	99,534
—1958214488	7,467,369	49	153,429
—1956376675	1,780,606	24	74,973
—1941157067	612,124	5	122,425
—1899532397	2,037,257	4	479,355
—1898904502	315,272	5	63,054
—1884551502	9,040,000	58	155,862
—1880843073	5,265,708	41	128,432
—1838877792	3,483,609	31	112,374
—1828369285	17,140,309	162	105,804
—1759758341	6,010,971	50	120,219
—1742177269	9,976,653	62	160,914
—1740960093	13,154,390	45	292,320
—1740086291	26,940,727	147	183,270
—1739842518	2,310,068	27	85,558
—1704715418	12,875,152	171	75,293
—1661485163	3,393,780	31	109,477
—1635069591	7,537,000	51	147,784
—1542448328	9,922,578	120	82,688
—1520701304	4,697,310	77	61,004
—1484222959	1,444,014	11	131,274
—1471661205	6,322,000	40	158,050
—1461073515	92,484,000	302	306,238
—1454186553	282,778	4	70,695
—1432738384	3,528,890	33	106,936
—1427334167	37,484,000	359	104,412
—1417226723	983,006	11	89,364
—1281724603	4,028,000	38	106,000
—1243439974	22,596,956	99	228,252
—1241427110	10,487,391	104	100,840
—1187326382	707,341	4	176,835
—1169045359	5,046,000	43	117,349

Firm No.	Sales ($)	Employment	Productivity ($)
—1129223838	10,578,429	104	101,716
—1128703111	1,354,620	14	96,759
—1126326868	2,212,064	19	116,424
—1116912576	5,470,620	25	218,825
—1097459358	92,988,380	461	201,601
—1086130450	26,260,884	105	250,509
—1038621441	14,126,803	103	137,153
—1004329971	17,601,176	165	106,674
—1000240433	15,690,666	102	153,830
—999105849	2,547,000	21	121,286
—995226650	4,930,000	24	205,417
—947962116	4,549,568	34	133,811
—934975561	4,495,541	39	115,270
—885365563	3,121,641	34	91,813
—857031178	11,353,000	99	114,677
—852461053	932,387	143	6,520
—843055880	1,606,394	36	44,622
—840166025	10,585,957	109	97,119
—806944983	9,609,077	85	113,048
—794575305	1,406,804	3	468,935
—788484912	15,056,348	108	139,411
—779297214	108,005,394	736	146,746
—759779489	43,715,000	160	273,219
—726121634	1,660,145	14	118,582
—702330654	12,073,751	125	96,590
—692565138	6,173,766	23	268,425
—681139744	13,963,911	85	164,281
—674357347	5,304,000	52	102,000
—672809309	10,311,629	28	368,272
—654901806	10,811,000	53	203,981
—622207779	3,122,027	41	76,147
—591889087	2,346,285	237	9,900
—585725005	16,463,961	85	193,694
—560318612	4,131,687	22	190,664
—554924474	171,103	3	57,034
—550588573	943,348	10	97,554
—543809333	9,295,728	25	371,829
—504989951	25,003,966	78	320,235
—436909589	11,245,912	337	33,371
—429565845	194,828	8	24,354
—426260672	677,432	12	56,453
—413262258	16,722,097	104	160,789
—370373838	2,195,090	14	156,792
—356857349	8,882,300	105	84,593
—347882712	10,155,480	508	19,991
—334795766	2,737,505	31	88,307
—334691552	2,927,563	25	117,103
—325246775	16,232,121	108	150,297
—322389137	3,344,284	32	104,509
—311586268	939,857	5	187,971
—297716183	34,926,049	192	181,509
—263774128	4,637,869	42	110,425
—229337262	1,529,815	18	84,990
—222714747	10,140,682	157	64,590
—172876934	3,873,669	41	94,480
—167523770	1,377,000	15	91,800
—138492743	10,056,766	35	287,336
—126595790	5,781,000	116	49,836
—111557939	14,913,000	108	138,083
—106605238	94,110,272	316	297,817
—80321537	2,496,868	28	88,135
—75360888	3,998,950	21	190,426
—72799676	14,999,842	67	223,878
—52573030	3,731,345	38	99,503
—41850669	20,268,686	98	206,823
—2420921	1,191,242	13	91,634
—438018	32,608,321	116	281,106
16573262	2,803,311	21	133,491
22130970	8,378,094	55	152,329
48907681	1,447,117	11	136,779
83564872	1,099,835	13	84,603
85474563	3,475,788	50	69,516
92019186	4,882,733	27	180,842
98077462	6,103,725	66	92,481

Firm No.	Sales ($)	Employment	Productivity ($)
132107069	4,875,150	55	88,639
215326868	8,232,877	105	78,408
235292569	201,980,000	934	216,253
278618212	313,150	5	62,630
294844867	613,236	10	61,324
299352457	1,090,852	14	77,918
300171006	2,425,844	22	112,830
370006245	45,317,479	260	174,634
375977128	3,275,986	30	109,200
416345364	6,160,767	431	14,294
431287226	6,578,244	344	19,123
434352811	853,056	19	43,972
447765204	4,050,320	32	126,573
456495450	22,274,281	77	289,276
457871548	166,600,000	660	252,424
460220479	5,323,864	37	143,888
461983321	9,815,491	70	140,221
488397464	3,814,820	2122	1,798
507638153	1,168,480	14	83,463
605479507	3,393,771	35	96,965
695555564	3,774,516	18	209,695
709865456	2,505,135	34	73,680
725507790	134,197,000	914	146,824
737303963	7,042,585	40	176,065
742517299	3,196,691	52	61,475
765990946	11,298,809	110	102,716
769259150	7,770,655	16	485,666
774637751	14,856,715	62	239,624
807998327	19,015,349	846	22,477
816528506	9,998,096	41	242,085
821736854	4,502,400	57	78,989
831153636	884,344	130	6,803
870096733	10,389,478	82	126,701
916493089	5,939,422	57	104,200
920775500	13,044,545	691	18,878
921991757	23,726,780	113	209,972
923653641	2,722,000	18	151,222
931084257	19,809,756	57	347,540
931353658	13,942,054	69	202,059
936755382	1,990,490	24	82,937
938704928	9,793,612	126	77,727
952223001	3,371,521	31	108,759
974323566	7,510,846	78	96,293
998418962	4,612,000	35	131,771
1008993417	1,065,256	21	50,726
1036673242	86,665,926	458	189,227
1047544912	12,706,348	167	76,086
1079241463	639,588	4	159,897
1080100154	13,493,317	86	156,899
1157306813	23,214,000	204	113,794
1170995123	1,954,476	13	150,344
1176704596	1,551,985	23	68,369
1190314840	16,885,829	808	20,898
1190725189	6,360,142	68	93,532
1199996737	12,773,634	66	193,540
1208792226	2,043,850	21	97,326
1237998436	14,291,766	134	106,655
1246033896	15,392,000	58	265,379
1246285115	11,261,303	61	184,612
1246302114	40,310,044	3115	12,941
1246892583	5,306,225	43	123,401
1247153819	7,454,736	63	118,329
1247167949	57,390,191	259	221,584
1247662700	105,504,196	395	267,099
1247670190	112,370,000	998	112,595
1247750161	158,893	4	39,723
1247758341	5,834,248	68	85,798
1247766035	5,108,385	34	150,247
1249481184	1,492,256	12	124,355
1250022715	7,189,955	76	94,605
1250103435	28,962,384	187	154,879
1250105714	4,800,000	53	90,566
1250174776	20,457,000	124	164,976
1250186876	88,739,000	333	266,483

Firm No.	Sales ($)	Employment	Productivity ($)
1250192980	433,632	4	108,408
1250257754	3,281,352	41	80,033
1251302450	4,018,650	40	100,466
1252079576	110,491,969	497	222,318
1252436282	217,035	2	108,518
1253720272	14,816,335	77	192,420
1254322240	100,962,620	320	315,508
1255105505	465,216	5	93,043
1256321189	1,731,646	20	86,582
1256768152	2,917,626	34	85,813
1256819844	52,569,607	195	269,588
1256829696	5,821,437	62	93,894
1256861475	511,901	4	127,975
1256921129	7,230,791	24	301,283
1257376509	1,926,715	25	77,378
1257516574	10,874,000	99	109,838
1258743222	8,813,262	42	209,840
1260826068	1,978,584	22	89,936
1262959682	15,889,753	86	184,765
1264723282	3,640,000	20	182,000
1266339861	6,975,566	45	155,013
1266353281	11,331,686	135	83,938
1266507166	640,737	9	71,193
1266857885	1,625,000	19	85,526
1266942829	7,291,000	118	61,788
1266943121	16,868,347	115	146,173
1266947270	1,876,145	32	58,630
1267027715	1,656,638	29	57,622
1267462374	663,920	10	66,392
1267470068	10,547,269	76	138,780
1267543458	6,961,334	90	77,348
1267648076	3,323,141	26	127,813
1267651976	10,210,351	71	143,808
1268086064	10,016,000	34	294,588
1268146310	3,392,384	45	75,386
1268157420	25,542,464	321	79,572
1268224827	1,532,111	8	191,514
1268670167	355,324,231	1143	310,870
1268744533	2,474,000	43	57,535
1268751244	1,688,308	16	105,519
1268925702	1,794,208	14	128,158
1268951389	22,679,000	152	149,204
1269004689	161,938	3	52,577
1269269057	4,748,940	20	237,447
1269271489	3,866,340	30	128,878
1269291616	2,906,220	34	85,477
1269368306	20,343,681	108	188,367
1269436574	991,000	203	4,882
1269956130	48,092,000	352	136,625
1270041484	2,214,350	21	105,045
1270057007	11,118,850	90	123,543
1270480498	6,162,659	69	89,314
1270494120	7,701,343	64	120,333
1271250626	8,126,174	98	82,920
1271253012	3,574,300	26	137,473
1271254787	2,428,448	17	142,850
1271444344	3,399,635	38	89,464
1273082444	1,757,269	19	92,488
1273151594	2,636,265	18	146,459
1273511065	3,415,979	38	89,894
1273604467	935,330	16	59,386
1273670517	1,588,074	9	176,453
1274280512	185,220	1	185,220
1274377941	59,439,842	223	266,546
1274732253	4,418,363	33	133,890
1274891083	8,212,101	89	92,271
1274904043	7,013,000	55	127,509
1274977621	10,041,631	107	93,847
1274982453	24,617,949	165	149,200
1275498608	8,194,926	82	99,938
1275501481	8,854,439	42	210,820
1275511967	8,679,385	47	186,333
1276001619	1,921,000	10	192,100
1276010273	837,229	8	104,654

Firm No.	Sales ($)	Employment	Productivity ($)
1276103578	6,547,098	43	152,258
1276522602	1,096,375	14	78,313
1276536764	1,760,404	7	251,486
1276720693	23,845,594	153	155,854
1276793499	912,115	8	114,014
1276868869	90,881,308	633	143,572
1276881128	6,249,947	65	96,153
1277148172	4,047,406	51	79,361
1277321808	29,153,315	202	144,323
1277389938	1,154,435	11	104,949
1277834733	32,327,732	144	225,280
1279745224	209,812,000	990	211,931
1280248531	9,645,673	48	200,952
1280327279	5,206,736	17	306,279
1280333008	1,855,202	19	97,642
1280413966	12,554,000	181	69,359
1280432405	9,508,149	73	130,249
1280778333	15,244,156	65	234,525
1281015259	4,717,220	56	84,236
1281019133	4,188,055	23	182,089
1281025757	4,588,575	31	148,019
1281031551	844,748	6	151,389
1281037430	686,821	8	85,853
1281105917	5,609,499	23	243,891
1281107514	2,896,917	16	180,157
1282051642	10,719,785	111	96,575
1282140686	4,415,042	35	125,534
1288447499	9,275,776	68	136,408
1294227725	1,198,400	19	63,074
1295078554	69,520,128	245	283,756
1350478164	7,764,988	73	106,735
1364503640	2,604,710	13	200,362
1397900651	20,812,200	72	289,058
1438893258	709,112	9	76,661
1442035945	104,000	62	1,677
1456199116	14,937,310	71	210,385
1461210273	688,001	5	137,600
1489228822	34,534,810	222	155,562
1508209231	58,126,775	247	235,331
1528554001	34,240,000	191	179,267
1531789493	6,468,184	656	9,860
1535674410	83,743,273	391	214,177
1565479699	4,024,755	31	129,831
1569320561	2,785,528	32	87,048
1605100384	1,196,061	172	6,954
1625376772	5,722,000	63	90,825
1658462633	191,092,628	608	314,297
1739021199	7,540,427	61	123,614
1751920052	4,841,397	70	69,163
1866991437	2,250,498	36	62,514
1871304606	1,807,141	17	106,302
1874228463	10,409,004	76	136,961
1919568775	1,769,572	18	98,310
1974568513	430,401	16	27,768
1974830581	1,518,225	16	94,889
1976603120	4,028,269	37	108,872
1995751409	14,548,104	254	57,276
2012969340	24,295,000	185	131,324
2044046179	27,293,631	110	248,124
2050270334	59,757,408	192	311,237
2071124572	30,636,210	212	144,510
2086748305	37,808,432	175	216,048
2109627131	11,900,000	75	158,667

(10) Sales, Employment, and Productivity at Each Firm Upon Completion of the Program and Each Year for the Two-year Period Following Completion

Firms that completed the TAAF Program in FY 2008 report that at completion, average sales were $10.9 million, average employment was 73, and average productivity was $150,674 (sales per employee).

Between FY 2008 and FY 2009, one year after completing the program, firms report that average sales increased by one percent, average employment decreased by 10 percent, and average productivity increased by 11 percent. The Bureau of Labor Statistics (BLS) reports that nationwide for the manufacturing industry, average employment decreased 12 percent and

average productivity increased by 4 percent.

Between FY 2008 and FY 2010, two years after completing the program, firms report that average sales decreased by 14 percent, average employment decreased by 16 percent, and average productivity increased by 3 percent. BLS reports that nationwide for the manufacturing industry, average employment decreased 12 percent and average productivity increased by 9 percent.

For the purposes of this report, data was reported only for firms where all data was available. Since the certified firms are in various industries, which have a variety of ways to measure productivity, sales per employee was chosen as the productivity measure. This measure is used because it can be generally applied to all certified firms. However, BLS' productivity measures relate output to the labor hours used in the production of that output.

Exhibit 22: Summary of Average Sales, Employment, and Productivity at Firms Upon Completion of the Program and the One-Year Period Following Completion

Program completion	Average sales	Average employment	Average productivity
Completion (FY 2008)	$10,999,200	73	$150,674
1st Year Following Completion (FY 2009)	$11,079,460	66	$167,871
% Change 1st Year Following Completion	1%	−10%	11%

Exhibit 23: Summary of Average Sales, Employment, and Productivity at Firms Upon Completion of the Program and the Two-Year Period Following Completion

Program completion	Average sales	Average employment	Average productivity
Completion (FY 2008)	$10,999,200	73	$150,674
2nd Year Following Completion (FY 2010)	$9,498,479	61	$155,713
% Change 2nd Year Following Completion	−14%	−16%	3%

Exhibit 24: Sales, Employment, and Productivity at Each Firm Upon Completion of the Program and Two-Year Period Following Completion

Firm ID	Average sales at completion (FY 2008)	Average sales 1st yr following completion (FY 2009)	Average sales 2nd yr following completion (FY 2010)	Average employment at completion (FY 2008)	Average employment 1st yr following completion (FY 2009)	Average employment 2nd yr following completion (FY 2010)	Average productivity at completion (FY 2008)	Average productivity 1st yr following completion (FY 2009)	Average productivity 2nd yr following completion (FY 2010)
FY08–01	$39,390,601	$37,698,350	$21,692,925	325	275	173	$121,202	$137,085	$125,393
FY08–05	10,630,000	10,800,000	4,800,000	64	55	38	166,094	196,364	126,316
FY08–03	28,400,000	31,500,000	25,150,000	190	180	158	149,474	175,000	159,177
FY08–04	5,130,000	5,800,000	5,325,204	33	35	31	155,455	165,714	171,781
FY08–02	16,500,000	17,800,000	17,000,000	53	55	56	311,321	323,636	303,571
FY08–23	3,000,000	2,000,000	2,000,000	25	25	23	120,000	80,000	86,957
FY08–24	7,500,000	7,000,000	7,020,687	67	65	65	111,940	107,692	108,011
FY08–20	2,000,000	1,000,000	2,400,000	21	10	22	95,238	100,000	109,091
FY08–25	4,200,000	4,000,000	4,200,000	33	31	33	127,273	129,032	127,273
FY08–26	1,700,000	1,100,000	1,200,000	9	9	9	188,889	122,222	133,333
FY08–21	6,056,458	5,500,000	3,006,918	27	31	21	224,313	177,419	143,187
FY08–28	3,070,000	3,080,000	2,300,000	19	18	15	161,579	171,111	153,333
FY08–22	10,200,000	9,000,000	10,000,000	58	55	57	175,862	163,636	175,439
FY08–27	18,750,000	17,000,000	18,500,000	86	80	85	218,023	212,500	217,647
FY08–30	275,000	248,000	229,000	6	8	7	45,833	31,000	32,714
FY08–29	313,000	416,000	533,000	22	12	12	14,227	34,667	44,417
FY08–34	3,081,000	2,220,000	1,597,000	39	25	22	79,000	88,800	72,591
FY08–31	17,500,000	14,200,000	10,900,000	195	160	120	89,744	88,750	90,833
FY08–32	3,210,000	4,273,000	4,637,000	36	41	35	89,167	104,220	132,486
FY08–36	18,592,000	18,227,000	16,852,000	130	105	125	143,015	173,590	134,816
FY08–37	354,000	859,000	1,117,000	5	7	6	70,800	122,714	186,167
FY08–33	30,000,000	40,000,000	40,000,000	200	100	120	150,000	400,000	333,333
FY08–35	14,300,000	14,200,000	13,000,000	38	35	37	376,316	405,714	351,351
FY08–38	6,500,000	7,100,000	8,400,000	50	68	80	130,000	104,412	105,000
FY08–39	37,000,000	40,000,000	43,000,000	440	429	439	84,091	93,240	97,950
FY08–41	7,500,000	8,900,000	9,400,000	25	29	31	300,000	306,897	303,226
FY08–40	8,500,000	10,500,000	10,750,000	15	25	28	566,667	420,000	383,929
FY08–44	911,948	881,669	430,401	20	16	11	45,597	55,104	39,127
FY08–42	1,972,425	1,629,361	945,420	18	14	14	109,579	116,383	67,530
FY08–43	19,493,382	15,767,000	19,000,000	88	86	86	221,516	183,337	220,930
FY08–47	520,610	452,662	301,635	8	6	5	65,076	75,444	60,327
FY08–49	4,250,000	3,386,346	1,818,408	22	19	15	193,182	178,229	121,227
FY08–57	769,184	816,322	674,255	11	11	10	69,926	74,211	67,426

Firm ID	Average sales at completion (FY 2008)	Average sales 1st yr following completion (FY 2009)	Average sales 2nd yr following completion (FY 2010)	Average employment at completion (FY 2008)	Average employment 1st yr following completion (FY 2009)	Average employment 2nd yr following completion (FY 2010)	Average productivity at completion (FY 2008)	Average productivity 1st yr following completion (FY 2009)	Average productivity 2nd yr following completion (FY 2010)
FY08–56	2,960,719	3,027,576	2,292,154	37	37	33	80,019	81,826	69,459
FY08–53	7,278,583	6,535,827	4,675,983	43	36	36	169,269	181,551	129,888
FY08–52	6,160,677	6,101,363	4,593,196	34	26	27	181,196	234,668	170,118
FY08–54	41,000,000	40,000,000	22,500,000	75	70	75	546,667	571,429	300,000
FY08–55	29,000,000	28,000,000	18,700,000	200	204	147	145,000	137,255	127,211
Total	10,299,200	11,079,460	9,498,479	73	66	61	150,674	167,871	155,713

(11) The Financial Assistance Received by Each Firm Participating in the Program

(12) The Financial Contribution Made by Each Firm Participating in the Program

In FY 2010, firms received $8.7 million in technical assistance provided by the TAACs to prepare petitions; and in the development and implementation of Adjustment Proposals (often through business consultants and other experts). Firms participating in the program contributed $6.1 million towards the development and implementation of Adjustment Proposals. Funds are not provided directly to firms; instead EDA funds TAACs and TAACs pay a cost-shared proportion of the cost to secure specialized business consultants.

Exhibit 25: Summary of TAAF Program Financial Assistance by TAAC: FY 2010

TAAC	TAAC assistance to firms	Amount paid to consultants by the TAACs	Total TAAC assistance to firms (TAACs + consultants)	Financial contribution by the firms
Great Lakes	$196,060	$677,560	$873,620	$646,809
Mid-America	93,836	466,399	560,235	466,399
MidAtlantic	309,655	910,562	1,220,217	910,562
Midwest	178,428	705,954	884,382	631,906
New England	229,249	1,283,189	1,512,438	1,256,739
New York State	152,425	366,230	518,655	271,104
Northwest	53,257	499,053	552,310	443,905
Rocky Mountain	493,122	433,261	926,383	433,261
Southeastern	243,177	514,935	758,112	495,659
Southwest	128,997	453,751	582,748	373,376
Western	98,004	183,943	281,947	170,524
Total	2,176,210	6,494,837	8,671,047	6,100,244

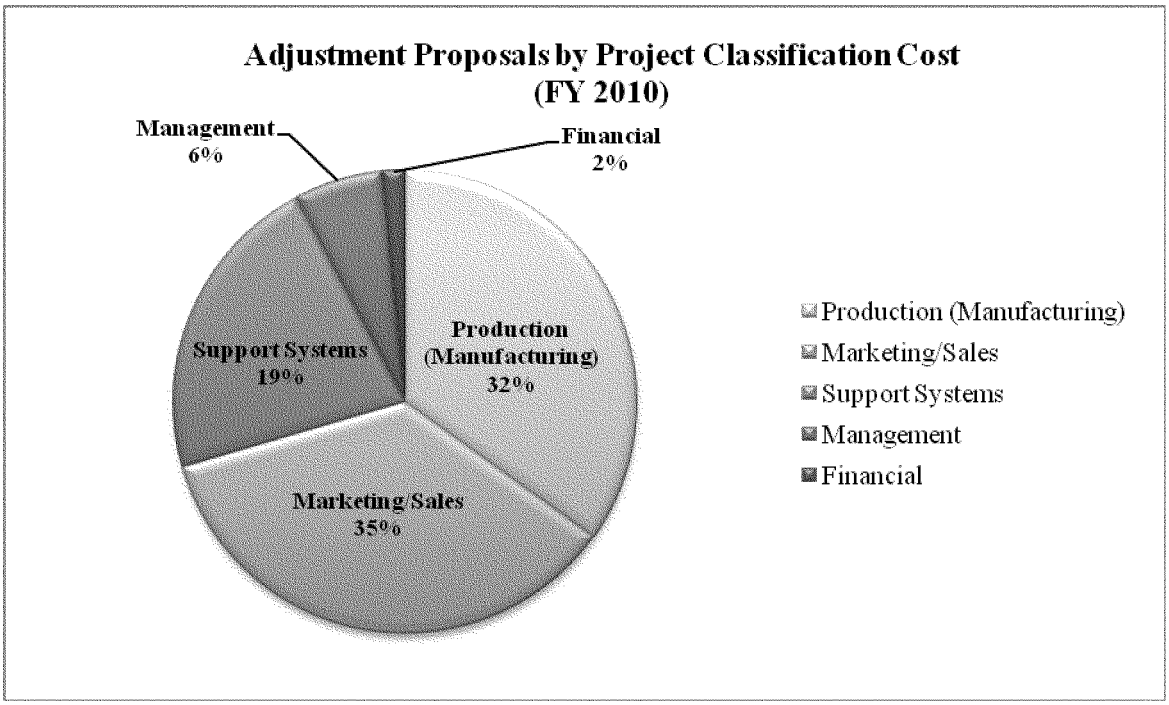
(13) The Types of Technical Assistance Included in the Adjustment Proposals of Firms Participating in the Program

Firms proposed various types of projects in Adjustment Proposals. Marketing/sales projects are geared toward increasing revenue, whereas production/manufacturing projects tend to be geared toward cutting costs. Support system projects can provide a competitive advantage by either cutting costs or creating new sales channels. Management and financial projects are designed to improve management's decision making ability and business control. More than half of all firms proposed to implement marketing/sales or production/manufacturing projects. Sample projects are listed below in Exhibit 26.

Exhibit 26: Characteristics of Technical Assistance in Adjustment Proposals: FY 2010

Project classification	Sample types of projects	Number of adjustment proposal projects	Adjustment proposal project costs
Financial	• Accounting systems upgrade • Cost control tracking system • Automatic Data Processing development	30	$517,000
Management	• Strategic business planning • Succession management • Management development	79	1,987,100
Marketing/Sales	• Sales process training • Market expansion and feasibility analysis • Web site design and upgrade	228	11,416,092
Production	• Lean manufacturing and certification • New product development • Production and warehouse automation	215	11,918,300
Support Systems	• Enterprise Resource Planning • MIS upgrades • Computer Aided Design software • Supply chain management software	162	6,984,400

Exhibit 27: Adjustment Proposals by Project Classification: FY 2010



(14) The Number of Firms Leaving the Program Before Completing the Project or Projects in Their Adjustment Proposals and the Reason the Project Was Not Completed

In FY 2010, of the 102 firms that left the TAAF program, 57 completed the program and the remaining 45 firms left for the reasons listed below in Exhibit 28.

Exhibit 28: Summary of Firms Leaving the TAAF Program: FY 2010

Reason for leaving program	Number of firms
Completed Assistance	57
Firm Filed Chapter 11	1
Firm Sold	2
Inadequate Funds for Project Implementation	4
Lost Interest in Program	4
Out of Business	11
Past 5-year Threshold	23
Total	102

Conclusion

TAAF effectively targeted small and medium sized firms FY 2010. The average sales, employment and productivity of firms certified into the program in FY 2010 was higher than that of firms certified in FY 2009. More than half of all firms proposed to implement a marketing/sales project or production/engineering project in their Adjustment Proposals.

Firms that completed the TAAF Program in FY 2008 report that at completion, average sales were $10.3 million, average employment was 73, and average productivity was $140,977 (sales per employee). One year after completing the program (FY 2009), firms report that average sales increased by one percent, average employment decreased by 10 percent, and average productivity increased by 11 percent. BLS reported that nationwide for the manufacturing industry in FY 2009, average employment decreased 12 percent and average productivity increased by 4 percent. Two years after completing the program (FY 2010), firms report that average sales decreased by 14 percent, average employment decreased by 16 percent, and average productivity increased by 3 percent. BLS reported that nationwide for the manufacturing industry in FY 2010, average employment decreased 12 percent and average productivity increased by 9 percent.

Overall, there has been an increase in the demand for the TAAF Program in FY 2010, as demonstrated by the increase in the number of petitions for certification and Adjustment Proposals submitted to EDA for approval. In FY 2010, EDA approved an additional 114 petitions, a 53 percent increase as compared to FY 2009; and approved an additional 93 Adjustment Proposals, a 54 percent increase as compared to FY 2009.

The addition of TAAF staff resources facilitated EDA's ability to improve processing time for petitions and Adjustment Proposals in FY 2010. Although there was a spike in petitions and Adjustment Proposals, EDA successfully met the 40-day processing deadline to make a final determination for petitions accepted for filing; and the 60-day processing deadline for approval of Adjustment Proposals as required in the TGAAA. In fact, the average processing time for petitions has started to decline below the 40-day requirement and the average processing time for Adjustment Proposals is below 30 days.

Dated: January 20, 2011.

Bryan Borlik,

Director, Trade Adjustment Assistance for Firms Program.

[FR Doc. 2011–1583 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–814]

Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 6, 2011, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") results of redetermination, which construed the scope of the *Order*[1] as excluding carbon steel butt-weld pipe fittings from the People's Republic of China ("PRC") used in structural applications, pursuant to the CIT's remand order in *King Supply Co. LLC, d/b/a King Architectural Metals* v. *United States,* Slip Op. 10–111, Court No. 09–00477 (September 30, 2010) ("*King Supply I*"). *See* Final Results of Redetermination Pursuant to Remand, Court No. 09–00477, dated December 1, 2010; *King Supply Co. LLC, d/b/a King Architectural Metals,* v. *United States,* Slip Op. 11–2, Court No. 09–00477 (January 6, 2011) ("*King Supply II*"). Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final scope ruling and is amending its final scope ruling on carbon steel butt-weld pipe fittings from the PRC used in structural applications. *See* Memorandum from Edward C. Yang, Senior NME Coordinator for Import Administration to John M. Andersen, Acting Deputy Assistant Secretary for Import Administration, Final Scope Ruling: Antidumping Duty Order on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, dated October 20, 2009 ("Final Scope Ruling").

DATES: *Effective Date:* January 16, 2011.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Operations, Office 9, Import Administration—International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–3208.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2009, the Department issued a final scope ruling on carbon steel butt-weld pipe fittings from the PRC used in structural applications. *See* Final Scope Ruling. In the Final Scope Ruling, the Department found that carbon steel butt-weld pipe fittings from the PRC used in structural applications were covered by the *Order* because they met the physical description of subject merchandise. *See* Final Scope Ruling, at 6.

In *King Supply I,* the CIT determined that the scope language of the *Order* contains an end-use element that results in the exclusion of pipe fittings used to join sections in structural applications from the *Order.* Therefore, the CIT ordered the Department to issue a scope determination that construes the scope of the *Order* as excluding carbon steel butt-weld pipe fittings used in structural applications. *See King Supply I,* at 3.

On December 1, 2010, the Department issued its final results of redetermination pursuant to *King Supply I.* Pursuant to the remand order in *King Supply I,* we construed the scope of the *Order* as excluding carbon steel butt-weld pipe fittings used only in structural applications. The CIT sustained the Department's remand redetermination on January 6, 2011. *See King Supply II.*

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's January 6, 2011, judgment sustaining the Department's remand redetermination construing the scope of the *Order* as excluding carbon steel butt-weld pipe fittings used only in structural applications, constitutes a final decision of that court that is not in harmony with the Department's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of carbon steel butt-weld pipe fittings from the PRC used only in structural applications pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate on carbon steel butt-weld pipe fittings used only in structural applications will be zero percent.

Amended Final Scope Ruling

Because there is now a final court decision with respect to carbon steel butt-weld pipe fittings from the PRC used in structural applications, the Department amends its final scope ruling and now finds that the scope of the *Order* excludes carbon steel butt-weld pipe fittings used only in structural applications. The Department will instruct U.S. Customs and Border Protection ("CBP") that the cash deposit rate on carbon steel butt-weld pipe fittings used only in structural applications will be zero percent. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of carbon steel butt-weld pipe fittings from the PRC used only in structural applications without regard to antidumping duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with sections 516A(c)(1) of the Tariff Act of 1930, as amended.

Dated: January 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–1650 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China,* 57 FR 29702 (July 6, 1992) ("*Order*").

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On January 18, 2011, the binational panel issued its decision in the review of the United States International Trade Commission's (the Commission) final injury determination in Certain Welded Large Diameter Line Pipe from Mexico (NAFTA Secretariat File Number USA–MEX–2007–1904–03). The binational panel remanded the Commission's determination. The Commission is directed to issue its determination on remand on or before

March 22, 2011. Copies of the panel's decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Dated: January 21, 2011.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2011–1668 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China (PRC): Rescission of Antidumping Duty New-Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Hanson Diamond Tools (Danyang) Co., Ltd. (Hanson), the Department of Commerce (the Department) initiated a new-shipper review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China (PRC) covering the period January 23, 2009, through October 31, 2010. On January 10, 2011, Hanson withdrew its request; therefore, we are rescinding this new-shipper review.

DATES: *Effective Dates:* January 26, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Aditi Palli, AD/CVD Operations 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1757 and (202) 482–7871, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2011, the Department initiated an antidumping duty new-shipper review of Hanson. See *Diamond Sawblades and Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 76 FR 775 (January 6, 2011). On January 10, 2011, Hanson withdrew its request for a new-shipper review.

Rescission of New-Shipper Review

Section 351.214(f)(1) of the Department's regulations provides that the Department may rescind a new-shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Hanson withdrew its request for a review on January 10, 2011, which is within the 60-day deadline. Therefore, the Department is rescinding the new-shipper review of Hanson.

Effective with the publication of this notice, entries of diamond sawblades and parts thereof from the PRC from Hanson will be subject to the PRC-wide cash-deposit rate of 164.09 percent.

Notification

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This rescission and notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: January 20, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Operations.

[FR Doc. 2011–1651 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Implantation and Recovery of Archival Tags for Highly Migratory Species

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 March 28, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Clark, (301) 713–2347 or *michael.clark@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. The National Oceanic and Atmospheric Administration (NOAA) allows scientists to implant archival tags in, or affix archival tags to, selected Atlantic Highly Migratory Species (tunas, sharks, swordfish, and billfish). Archival tags collect location, temperature, and water depth data that is useful for scientists researching the movements and behavior of individual fish. It is often necessary to retrieve the tags in order to obtain the collected data; therefore, persons catching tagged fish are exempted from other normally applicable regulations (*i.e.,* immediate release of the fish, minimum size, prohibited species, retention limits). These participants must notify NOAA, return the archival tag or make it available to NOAA personnel, and provide information about the location and method of capture if they harvest a fish that has an archival tag. The information obtained is used by NOAA in the formation of international and

domestic fisheries policy and regulations.

Scientists outside of NOAA who affix or implant archival tags must obtain prior authorization from NOAA and submit subsequent reports about the tagging of fish. NOAA needs this information to evaluate the effectiveness of archival tag programs, to assess the likely impact of regulatory allowances for tag recovery, and to ensure that the research does not produce excessive mortality.

II. Method of Collection

Tags and associated information are either mailed in to NOAA and/or information may be collected via telephone.

III. Data

OMB Control Number: 0648–0338.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected public: Individuals or households; business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 32.

Estimated Time per Response: 30 minutes for reporting an archival tag recovery (25 respondents); 40 minutes each for notification of planned archival tagging activity and three reports (2 interim reports and 1 annual report) (7 respondents).

Estimated Total Annual Burden Hours: 32.

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: January 20, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–1514 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Economic Expenditure Survey of Golden Crab Fishermen in the U.S. South Atlantic Region

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 March 28, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Scott Crosson, (305) 361–4468 or *scott.crosson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect economic information from golden-crab landing commercial fishermen in the U.S. South Atlantic region. The data gathered will be used to evaluate the likely economic impacts of management proposals. In addition, the information will be used to satisfy legal mandates under Executive Order 12898, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and other pertinent statues.

II. Method of Collection

A standardized survey will be administered via in-person, telephone and/or mail to all fishermen participating in the fishery.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 9.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 9.

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: January 20, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–1515 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA173

Endangered Species; File No. 15552

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service Southeast Fisheries Science Center

(SEFSC) [Bonnie Ponwith: Responsible Party], 75 Virginia Beach Drive, Miami, FL 33149, has applied in due form for a permit to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), olive ridley (*Lepidochelys olivacea*), leatherback (*Dermochelys coriacea*), and unidentified hardshell sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 25, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15552 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The proposed research would allow the applicant to monitor the take of green, loggerhead, hawksbill, leatherback, Kemp's ridley, olive ridley, and unidentified hardshell sea turtles by observed commercial fisheries and collect data to estimate bycatch and its effects on sea turtle sub-populations. Annually, up to 94 green, 731 loggerhead, 163 Kemp's ridley, 76 hawksbill, 255 leatherback, and 120 olive ridley/unknown hardshell sea turtles would be handled, identified, photographed, measured, weighed, flipper and passive integrated transponder tagged, temporarily marked, skin biopsied, and released. The permit would authorize SEFSC certified observers to collect data on juvenile, sub-adult, and adult sea turtles incidentally captured in commercial fisheries in the Gulf of Mexico and the East coast of the United States. These efforts would aid in the development and refinement of management efforts to recover these species. The sampling would be conducted year-round for five years from the date of issuance of the permit.

Dated: January 21, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–1632 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA158

Gulf of Mexico Fishery Management Council (Council); Public Meetings; Correction

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

ACTION: Notice of addendum to a meeting notice.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings. Additional items have been added to the agenda. See **SUPPLEMENTARY INFORMATION**.

DATES: The meetings will be held February 7–10, 2011.

ADDRESSES: The meetings will be held at the Courtyard Marriott, 1600 E. Beach Blvd, Gulfport, MS 39501.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on January 20, 2011 (76 FR 3616). The agenda for the days that the additional items occur is being republished. All other information that was previously published remains unchanged.

Council

Wednesday, February 9, 2011

4 p.m.–6 p.m.—The Council will receive public testimony on exempted fishing permits (EFPs),if any; Final Action on the Greater Amberjack Regulatory amendment; and hold an open public comment period regarding any fishery issue of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Committees

Tuesday, February 8, 2010

10 a.m.–12 noon & 1:30 p.m.–5:30 p.m.—The Reef Fish Management Committee will receive an update of the 2010 red snapper landings and status of the regulatory amendment; review the mutton snapper and goliath grouper benchmark assessments; review the re-run of the gag update assessment; review the goliath grouper assessment; discuss the impact of observed discard estimates on the red grouper stock assessment; review an options paper for a red snapper regulatory amendment to adjust the fall closing date and allow for weekend openings; receive a report on the Limited Access Privilege Program Advisory Panel meeting; discuss the individual fishing quota finance program; review the Greater Amberjack Regulatory Amendment for final action; and review an individual fishing quota discussion paper.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to

further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: January 20, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–1559 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA040

Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training

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

ACTION: Notice of issuance of a Letter of Authorization; request for comments on Integrated Comprehensive Management Program Plan.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Atlantic Fleet Active Sonar Training (AFAST) Study Area for the period of January 22, 2011, through January 21, 2012. NMFS also provides notice that the Integrated Comprehensive Management Program (ICMP) Plan, which is intended for use as a planning tool to focus Navy monitoring priorities pursuant to the MMPA and Endangered Species Act (ESA), has been updated for 2010. NMFS encourages the public to review this document and provide comments, information, and suggestions on the ICMP Plan.

DATES: This authorization is effective from January 22, 2011, through January 21, 2012. Comments and information on the ICMP Plan must be received no later than February 28, 2011.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here. The mailbox address for providing e-mail comments on the ICMP Plan is *ITP.Hopper@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison or Brian D. Hopper, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to AFAST training, maintenance, and RDT&E became effective on January 22, 2009 (74 FR 4844, January 27, 2009), and remain in effect through January 22, 2014. The AFAST study area extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., but not encompassing the Bahamas (*see* Figure 1–1 in the Navy's Application). For detailed information on this action, please refer to the January 2009 final rule. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On August 31, 2010, NMFS received a request from the Navy for a renewal of an LOA issued on January 22, 2010, for the taking of marine mammals incidental to training and research activities conducted within the AFAST Study Area under regulations issued on January 22, 2009 (74 FR 4844, January 27, 2009). The Navy has complied with the measures required in 50 CFR 216.244 and 216.245, as well as the associated 2010 LOA, and submitted the reports and other documentation required in the final rule and the 2010 LOA.

Summary of Activity Under the 2010 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2010, the training activities conducted by the Navy were within the scope and amounts authorized by the 2010 LOA and the levels of take remain within the scope and amounts contemplated by the final rule. The Navy conducted eight major anti-submarine warfare strike group training exercises in 2010, including one Integrated Anti-Submarine Warfare Course (IAC II), one Joint Task Force Exercise (JTFEX), three Composite Training Unit Exercises (COMPTUEX), and three Southeastern Anti-Submarine Warfare Integrated Training Initiative exercises (SEASWITI).

Planned Activities and Estimated Take for 2011

In 2011, the Navy expects to conduct the same type and amount of training identified in the 2010 LOA. Therefore, for 2011, NMFS authorizes the same amount of take that was authorized in 2010.

Summary of Monitoring, Reporting, and Other Requirements Under the 2010 LOA

Annual Exercise Reports

The Navy submitted their classified and unclassified 2010 exercise reports within the required timeframes and the unclassified report is posted on NMFS' Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* NMFS has reviewed both reports and they contain the information required by the 2010 LOA. The reports indicate the amounts of different types of training that occurred from August 2, 2009, through August 1, 2010. As mentioned above, the Navy conducted 8 major anti-submarine warfare training exercises addressed in the rule (the rule analyzed the likely impacts from 39 coordinated unit level training exercises and 7 strike group training exercises).

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 64 marine mammal sightings totaling 329 animals. Furthermore, safety zones were adhered to, and vessels and aircraft applied mitigation

measures when marine mammals were observed within the requisite zones. To summarize, there were a total of 5 sightings of 20 marine mammals for all AFAST Major Training Exercises for reporting (MTERs) at ranges less than 1,000 yards (914 m) during which mid-frequency active sonar (MFAS) was in use. Of these 5 total MTER MFAS sightings, there were 3 sightings of 11 dolphins, 2 sightings of 9 whales, and 0 sightings of pinnipeds. There were a total of 7 mitigation events triggered by these sightings, which resulted in two sonar power downs (range to animal < 1,000 yards (914 m)) and two shut down (range to animal < 200 yards (183 m)). During one of these mitigation events, sonar was unnecessarily shut down when the observed range of a whale was in excess of 1,000 yards (914 m). During two mitigation events when sonar power was lowered (power down by –10 dB), the ship did not report a range to the marine mammal sighted.

2010 Monitoring

The Navy conducted the monitoring required by the 2010 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and exercises by dedicated MMOs, as well as passive acoustic monitoring utilizing high frequency acoustic recording packages (HARPs) and pop-up buoys, and marine mammal tagging, tracking, and biopsy sampling. The Navy submitted their 2010 Monitoring Report, which is posted on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. The Navy included a summary of their 2010 monitoring effort and results (beginning on page 9 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Navy-funded marine mammal monitoring accomplishments within the AFAST study area occurred from August 2, 2009 to August 1, 2010.

Visual Surveys

The majority of monitoring effort for the reporting period was conducted in two locations, Onslow Bay and the Jacksonville (JAX) Operating Area (OPAREA). These locations serve as the primary study areas for longitudinal baseline monitoring efforts and are also the primary locations for coordinated Anti-Submarine Warfare (ASW) exercise monitoring events. These monitoring efforts and their findings, if available, will be discussed in greater detail below.

The baseline monitoring program consists of year-round multi-disciplinary monitoring through the use of shipboard and aerial visual surveys (24 days each annually), photo identification studies, biopsy sampling, and passive acoustic monitoring. Surveys are conducted year-round using established track lines and standard distance sampling techniques. During the reporting period, aerial surveys were planned monthly in both Onslow Bay and JAX; however, in JAX no surveys were flown during April and May due to adverse weather conditions. In Onslow Bay, aerial surveys were conducted on 23 days during this period, and aerial observers reported sightings of seven identifiable species of marine mammals. In JAX, aerial surveys were conducted on 37 days during the reporting period, and aerial observers reported sightings of nine identifiable species of marine mammals. On March 20, 2010, an aerial survey to the west of the JAX OPAREA (and outside of designated critical habitat) observed a female right whale giving birth, which is notable because it was only the second North Atlantic right whale birth observed.

Vessel surveys were conducted in both Onslow Bay and JAX during the reporting periods. Vessel-based observers in Onslow Bay reported sightings of five identifiable species of marine mammals. Over 1,300 digital images were taken for species identification and individual recognition. Analysis of these photographic images resulted in re-sightings of five bottlenose dolphins and one spotted dolphin, which may suggest some degree of residency in the study area. Vessel surveys in JAX reported sightings of four identifiable species of marine mammals. Approximately 3,300 digital images were taken for the purposes of species identification and individual recognition.

Tagging, Tracking, and Biopsy Sampling

In conjunction with the vessel surveys in Onslow Bay, researchers from Duke University and Woods Hole Oceanographic Institution deployed five DTAGs between July 4–7, 2010. The DTAG is a small, lightweight tag that is placed on a whale using a carbon-fiber pole and attaches to the animal via four silicon suction cups. The DTAG is equipped with a pressure sensor, three-axis magnetometer and accelerometers that measure depth, heading, pitch, and roll, at a rate of five times per second. The tag contains two hydrophones that record sound and a VHF antenna that allows radio tracking of animals while they are at the surface and facilitates re-location of the tag upon release from the animal. Data are archived on the tag during deployment and later downloaded for calibration and analysis. The duration of tag deployments vary and tags can either be released by a programmed release mechanism or by the animal's actions that result in shedding the device (*i.e.,* breaching, coming into physical contact with other animals, *etc.*). The longest DTAG deployment during the July 2010 study was over 17 hours. Data from these tagging efforts will be analyzed in Matlab to generate descriptive metrics for the diving and acoustic behavior of each whale. These include time-depth profiles for the duration of the tag deployment.

When sea conditions permitted, focal follows of tagged animals were conducted from a rigged-hulled inflatable boat (RHIB) during daylight hours. Location, group size, spread, synchrony and composition, behavioral state and environmental conditions were recorded at 5-minute intervals. Although these detailed behavioral observations could not be collected at night, the R/V Stellwagen followed the tagged whale closely using the VHF radio signal. In addition, the presence of prey was monitored using an onboard fisheries acoustic system and measured physical features of the water column using Acoustic Doppler Current Profiler (ADCP) and conductivity-temperature-depth (CTD) casts.

In addition, the research team was able to collect skin biopsy samples from three of the tagged whales for future molecular determination of the gender of these individuals.

Passive Acoustic Monitoring

Three passive acoustic systems have been used during AFAST monitoring in Onslow Bay and JAX—a multi-element towed array used during vessel surveys, bottom-mounted high-frequency acoustic recorder packages (HARPs), and pop-up buoys. During the reporting period, the towed array was deployed on 17 days of surveys in Onslow Bay. A total of 70 acoustic detections were made, 40 of which were identified to species. Three HARPs were deployed in Onslow Bay during the reporting period. In JAX, the towed array was deployed on 19 days of surveys. A total of 48 acoustic detections were made, 31 of which were identified to species. Six HARP deployments were made in JAX during the reporting period. A thorough analysis of all acoustic data is currently underway.

Coordinated ASW exercise monitoring studies are one of the primary components being used to address specific monitoring questions presented in the AFAST monitoring

plan and LOA. Both passive acoustic and visual monitoring methods have been employed to address before/after (aerial surveys) and before/during/after (passive acoustics) monitoring requirements. During this reporting period, two focused ASW exercise passive acoustic monitoring efforts were conducted in the JAX OPAREA, each included the deployment of 9 pop-up buoys arranged in an array configuration. The goal was to establish intensive short-term (20–30 day) passive acoustic monitoring before, during, and after specific ASW exercises. Two sets of buoys were deployed from September 11, 2009, through October 8, 2009, and from December 4, 2009, through January 7, 2010, respectively. Analysis of data from both deployments is currently in progress.

Aerial surveys were coordinated before and after three ASW training events during the reporting period. Two surveys coincided with pop-up buoy deployments and were conducted September 14–18, 2009, and December 8–10, 2009; however, aerial surveys conducted in December were hampered by poor weather conditions. The third survey was conducted June 4–7, 2010 in the JAX OPAREA. During the September 2009 surveys, there were a total of 39 sightings of four delphinid species. There were no cetacean sightings during the December 2009 surveys. The June 2010 surveys reported one sighting of a short-finned pilot whale and three sightings of Atlantic spotted dolphins.

Marine Mammal Observations and Lookout Effectiveness Study

Navy marine mammal observers (MMOs) participated in two exercises in the JAX OPAREA on March 15–19, 2010 and June 4–9, 2010. MMOs conducted visual observations from the bridge wings of Guided Missile Destroyers (DDGs) during daylight hours. They worked alongside the Navy lookouts, conducting visual searches for marine species. Visual monitoring for both exercises was conducted in coordination with data collection for a Navy Lookout Effectiveness Study. During the March 2009 exercise, the MMOs spent approximately 27.5 hours monitoring for marine species. Independent MMOs reported four marine mammal sightings, which included three Atlantic spotted dolphins and one unidentified dolphin. During the June 2010 exercise, the MMOs spent approximately 42 hours monitoring for marine species. Independent MMOs reported 13 marine mammal sightings, which included two Atlantic spotted dolphins and 11 unidentified dolphins. There were no reports of marine mammals behaving in any unusual manner during these exercises.

To date, the Navy has successfully completed four Lookout Effectiveness data collection trials. The primary functions of these efforts were to test and refine lookout observation methodology. Of the four studies, one was completed in Hawaii, one was completed in Southern California, and two were completed off the coast of Jacksonville, FL. Each study had four trained biologists acting as MMOs, observing from sunrise to sunset each day while underway, to assess the effectiveness of the Navy lookout team and to obtain data to characterize the possible exposure of marine species to MFAS.

During the March 2010 exercise, the MMOs recorded four independent sightings of marine mammal (*i.e.,* sightings not seen by the Navy lookout team). In addition, the Navy lookout team recorded three independent sightings, and six sightings were seen by both the MMOs and the Navy lookouts. A qualitative review of the data revealed that poor sighting conditions (*e.g.,* high wind speed and sea state) correlated to low sightings. For example, on the days when the number of sightings was the lowest (March 16 and 18), the wind speed and sea states were relatively greater than the remaining days with a greater number of sightings.

During the June 2010 exercise, the MMOs recorded 12 independent sightings of marine mammals. In addition, the Navy lookout team recorded three independent sightings, and four sightings were seen by both the MMOs and the Navy lookouts. The Navy concluded that these studies accomplished their goals. First, data was collected that will populate a spreadsheet in order to being determining the effectiveness of the Navy lookouts. Second, sightings information, including the range and bearing to an animal, can be used to determine to what extent animal(s) may have been exposed to MFAS if the device was in use. Reconstruction of the event and the determination of the possible exposure(s) of marine species to MFAS will be completed separately.

In conclusion, the Navy's implementation of the monitoring plan accomplished several goals, which contribute to a larger body of data intended to better characterize the abundance, distribution, life history, and behaviors of the species in the AFAST study area. In general, the monitoring conducted in 2010 satisfied the objectives of the monitoring plan and specifically contributed to the following: (1) A greater knowledge and understanding of the density and distribution of species within the AFAST study area; (2) the vocalizations of different species, which advances the development of automated classification software; (3) the movement patterns of individual (both vertically in the water column as well as horizontally for the duration of a DTAG deployment); and (4) observable behavioral patterns of marine mammals, before, during, and after exposure to Navy training activities.

Except as described below in the Adaptive Management section, NMFS concludes that the results of these monitoring efforts when taken together with the findings presented in the 2010 exercise report (*see* Annual Exercise Report section) do not warrant making changes to the current monitoring/mitigation requirements identified in the LOA. While the data collected by the Navy through monitoring and reporting builds upon the existing body of information in a valuable way, none of the new data contradict, or amend, the assumptions that underlie the findings in the 2009 rule in a manner that would suggest changing the current mitigation or monitoring.

Adaptive Management

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which includes an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2010, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2010, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Based on the implementation of the 2010 monitoring, the Navy proposed some minor modifications to their monitoring plan for 2011, which NMFS agreed were appropriate. Additional details regarding these minor modifications are provided in the following paragraph.

After over 3 years of combined aerial and shipboard visual surveys at the Onslow Bay location, the Navy plans to shift some of that survey effort to a new

location to the north, off Cape Hatteras, NC because the Onslow Bay surveys have established a relatively detailed baseline of low marine species distribution and habitat use. This change is meant to enable the Navy to take advantage of additional monitoring locations and techniques to better address the questions proposed in the AFAST monitoring plan and contribute to addressing the objectives of the Navy's ICMP plan. Vessel and aerial surveys off Cape Hatteras will support a study examining the behavioral ecology, prey fields, and cetacean reactions to sound. The project is an expansion of previous research conducted on pilot whales and other deep-diving odontocetes by researchers from Duke University and Woods Hole Oceanographic Institution. Baseline data will be collected in 2010–2011 from boat-based visual surveys and may also include tagging, biopsy, photo ID, and tracking. The project is anticipated to span approximately 3 years to include future experimental response studies and prey field mapping. For 2011, the Navy proposes to allow for flexibility among multiple sites within the Virginia Capes (VACAPES), Cherry Point (CHPT), and Jacksonville (JAX) Operating Areas (OPAREAS) in order to support different monitoring efforts as described above. The Navy plans to continue some baseline monitoring at the Onslow Bay site.

Beyond those changes, none of the information contained in the monitoring report or discussed at the annual adaptive management meeting led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 12 of the Navy's 2011 LOA Application, which may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Integrated Comprehensive Monitoring Report

The 2010 LOA required that the Navy update the ICMP Plan to reflect development in three areas, specifically: (1) Identifying more specific monitoring sub-goals under the major goals that have been identified; (2) characterizing Navy Range Complexes and study areas within the context of the prioritization guidelines described in the ICMP Plan; and (3) continuing to develop data management, organization and access procedures. The Navy has updated the ICMP Plan as required. Because the ICMP is an evolving Program, we have posted the ICMP on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* and are specifically requesting input, which the Navy and NMFS will consider and apply as appropriate.

Further, the Navy convened a monitoring meeting in October, 2010 to solicit input from NMFS and marine mammal and acoustic scientists regarding the comprehensive development and improvement of the more specific monitoring that should occur across the Navy's training areas. Subsequent to those discussions, the Navy has developed a scientific advisory group (of Navy and outside scientists) that will work on a proposed Navy training area-wide monitoring plan that better considers the biological, logistical, and resource-specific factors that are applicable in each area (and which are summarized in the updated ICMP) to maximize the effectiveness of Navy monitoring within the context of the information that is most needed. Subsequently, NMFS and MMC representatives will review this proposed Navy-wide monitoring plan, which will likely reflect monitoring differences in some Navy training areas from what is required in the 2011 LOA.

This proposed Navy-wide monitoring plan will then be available for review and discussion at the required 2011 Navy Monitoring Meeting, which will take place in late Spring 2011. The Navy and NMFS will then modify the Navy-wide monitoring plan based on applicable input from the 2011 Monitoring Meeting and propose appropriate changes to the monitoring measures in specific LOAs for the different Range Complexes and training areas. For training areas with substantive monitoring modifications, NMFS will subsequently publish proposed LOAs, with the modifications, in the **Federal Register** and solicit public input. After addressing public comments and making changes as appropriate, NMFS will issue new training area LOAs that reflect the new Navy-wide monitoring plan.

NOAA Workshops

In a January 19, 2010 letter to the Council on Environmental Quality, NOAA identified the need for two interrelated workshops on marine mammals and sound in the ocean. To address this commitment, NOAA is convening two parallel, focused, relatively small, and product-driven working groups. One will identify and map cetacean "hot spots", defined as areas of known, or reasonably predictable, biological importance (*i.e.,* for reproduction, feeding, migration) and/or high densities. The second working group will be directed toward developing a comprehensive data collection and analysis plan for describing and predicting underwater sound fields in different areas. The outcomes of these working groups will be integrated and analyzed in a broader symposium to include a larger audience of scientists, industries, Federal agencies, conservation managers, and environmental non-governmental organizations (NGOs). The final products and analyses will provide a more robust, comprehensive, and context-specific biological and acoustic basis by which to inform subsequent management decisions regarding human-generated noise in our oceans. The steering committee has been convened and met for the first time in October, 2010. The working group efforts should take about a year to complete, and we expect the final symposium to be held in early 2012. The results of these working groups will be analyzed by NMFS in an adaptive management context, as related to the AFAST final rule (74 FR 4844, January 27, 2009), and mitigation or monitoring measures may be modified, as appropriate.

Authorization

The Navy complied with the requirements of the 2010 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2010 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized in 2011 for the Navy's AFAST activities is consistent with our previous findings made for the total taking allowed under the AFAST regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2011 AFAST activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the AFAST Study Area from January 22, 2011, through January 21, 2012.

Dated: January 20, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–1642 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA141

Taking and Importing of Marine Mammals

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

ACTION: Notice; affirmative finding issuance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has issued a 5-year affirmative finding for the Government of Guatemala under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Guatemalan-flag purse seine vessels or purse seine vessels operating under Guatemalan jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Guatemala and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The affirmative finding is effective from April 1, 2010 through March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–3230; fax 562–980–4027.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Guatemala and obtained from the IATTC and the Department of State and has determined that Guatemala has met the MMPA's requirements to receive an affirmative finding.

After consultation with the Department of State, the Assistant Administrator issued the Republic of Guatemala a 5-year affirmative finding, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Guatemalan-flag purse seine vessels or purse seine vessels operating under Guatemalan jurisdiction. This affirmative finding for Guatemala will remain valid through March 31, 2015.

Dated: January 20, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–1631 Filed 1–25–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0080]

Children's Products Containing Lead; Technological Feasibility of 100 ppm for Lead Content; Notice of Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: Section 101(a) of the Consumer Product Safety Improvement Act ("CPSIA") provides that, as of August 14, 2011, children's products may not contain more than 100 parts per million ("ppm") of lead unless the Consumer Product Safety Commission ("CPSC," "Commission," or "we") determines that such a limit is not technologically feasible. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. Through this notice, the Commission is announcing that it will conduct a public hearing to receive views from all interested parties about the technological feasibility of meeting the 100 ppm lead content limit for children's products and associated public health considerations.

DATES: The public hearing will begin at 10 a.m. EST on February 16, 2011, and conclude the same day.

ADDRESSES: The public hearing will be held in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814.

Online Registration and Webcast: Members of the public who wish to attend the public hearing are requested to preregister online at *http://www.cpsc.gov/meetingsignup.html.* You may register until 5 p.m. EST on February 15, 2011. This public hearing also will be available live via webcast on February 16, 2011, at *http://www.cpsc.gov/webcast.* Registration is not necessary to view the webcast. A transcript will be made of the proceedings of the public hearing.

Oral Presentations and Written Comments: To make oral presentations, participants must preregister online. Presenters must also submit a request to make an oral presentation, and the written text of such comments captioned "100 PPM—Technological Feasibility Public Hearing" by electronic mail (email) to *cpsc-os@cpsc.gov,* or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, no later than 5 p.m. EST on February 10, 2011. Commenters should limit their presentations to approximately 15 minutes, exclusive of any periods of questioning by the Commissioners or CPSC staff. We may limit further the time for any presentation and impose restrictions to avoid excessive duplication of presentations.

Participants who are unable to make an oral presentation may submit written comments regarding the issues outlined under Supplementary Information captioned "100 PPM—Technological

Feasibility Public Hearing" by electronic mail (email) to *cpsc-os@cpsc.gov,* or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, no later than 5 p.m. EST on February 10, 2011.

Any information submitted in writing and orally to the CPSC at the public hearing will become part of the public record.

FOR FURTHER INFORMATION CONTACT: Concerning requests and procedures for oral presentations of comments: Rockelle Hammond, Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504–6833; email: *cpscos@cpsc.gov.* For all other matters: Dominique Williams, Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504–7597; e-mail: *dwilliams@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 101(a)(2)(C) of the CPSIA (15 U.S.C. 1278a(a)(2)(C)) provides that, as of August 14, 2011, children's products may not contain more than 100 parts per million (ppm) of lead unless the Commission determines that such a limit is not technologically feasible. The Commission may make this determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. Section 101(d) of the CPSIA (15 U.S.C. 1278a(d)) provides that a lead limit shall be deemed technologically feasible with regard to a product or product category if:

(1) A product that complies with the limit is commercially available in the product category;

(2) Technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;

(3) Industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or

(4) Alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

If the Commission determines that the 100 ppm lead content limit is not technologically feasible for a product or product category, section 101(a)(2)(D) of the CPSIA requires the Commission, by regulation, to establish the lowest amount below 300 ppm that it determines is technologically feasible. On July 27, 2010, we published a notice in the **Federal Register** (75 FR 43942) requesting comments and information regarding the technological feasibility for manufacturers to meet the 100 ppm lead content limits. We received comments from consumer groups, manufacturers, retailers, associations, and laboratories regarding the technological feasibility of meeting the 100 ppm lead content limit. A number of commenters stated that some classes of materials will have difficulty meeting the 100 ppm lead content limit, including metal components and some glass and ceramic components. According to the commenters, source materials, including recycled materials for metal alloys, cannot comply consistently due to the variability of the materials. A few commenters contended that other materials, such as plastics, could comply if only virgin plastics are used.

However, some commenters stated that for all materials, there is significant variability among test results, even for identical products, due to variations in testing methodology and procedures, and that inter- and intra-laboratory variability must be addressed. Several commenters also stated that there are no demonstrable health benefits of reducing lead limits from 300 ppm to 100 ppm in light of the relative inaccessibility of lead that is bound in plastic or metal. Other commenters stated that there are children's products in the market now that meet the 100 ppm lead content limits, and that it is not only possible, but also essential for the public health, to reduce lead in consumer products—particularly children's products—to the lowest levels that are technologically feasible. We are still reviewing the comments and will consider them along with the additional information presented at the hearing.

Participants should not resubmit their comments, which were submitted in response to the July 27, 2010 notice. The Commission is seeking new or additional information that specifically addresses the issues outlined below in the public hearing that were not addressed in the earlier comments:

(1) Please identify any product or product category that already complies with the 100 ppm limit and describe the extent to which such product(s) or product categories are commercially available in the United States. We are interested especially in:

(a) Metal components in children's products, how such metal components are sourced or obtained, and the extent to which lead is found in metals alloys even when it is not introduced intentionally;

(b) Plastic and non-metal materials in children's products, how such plastic and non-metal materials are sourced or obtained, and the extent to which lead is found in such materials even when it is not introduced intentionally;

(c) Glass and ceramic materials in children's products, how such glass and ceramic materials are sourced or obtained, and the extent to which lead is found in such materials even when it is not introduced intentionally; and

(d) What factors or considerations should we evaluate in deciding whether a product complying with the limit is "commercially available?"

(2) What technologies exist that would enable manufacturers to comply with the 100 ppm limit? In responding to this question, please describe the technology or technologies and the product or product category that would benefit.

(a) Please describe the extent to which the technology or technologies is commercially available or otherwise available to manufacturers.

(b) Section 101(d)(2) of the CPSIA states that the technology to comply with the limit is "commercially available to manufacturers or is otherwise available within the common meaning of the term." What factors or considerations should we evaluate in deciding whether a technology is "commercially available" or "otherwise available within the common meaning of the term?"

(3) What industrial strategies or devices have been developed that are capable or will be capable of achieving a lead limit of 100 ppm by August, 2011?

(a) What barriers, if any, exist to prevent a company from adopting such an industrial strategy or device to achieve the desired limit?

(b) How might CPSC determine whether companies are acting in "good faith" as to their capabilities in adopting a particular industrial strategy or device?

(4) What alternative practices, best practices, or other operational changes exist that would allow the manufacturer to comply with the 100 ppm lead limit? What factors or considerations might encourage or deter manufacturers from adopting such practices or operational changes?

(5) What data on inter- and intra-laboratory variability and inter- and intra-lot variability exists? In responding to this question, it would be very helpful if the basis for such variability can be explained. For example, the sensitivity of a particular piece of laboratory equipment or the use

of a particular test method might lead to some variation in results.

(6) What health effects are associated with a reduction of the lead content limit from 300 ppm to 100 ppm? From 300 ppm to some other level above 100 ppm? In responding to these questions, published scientific or medical articles will be helpful.

Any information submitted in writing and orally to the CPSC at the public hearing will become part of the public record. The public hearing will begin at 10 a.m. EST on February 16, 2011, and will conclude the same day. This public hearing will also be available live via webcast on February 16, 2011, at *http://www.cpsc.gov/webcast.* Requests to present oral comments must be submitted to the Office of the Secretary no later than 5 p.m. EST on February 10, 2011. Written comments, or a written copy of the text of the oral comments, must be received no later than 5 p.m. EST on February 10, 2011. Commenters should limit their presentations to approximately 15 minutes, exclusive of any periods of questioning by the Commissioners or the CPSC staff. We may limit further the time for any presentation and impose restrictions to avoid excessive duplication of presentations. A transcript will be made of the proceedings of the public hearing. Access to the docket to read background documents, including a transcript of the public meeting, or comments received, will be made available at *http://www.regulations.gov* under Docket No. CPSC–2010–0080.

Dated: January 21, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–1658 Filed 1–25–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 28, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 20, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title of Collection: Language Instruction Educational Programs (LIEPs): Lessons from the Research and Profiles of Promising Programs.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or households; State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 330.

Total Estimated Number of Annual Burden Hours: 384.

Abstract: Language Instruction Educational Programs (LIEPs) refers to a systematic approach to the provision of services that support the development of English language proficiency and academic achievement among English learners. This exploratory study will describe LIEP characteristics that may influence the quality of programs delivered to English Learners (EL) in grades K through 12. The major purpose of this project is to gather data from the field that yields an initial portrait of well-designed and implemented LIEPs, and to provide practical guidance to local educators on selecting, designing, implementing and evaluating LIEPs. This is important because before this, there have been no systematic attempts to determine the characteristics of LIEPs for ELs in kindergarten through grade 12 and to describe contextual factors that contribute to their effectiveness.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4488. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–1541 Filed 1–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB

review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 25, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 21, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Projects with Industry Annual Reporting Form.

OMB Control Number: 1820–0631.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Private Sector; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 67.

Total Estimated Annual Burden Hours: 6,030.

Abstract: The current Projects with Industry Annual Reporting Form collects data that is used to: (1) Evaluate the performance of grant recipients with respect to their compliance with evaluation standards as required under section 611(f)(3)(B) of the Rehabilitation Act of 1973, as amended; (2) determine whether a grantee's performance meets the requirements for continuation funding as required by section 611(f)(4); (3) comply with mandated annual reporting requirements in section 611(a)(5); and (4) evaluate the performance of the program and its grantees with respect to measures established pursuant to the Government Performance and Results Act and the job training common measures.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4453. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–1602 Filed 1–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. 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: Wednesday, February 9, 2011, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

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: The main meeting presentation will be on the Fiscal Year 2013 Budget and Prioritization.

Public Participation: The EM SSAB, Oak Ridge, 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 Patricia J. Halsey 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 the agenda item should contact Patricia J. Halsey 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 Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on January 20, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–1592 Filed 1–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. 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, February 10, 2011; 9 a.m.–5 p.m. Friday, February 11, 2011; 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hanford House, 802 George Washington Way, Richland, Washington 99352.

FOR FURTHER INFORMATION CONTACT: Paula Call, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA, 99352; Phone: (509) 376–2048; or E-mail: *Paula.Call@rl.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:

- Agency Updates, including progress on the American Recovery and Reinvestment Act (Office of River Protection and Richland Operations Office; Washington State Department of Ecology; U.S. Environmental Protection Agency)
- Committee Updates, including: Tank Waste Committee; River and Plateau Committee; Health, Safety and Environmental Protection Committee; Public Involvement Committee; and Budgets and Contracts Committee
- Debrief and discussion regarding Tank Closure Plan Committee-of-the-Whole meeting and review of next steps
- 324 Building B–Cell Contamination Update
- River Corridor Baseline Risk Assessment Update
- Potential Board Advice
- Medical Site Contractor Request for Proposal
- Preservation of Hanford Artifacts
- Open Government Plan
- Changes to the Beryllium Rule
- Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, 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 Paula Call 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 Paula Call 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 Paula Call's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC on January 20, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–1593 Filed 1–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy, Office of Science.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, March 7, 2011, 9 a.m. to 5 p.m.; Tuesday, March 8, 2011, 8:30 a.m. to 12 p.m.

ADDRESSES: Doubletree Bethesda Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; *Telephone:* 301–903–4941.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To inform the Committee about the Department's Fusion Energy Sciences (FES) fiscal year (FY) 2012 budget submission to Congress and to conduct other committee business.

Tentative Agenda Items:

- Office of Science FY 2012 Congressional Budget Request
- FES Program FY 2012 Congressional Budget Request
- FES Response to the Committee of Visitors' Review of the FES Program
- Update on the status of US ITER Activities
- Report on the Fusion Nuclear Sciences Pathways Assessment Activities
- Public Comments

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). Reasonable provision will be made to include the scheduled oral statements during the Public Comments time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review on the Fusion Energy Sciences Advisory Committee Web site—*http://www.science.doe.gov/ofes/fesac.shtml.*

Issued at Washington, DC on January 20, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–1598 Filed 1–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). HTAC was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849. The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 17, 2011; 9 a.m.–5 p.m. Friday, February 18, 2011; 9 a.m.–2 p.m.

ADDRESSES: Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: *HTAC@nrel.gov* by e-mail.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide advice, information, and recommendations to the Secretary on the program authorized by title VIII of EPACT.

Tentative Agenda: (Subject to change; updates will be posted on *http://hydrogen.energy.gov* and copies of the final agenda will available the date of the meeting).

- DOE and Department of Defense Program Updates
- Industry Presentations
- HTAC Subcommittee Overviews
- HTAC Annual Report Development
- Stationary Fuel Cell Industry Analysis
- Overview of the November 2010 McKinsey study: A portfolio of power-trains for Europe: a fact-based analysis
- Open Discussion

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 9 a.m. and 9:30 a.m. on February 17, 2011. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *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 *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov.*

Issued at Washington, DC on January 20, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–1603 Filed 1–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Blue Ribbon Commission on America's Nuclear Future

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice announces a closed meeting of the Blue Ribbon Commission on America's Nuclear Future (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

Due to national security considerations, under section 10(d) of the Act and 5 U.S.C. 552b(c), the meeting will be closed to the public and matters to be discussed are exempt from public disclosure under Executive Order 13526 and the Atomic Energy Act of 1954, 42 U.S.C. 2161 and 2162, as amended.

This notice is being published less that 15 days from the date of the meeting due to logistical circumstances, Commissioners' availability, and the inability to delay and reschedule the meeting in a timely fashion.

DATES: Thursday, February 3, 2011, 8:30 a.m.–4 p.m.

ADDRESSES: Navy Shipyard, 1333 Isaac Hull Avenue, SE., Washington, DC 20376.

FOR FURTHER INFORMATION CONTACT: Timothy A. Frazier, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4243 or facsimile (202) 586–0544; e-mail *CommissionDFO@nuclear.energy.gov.* Additional information will be available at *http://www.brc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste. The Commission is scheduled to submit a draft report to the Secretary of Energy in July 2011 and a final report in January 2012.

This is the first closed full Commission meeting. Previous open full Commission meetings were held in March, May, July, September, and November 2010. Webcasts of the previous open meetings along with meeting transcripts and presentation are available at *http://www.brc.gov.*

Purpose of the Meeting: The purpose of this meeting is to provide Commissioners with classified briefings and hold discussions which they are unable to receive in an open meeting because the disclosure of such information is specifically authorized under criteria established by Executive Order 13526 to be kept secret in the interests of national defense and is exempt from disclosure under the Atomic Energy Act, 42 U.S.C. 4161 and 4162.

The Commission's charter directs the Commission to "conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including all alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel, high-level waste, and materials derived from nuclear activities." In support of that effort, the Commission will receive classified briefings and hold classified discussions on various topics relating to fuel cycle technologies, material attractiveness and weapons usability, design basis threats to commercial used nuclear fuel and commercial power reactors, and Navy nuclear fuel. Therefore, the purpose for closing this meeting is proper and consistent with the exemptions set forth in 5 U.S.C. 552b(c).

Tentative Agenda: The meeting is expected to start at 8:30 a.m. on Thursday, February 3, 2011 and conclude at approximately 4 p.m.

Public Participation: There will be no public participation in this closed meeting. As always, those wishing to provide written comments or statements to the Commission are invited to send them to Timothy A. Frazier, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, e-mail to *CommissionDFO@nuclear.energy.gov*, or post comments on the Commission Web site at *http://www.brc.gov.*

Minutes: The minutes of the meeting will not be available.

Issued in Washington, DC on January 20, 2011.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2011–1600 Filed 1–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 19, 2011.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–37–000.

Applicants: Ohio Power Company, Columbus Southern Power Company

Description: Application for Approval of Internal Reorganization Under Section 203 of the Federal Power Act of Ohio Power Company, *et al.*

Filed Date: 01/18/2011.

Accession Number: 20110118–5313.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 8, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–656–007; EL10–83–000.

Applicants: Shell Energy North America (US), L.P.

Description: Response of Shell Energy North America (US), L.P. to Show Cause Order.

Filed Date: 01/12/2011.

Accession Number: 20110112–4007.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER10–2116–001.

Applicants: KCP&L Greater Missouri Operations Company.

Description: KCP&L Greater Missouri Operations Company submits tariff filing per 35: GMO OATT Baseline Compliance Filing to be effective 8/4/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5143.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER10–2531–002.

Applicants: Cedar Creek Wind Energy, LLC.

Description: Cedar Creek Wind Energy, LLC's Notice of Non-Material Change in Status.

Filed Date: 01/18/2011.

Accession Number: 20110118–5236.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 8, 2011.

Docket Numbers: ER10–3211–001.

Applicants: Sempra Energy Trading LLC.

Description: Sempra Energy Trading LLC submits tariff filing per 35: Sempra Energy Trading LLC Revised MBR and Reactive Power Tariffs to be effective 9/29/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5031.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–1830–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–01–18 CAISO's Generator Interconnection Procedures Compliance Filing to be effective 12/19/2010.

Filed Date: 01/18/2011.

Accession Number: 20110118–5282.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 8, 2011.

Docket Numbers: ER11–2030–002.

Applicants: Hinson Power Company, LLC.

Description: Hinson Power Company, LLC submits tariff filing per 35: Hinson Baseline Tariff Compliance Filing to be effective 11/4/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5056.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2449–001.

Applicants: Connecticut Gas & Electric, Inc.

Description: Connecticut Gas & Electric, Inc. submits tariff filing per 35.17(b): Connecticut Gas & Electric, Inc. Supplemental Filing to be effective 2/15/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5083.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2456–001.

Applicants: The Trustees of the University of Pennsylvania.

Description: The Trustees of the University of Pennsylvania submits tariff filing per 35: Baseline Tariff Filing to be effective 1/19/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5114.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2493–001.

Applicants: Mountain Wind Power, LLC.

Description: Mountain Wind Power, LLC submits tariff filing per 35: Mountain Wind Power, LLC Supplement to Notice of Category 1 Seller Status to be effective 12/23/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5090.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2494–001.

Applicants: Mountain Wind Power II LLC.

Description: Mountain Wind Power II LLC submits tariff filing per 35: Mountain Wind Power II LLC Supplement to Notice of Category 1 Seller Status to be effective 12/23/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5091.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2694–000.

Applicants: Southern California Edison Company.

Description: Request for Waiver of Southern California Edison Company.

Filed Date: 01/14/2011.

Accession Number: 20110114–5252.

Comment Date: 5 p.m. Eastern Time on Friday, February 4, 2011.

Docket Numbers: ER11–2697–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: BPA Cooperative Communications Agreement 2nd Revised to be effective 12/2/2010.

Filed Date: 01/18/2011.

Accession Number: 20110118–5261.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 8, 2011.

Docket Numbers: ER11–2698–000.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power, Inc. submits tariff filing per 35.13(a)(2)(iii: CUS JOATT Schedule 2 to be effective 1/16/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5005.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2699–000.

Applicants: The Dayton Power and Light Company.

Description: The Dayton Power and Light Company submits tariff filing per 35.15: FERC Rate Schedule No. 42, Village of Arcanum to be effective 1/19/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5035.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2700–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 1–19–11 CMMPA Filing to be effective 7/28/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5075.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2701–000.

Applicants: Mountain View Power Partners IV, LLC.

Description: Mountain View Power Partners IV, LLC submits tariff filing per 35.12: Baseline Filing to be effective 3/20/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5092.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2702–000.

Applicants: La Paloma Generating Company, LLC.

Description: La Paloma Generating Company, LLC submits tariff filing per 35: January 19, 2011 Compliance Filing to be effective 9/30/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5104.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2703–000.

Applicants: AEP Texas Central Company.

Description: AEP Texas Central Company submits tariff filing per 35.1: TCC RS and SA Baseline to be effective 1/20/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5111.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2704–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: WMPA No. 2713, Queue No. V4–027, Keystone Solar LLC and PPL to be effective 12/13/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5119.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2705–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–01–19 CAISO Revised Transmission Planning Process Compliance filing to be effective 12/20/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5140.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2706–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: WMPA No. 2722, Queue No. W2–036, PSE&G and PSE&G to be effective 1/13/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5141.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Docket Numbers: ER11–2707–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: WMPA No. 2711, Queue W1–083, West Deptford Solar, L.L.C. and PSE&G to be effective 12/9/2010.

Filed Date: 01/19/2011.

Accession Number: 20110119–5142.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 9, 2011.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH11–12–000.

Applicants: IP Gyrfalcon Company, LLC.

Description: Notice of Change in Facts of International Power America, Inc.

Filed Date: 01/14/2011.

Accession Number: 20110114–5235.

Comment Date: 5 p.m. Eastern Time on Friday, February 4, 2011.

Any person desiring to intervene or to protest in any of the above 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 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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 Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1575 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13808–000; Project No. 13813–000]

Lock+ Hydro Friends Fund XLIX; FFP Missouri 14, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

January 19, 2011.

On January 18, 2011, the Commission held a drawing to determine priority between two competing preliminary permit applications with identical filing times. In the event that the Commission concludes that neither of the applicants' plans is better adapted than the other to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XLIX: Project No. 13808–000.

2. FFP Missouri 14, LLC: Project No. 13813–000.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1576 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL11–15–000; QF86–36–005]

PowerSmith Cogeneration Project, LP; Notice of Filing

January 19, 2011.

Take notice that on January 13, 2011, PowerSmith Cogeneration Project, LP (PowerSmith), pursuant to section

292.205 of the Federal Energy Regulatory Commission's (Commission) Regulations implementing the Public Utility Regulatory Policies Act of 1978, as amended (PURPA), 18 CFR 292.205(c) (2007), filed a request for a one-year waiver of the operation standard set forth in section 292.205(a)(1) of the Commission's Regulations for the topping-cycle cogeneration facility owned and operated by PowerSmith located in Oklahoma.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1565 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2692–000]

ACS Energy Services, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 19, 2011.

This is a supplemental notice in the above-referenced proceeding, ACS Energy Services, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 8, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1577 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2524–018]

Grand River Dam Authority; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

January 18, 2011.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process

b. *Project No.:* 2524–018.

c. *Date Filed:* November 19, 2010.

d. *Submitted By:* Grand River Dam Authority.

e. *Name of Project:* Salina Pumped Storage Project.

f. *Location:* In Mayes County, Oklahoma on the Saline Creek arm of Lake Hudson, in the Grand River watershed. There are no federal lands to be used by the project.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contacts:* Dr. Darrell E. Townsend II, Director of Ecosystems Management, and Mr. Charles Atkins, Superintendent of Hydro Operations, Grand River Dam Authority, P.O. Box 70, Langley, OK 74350–0070.

i. *FERC Contact:* Stephen Bowler at (202) 502– 6861, *stephen.bowler@ferc.gov;* or Jeanne Edwards at (202) 502–6181, *jeanne.edwards@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental

document cannot also intervene. 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Grand River Dam Authority filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* 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 paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to, and from, Commission staff related to the merits of the potential application must be filed with the Commission. 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 *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. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings with the Commission must include on the first page, the project name (Salina Pumped Storage Project) and number (P–2524–018), and bear the appropriate heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by March 19, 2011.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, the meetings outlined below will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Afternoon Scoping Meeting

Date: Tuesday, February 15, 2011.
Time: 1 p.m. to 3 p.m. (CST).
Location: Grand River Dam Authority Ecosystems and Education Center, 420 E. Hwy 28, Langley, Oklahoma 74350.

Evening Scoping Meeting

Date: Tuesday, February 15, 2011.
Time: 6 p.m. to 8 p.m. (CST).
Location: Grand River Dam Authority Ecosystems and Education Center, 420 E. Hwy 28, Langley, Oklahoma 74350.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the "eLibrary" link. Follow the directions for accessing information in paragraph n.

Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an environmental site review of the project on Tuesday, February 15, 2011, starting at 10 a.m. We invite all interested agencies, Indian tribes, NGOs, and individuals to attend the environmental site review. To participate in the environmental site review you must register with Ms. Jacklyn Jaggars (*jjaggars@grda.com,* or 918–256–0723) of the Grand River Dam Authority on, or before, Monday, February 7, 2011.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activities that incorporates the time frames provided for in Part 5 of the Commission's regulations, and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public record of the project.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1564 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2484–017]

Gresham Municipal Utilities; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

January 19, 2011.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* P–2484–017.

c. *Date Filed:* November 22, 2010.

d. *Submitted by:* Gresham Municipal Utilities.

e. *Name of Project:* Upper Red Lake Dam Hydroelectric Project.

f. *Location:* On Red River in Shawano County, Wisconsin. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Gresham Municipal Utilities, Village of Gresham, Wisconsin, *Attn:* Art Bahr, Village Administrator, 1126 Main Street, P.O. Box 50, Gresham, WI 54128.

i. *FERC Contact:* Janet Hutzel at (202) 502–8675; or e-mail at *janet.hutzel@ferc.gov.*

j. Gresham Municipal Utilities filed its request to use the Traditional Licensing Process on November 22, 2010. Gresham Municipal Utilities provided public notice of its request on January 11, 2011. In a letter dated January 19, 2011, the Director of the Office of Energy Projects approved Gresham Municipal Utilities' request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the Wisconsin State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Gresham Municipal Utilities as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Gresham Municipal Utilities filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* 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 paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2484. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2013.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1567 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–58–000]

Venice Gathering System, L.L.C.; Notice of Request Under Blanket Authorization

January 19, 2010.

Take notice that on January 7, 2011, Venice Gathering System, L.L.C. (Venice), 1000 Louisiana, Suite 4300, Houston, Texas 77002, filed in Docket No. CP11–58–000, an application pursuant to sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to abandon in place an existing 20-inch diameter natural gas supply lateral pipeline, offshore Louisiana, under Venice's blanket certificate issued in Docket No. CP97–533–000, *et al.,*[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Venice proposes to abandon in place approximately 28.90 miles of 20-inch diameter pipeline which serves as a supply lateral between the South Timbalier Block 265 A platform and the South Timbalier Block 151 compressor platform, offshore Louisiana. Venice states that the abandonment of the supply lateral would not involve the physical removal of any facilities. Venice also states that the four customers currently served via the supply lateral have given their approval for the abandonment. Venice estimates that the proposed abandonment would cost $875,000.

Any questions concerning this application may be directed to D. Kirk Morgan II, Counsel, Bracewell and Giuliani, 2000 K Street, NW., Suite 500, Washington, DC 20006, e-mail: *kirk.morgan@bgllp.com,* or via telephone at (202) 828–5854 or by facsimile (202) 857–2112.

This filing is available for review at the Commission 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 filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for

[1] 81 FERC ¶ 61,183 (1997).

authorization pursuant to Section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1568 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Entergy Regional State Committee Meeting

January 18, 2011.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Entergy Regional State Committee Meeting

January 26, 2011 (8 a.m.–5 p.m.), Doubletree Hotel, 300 Canal Street, New Orleans, LA 70130, 504–581–1300.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–60	Ameren Services Co. v. Entergy Services, Inc.
Docket No. EL09–43	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–50	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–61	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–78	South Mississippi Electric Power Association v. Entergy Services, Inc.
Docket No. EL10–55	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–65	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER09–636	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–1214	Entergy Services, Inc.
Docket No. ER09–1224	Entergy Services, Inc.
Docket No. ER10–794	Entergy Services, Inc.
Docket No. ER10–879	Entergy Services, Inc.
Docket No. ER10–1350	Entergy Services, Inc.
Docket No. ER10–1367	Entergy Services, Inc.
Docket No. ER10–2216	Entergy Arkansas, Inc.
Docket No. ER10–2223	Entergy Mississippi, Inc.
Docket No. ER10–2224	Entergy Texas, Inc.
Docket No. ER10–2226	Entergy Louisiana, LLC.
Docket No. ER10–2228	Entergy New Orleans, Inc.
Docket No. ER10–2247	Entergy Services, Inc.
Docket No. ER10–2748	Entergy Services, Inc.
Docket No. ER11–2131	Entergy Arkansas, Inc.
Docket No. ER11–2132	Entergy Louisiana, LLC.
Docket No. ER11–2133	Entergy Louisiana, LLC.
Docket No. ER11–2134	Entergy Mississippi, Inc.
Docket No. ER11–2135	Entergy New Orleans, Inc.
Docket No. ER11–2136	Entergy Texas, Inc.
Docket No. ER11–2157	EWO Marketing, Inc.
Docket No. ER11–2158	Entergy Power, LLC.
Docket No. ER11–2560	Entergy Arkansas, Inc.
Docket No. ER11–2562	Entergy Louisiana, LLC.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1566 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional Entity Trustee, Regional State Committee and Board of Directors Meetings

January 18, 2011.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional Entity Trustee (RE), Regional State Committee (RSC) and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at the Doubletree Hotel, 300 Canal Street, New Orleans, LA 70130. The hotel phone number is (504) 581–1300.

SPP RE

January 24, 2011 (8:30 a.m.–2 p.m.)

SPP RSC

January 24, 2011 (1 p.m.–5 p.m.)

SPP Board of Directors

January 25, 2011 (8 a.m.–3 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, Southwest Power Pool, Inc.
Docket No. ER08–1419, Southwest Power Pool, Inc.
Docket No. ER09–35, Tallgrass Transmission LLC
Docket No. ER09–36, Prairie Wind Transmission LLC
Docket No. ER09–659, Southwest Power Pool, Inc.
Docket No. ER09–1050, Southwest Power Pool, Inc.
Docket No. OA08–61, Southwest Power Pool, Inc.
Docket No. OA08–104, Southwest Power Pool, Inc.
Docket No. ER10–659, Southwest Power Pool, Inc
Docket No. ER10–696, Southwest Power Pool, Inc.
Docket No. ER10–941, Southwest Power Pool, Inc.
Docket No. ER10–1069, Southwest Power Pool, Inc.
Docket No. ER10–1254, Southwest Power Pool, Inc.
Docket No. ER10–1269, Southwest Power Pool, Inc.
Docket No. ER10–1697, Southwest Power Pool, Inc.
Docket No. ER10–1960, Southwest Power Pool, Inc.
Docket No. ER10–2244, Southwest Power Pool, Inc.
Docket No. ER11–13, Southwest Power Pool, Inc.
Docket No. ER11–2071, Southwest Power Pool, Inc.
Docket No. ER11–2101, Southwest Power Pool, Inc.
Docket No. ER11–2103, Southwest Power Pool, Inc.
Docket No. ER11–2188, Southwest Power Pool, Inc.
Docket No. ER11–2190, Southwest Power Pool, Inc.
Docket No. ER11–2194, Southwest Power Pool, Inc.
Docket No. ER11–2198, Southwest Power Pool, Inc.
Docket No. ER11–2103, Southwest Power Pool, Inc.
Docket No. ER11–2188, Southwest Power Pool, Inc.
Docket No. ER11–2190, Southwest Power Pool, Inc.
Docket No. ER11–2194, Southwest Power Pool, Inc.
Docket No. ER11–2198, Southwest Power Pool, Inc.
Docket No. ER11–2205, Southwest Power Pool, Inc.
Docket No. ER11–2220, Southwest Power Pool, Inc.
Docket No. ER11–2291, Southwest Power Pool, Inc.
Docket No. ER11–2303, Southwest Power Pool, Inc.
Docket No. ER11–2308, Southwest Power Pool, Inc.
Docket No. ER11–2309, Southwest Power Pool, Inc.
Docket No. ER11–2315, Southwest Power Pool, Inc.
Docket No. ER11–2317, Southwest Power Pool, Inc.
Docket No. ER11–2345, Southwest Power Pool, Inc.
Docket No. ER11–2385, Southwest Power Pool, Inc.
Docket No. ER11–2401, Southwest Power Pool, Inc.
Docket No. ER11–2415, Southwest Power Pool, Inc.
Docket No. ER11–2425, Southwest Power Pool, Inc.
Docket No. ER11–2428, Southwest Power Pool, Inc.
Docket No. ER11–2525, Southwest Power Pool, Inc.
Docket No. ER11–2528, Southwest Power Pool, Inc.
Docket No. ER11–2619, Southwest Power Pool, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1569 Filed 1–25–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0531; FRL–9257–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping Requirements for Producers, Registrants, and Applicants of Pesticides and Pesticide Devices Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); EPA ICR No. 0143.11, OMB Control No. 2070–0028

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 February 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2010–0531, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, EPA Docket Center, Mail Code: 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: Robin Nogle, Office of Compliance/Agriculture Division, Mail Code: 2225A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–4154; *fax number:* (202) 564–0085; *e-mail address: nogle.robin@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 June 28, 2010 (75 FR 123), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). Any 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–OECA–2010–0531, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance 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 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 Enforcement and Compliance Docket is 202–566–0226.

Use EPA's electronic docket and comment system at *http://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 *http://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 *http://www.regulations.gov*.

Title: Recordkeeping Requirements for Producers, Registrants, and Applicants of Pesticides and Pesticide Devices Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

ICR numbers: EPA ICR No. 0143.11, OMB Control No. 2070–0028.

ICR Status: This ICR is scheduled to expire on January 31, 2011. 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: Producers of pesticides must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR Part 169. This information collection is mandatory under FIFRA section 8. It is used by the Agency to determine compliance with the Act. The information is used by EPA Regional pesticide enforcement and compliance staffs, the Office of Enforcement and Compliance Assurance (OECA), and the Office of Pesticide Programs (OPP) within the Office of Chemical Safety and Pollution Prevention (OCSPP), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and other Federal agencies, States under Cooperative Enforcement Agreements, and the public. 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 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.

Respondents/Affected Entities: Producers of pesticides for sale or distribution in the United States.

Estimated Number of Respondents: 11,600.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 23,200.

Estimated Total Annual Cost: $1,762,040. There are no annualized capital or O&M costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Changes in the Estimates: There is a decrease of 3,600 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is an adjustment due to a change in the number of respondents since the last ICR.

Dated: January 20, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–1630 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0488; FRL–9258–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Chemical-Specific Rules, TSCA Sec. 8(a); EPA ICR No. 1198.09, OMB Control No. 2070–0067

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Chemical-Specific Rules, TSCA Sec. 8(a); ICR No. 1198.09, OMB No. 2070–0067. The ICR, which is abstracted below, describes the nature of the information collection activity and its estimated burden and costs.

DATES: Additional comments may be submitted on or before February 25, 2011.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2010–0488 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: 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: Pamela Myrick, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–9838; e-mail address: *TSCA–Hotline@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 June 24, 2010 (75 FR 36067), EPA sought comments on this renewal ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments related to 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–OPPT–2010–0488, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT 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 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 Pollution Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view

public comments, access the index listing of the contents of the public docket, and to access those documents in the public 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 in *http://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. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Chemical-Specific Rules, TSCA Sec. 8(a).

ICR Numbers: EPA ICR No. 1198.09, OMB Control No. 2070–0067.

ICR Status: This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2011. Under 5 CFR 1320.10, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes the EPA Administrator to promulgate chemical-specific rules that require persons who manufacture, import or process the chemical substance or mixture, or who propose to manufacture, import, or process the chemical substance or mixture, to maintain such records and submit such reports to EPA as may be reasonably required. Any chemical covered by TSCA for which EPA or another Federal agency has a reasonable need for information and which cannot be satisfied via other sources is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, by-products of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of the identified chemical substance or mixture. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities and others in the public will also have access to this information for their use.

Responses to the collection of information are mandatory (see 40 CFR 704). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 68.8 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process or import, or propose to manufacture, process or import, the chemical substance or mixture identified in a rule.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 1.

Estimated No. of Respondents: 4.

Estimated Total Annual Burden on Respondents: 275 hours.

Estimated Total Annual Costs: $14,080.

Changes in Burden Estimates: There is no change in the total estimated respondent burden from that currently in the OMB inventory.

Dated: January 20, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–1663 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0487; FRL–9258–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping for Asbestos Abatement Worker Protection; EPA ICR No. 1246.11, OMB No. 2070–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping for Asbestos Abatement Worker Protection; EPA ICR No. 1246.11, OMB No. 2070–0072. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before February 25, 2011.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2010–0487 to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, *Mail Code:* 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: 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: Pamela Myrick, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, *Mailcode:* 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–9838; *e-mail address: TSCA-Hotline@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 July 13, 2010 (75 FR 39931), EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the

comment period. Any comments related to 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 EPA–HQ–OPPT–2010–0487, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public 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 above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Reporting and Recordkeeping for Asbestos Abatement Worker Protection.

ICR Status: This is a request to renew an existing approved collection that is currently scheduled to expire on January 31, 2011. Under OMB regulations, the date will be extended monthly and the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: EPA's asbestos worker protection rule is designed to provide occupational exposure protection to state and local government employees who are engaged in asbestos abatement activities in states that do not have state plans approved by the Occupational Safety and Health Administration (OSHA). The rule provides protection for public employees not covered by the OSHA standard from the adverse health effects associated with occupational exposure to asbestos. Specifically the rule requires state and local governments to monitor employee exposure to asbestos, take action to reduce exposure to asbestos, monitor employee health and train employees about asbestos hazards.

The rule includes a number of information collection activities that are addressed in this ICR. State and local government agencies are required to provide employees with information about exposures to asbestos and the associated health effects. The rule also requires state and local governments to notify EPA before commencing any asbestos abatement project. State and local governments must maintain medical surveillance and monitoring records and training records on their employees, must establish a set of written procedures for respirator programs and must maintain procedures and records of respirator fit tests. EPA will use the information to monitor compliance with the asbestos worker protection rule. This request addresses these reporting and recordkeeping requirements.

Responses to the collection of information are mandatory (*see* 40 CFR 763 Subpart G). Respondents may claim all or part of a record as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 0.3 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are state and local government employers in 25 states, the District of Columbia, and certain U.S. Territories that have employees engaged in asbestos-related construction, custodial and brake and clutch repair activities without OSHA-approved state plans.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 51.

Estimated No. of Respondents: 22,488.

Estimated Total Annual Burden on Respondents: 363,523 hours.

Estimated Total Annual Costs: $13,982,371.

Changes in Burden Estimates: This request reflects a net decrease of 39,226 hours (from 402,749 hours to 363,523 hours) in the total estimated respondent burden from that currently in the OMB inventory. This net decrease principally reflects the changed status of Illinois, which adopted an OSHA-approved state plan since the last ICR, reducing the number of affected states from 26 to 25 (plus the District of Columbia). The Supporting Statement provides details on the change in burden estimate. The change is an adjustment.

Dated: January 21, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–1662 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0281; FRL–9258–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting; EPA ICR No. 1693.07, OMB Control No. 2070–0142

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 February 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2010–0281, to (1) EPA online

using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Pesticide Public Regulatory Docket at Potomac Yard, 7502P, 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: Scott Drewes, Field and External Affairs Division, Office of Pesticide Programs, 7506P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–347–0107; fax number: 703–305–5884; e-mail address: *drewes.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), and the procedures prescribed in 5 CFR 1320.12. On May 5, 2010, EPA sought comments on this renewal ICR (75 FR 24690) pursuant to 5 CFR 1320.8(d). EPA received one comment, which is 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–OPP–2010–0281, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Pesticides Public Regulatory Docket, One Potomac Yard, 2777 S. Crystal Drive, Room S–4400, Arlington, VA 22202. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for this docket is 703–305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, to 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 *http://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 *http://www.regulations.gov.*

Title: Plant-Incorporated Protectants; CBI Substantiation and Reporting Risk/Benefit Information.

ICR Numbers: EPA ICR No. 1693.07, OMB Control No. 2070–0142.

ICR Status: The current OMB approval for this ICR is scheduled to expire on January 31, 2011. Under OMB regulations at 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR is for an ongoing information collection activity. 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 Final Rule and in the **Federal Register** when approved, are listed in 40 CFR part 9 or by other appropriate means, such as on the related collection instrument or form, if applicable.

Abstract: This ICR addresses the two information collection requirements described in regulations pertaining to pesticidal substances that are produced by plants (plant-incorporated protectants (PIPs)) and which are codified in 40 CFR part 174. A PIP is defined as "the pesticidal substance that is intended to be produced and used in a living plant and the genetic material necessary for the production of such a substance." Many, but not all, PIPs are exempt from registration requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Registrants sometimes include in a submission to EPA for registration of a PIP information that they claim to be confidential business information (CBI). CBI is protected by FIFRA and generally cannot be released to the public unless authorized after following the procedures in 40 CFR part 2. Under 40 CFR part 174, whenever a registrant claims that information submitted to EPA in support of a registration application for PIPs contains CBI, the registrant must substantiate such claims when they are made. In addition, manufacturers of PIPs that are otherwise exempted from the requirements of registration must report risk benefit information of the PIP to the Agency. Such reporting will allow the Agency to determine whether further action is needed to prevent unreasonable adverse effects to public health and the environment. Submission of this information is mandatory and supplied on occasion.

Burden Statement: The annual respondent burden for the collection of information associated with the substantiation at the time of submission for CBI claims related to a PIP registration application is estimated to average 21.5 hours per submission, and the annual respondent burden for the collection of information associated with the reporting of adverse effects for exempted PIPs is estimated to average 7 hours per submission. Burden is defined in 5 CFR 1320.3(b). The following is a summary of the burden and cost information for this ICR:

Respondents/Affected Entities: Producers and importers of PIPs.

Estimated Number of Respondents: 18.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 389.

Estimated Total Annual Cost: $26,875.00.

Changes in the Estimates: There is an increase of 86 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is an adjustment resulting from an increase in the estimated number of PIPs applications. EPA expects that the level of activity will continue.

Dated: January 20, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–1657 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–1007; FRL–8858–8; EPA ICR No. 1715.13; OMB Control No. 2070–0155]

Agency Information Collection Activities; Proposed Collection; Comment Request; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting

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 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, entitled: "TSCA Section 402 and

Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting" and identified by EPA ICR No. 1715.13 and OMB Control No. 2070–0155, is scheduled to expire on October 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before March 28, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–1007, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–1007. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–1007. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Michelle Price, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0744; fax number: (202) 566–0470; e-mail address: *price.michelle@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates 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.
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. 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.

II. 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. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. 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.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are persons who provide training in lead-based paint activities and/or renovation, persons who are engaged in lead-based paint activities and/or renovation, and State agencies that administer lead-based paint activities and/or renovation programs.

Title: TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting.

ICR numbers: EPA ICR No. 1715.13, OMB Control No. 2070–0155.

ICR status: This ICR is currently scheduled to expire on October 31, 2011. 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 Code of Federal Regulations (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 for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection request (ICR) combines information collection activities defined in existing ICRs 1715.09 (ICR for lead-based paint activities), 1715.10 (ICR addendum for the 2008 Renovation, Repair and Painting final rule), and 1715.12 (ICR for the 2010 Renovation, Repair and Painting opt-out and recordkeeping final rule) covering the reporting and recordkeeping requirements for individuals or firms conducting lead-based paint activities or renovation in or on houses, apartments, or child-occupied facilities built before 1978, under the authority of sections 402 and 404 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2682, 2684).

Sections 402(a) and 402(c)(3) of TSCA require EPA to develop and administer a training and certification program as well as work practice standards for persons who perform lead-based paint activities and/or renovations. The current regulations in 40 CFR part 745, subpart E, cover work practice standards, recordkeeping and reporting requirements, individual and firm certification, and enforcement for renovations done in target housing or child-occupied facilities. The current regulations in 40 CFR part 745, subpart L, cover inspections, lead hazard screens, risk assessments, and abatement activities (referred to as "lead-based paint activities") done in target housing and child-occupied facilities. The current regulations in 40 CFR part 745, subpart Q, establish the requirements that State or Tribal programs must meet for authorization to administer the standards, regulations, or other requirements established under TSCA section 402. Section 401 of TSCA defines target housing as any housing constructed before 1978 except housing for the elderly or disabled or 0-bedroom dwellings.

Sections 402(a) and 402(c)(3) of TSCA require reporting and/or recordkeeping from four entities: Firms engaged in lead-based paint activities or renovations in target housing and child-occupied facilities; individuals who perform lead-based paint activities in target housing and child-occupied facilities; training providers; and States/territories/Tribes/Alaskan native villages. This information collection applies to the reporting and recordkeeping requirements outlined in this *Abstract* section.

Responses to the collection of information are mandatory (*see* 40 CFR part 745). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 0.8 and 9.9 hours per response, depending upon the category of the 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 367,815.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: Varies.

Estimated total annual burden hours: 3,312,524 hours.

Estimated total annual costs: $149,223,301. This includes an estimated burden cost of $149,223,301 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is a decrease of 497,229 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects: EPA's revisions to the estimated number of respondents based on the number of respondents reporting to the Agency under the prior information collection, EPA's revisions to per-activity burden estimates to simplify some assumptions and to make estimation methods consistent, and characterization as Agency burden; some burden elements that had previously been described as respondent burden. See the supporting statement for details about revisions to burden estimates. This change is an adjustment.

V. 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. 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**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 19, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–1474 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9254–5]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board Nutrient Criteria Review Panel

Correction

In notice document 2011–1014 beginning on page 3133 in the issue of Wednesday, January 19, 2011, make the following corrections:

1. On page 3133, in the third column, in lines 25 through 28, "*http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activities/FL%20Estuaries%20TSD?OpenDocument*" should read "*http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/FL%20Estuaries%20TSD?OpenDocument.*"

2. On the same page, in the same column, in lines 45 through 47, "*http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activities/FL%20Estuaries%20TSD?OpenDocument*" should read "*http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/FL%20Estuaries%20TSD?OpenDocument*".

[FR Doc. C1–2011–1014 Filed 1–25–11; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9258–1]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board Lead Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Lead Review Panel to discuss its draft advisory report concerning two EPA documents entitled *Approach for Developing Lead Dust Hazard Standards for Residences* (November 2010 Draft) and *Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings* (November 2010 Draft).

DATES: The SAB Lead Review Panel will conduct a public teleconference on February 22, 2011. The teleconference will begin at 1 p.m. and end at 5 p.m. (Eastern Time).

ADDRESSES: The teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), via telephone at (202) 564–2050 or e-mail at *yeow.aaron@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the SAB Lead Review Panel will hold a public teleconference to discuss its draft advisory report concerning two EPA documents entitled *Approach for Developing Lead Dust Hazard Standards for Residences* (November 2010 Draft) and *Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings* (November 2010 Draft). The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Human exposure to lead may cause a variety of adverse health effects, particularly in children. EPA's Office of Pollution Prevention and Toxics (OPPT) regulates toxic substances, such as lead, through the Toxic Substances Control Act (TSCA). In 2001, EPA established standards for lead-based paint hazards, which include lead in residential dust. OPPT is considering possible revision of the residential lead-based paint dust hazard standards and the development of lead-based paint dust hazard standards for public and commercial buildings. As part of this effort, OPPT has developed two draft documents, *Approach for Developing Lead Dust Hazard Standards for Residences* (November 2010 Draft) and *Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings* (November 2010 Draft). OPPT sought consultative advice from the SAB Lead Review Panel on early drafts of the documents on July 6–7, 2010 [**Federal Register** Notice dated June 3, 2010 (75 FR 31433–31434)]. EPA has considered the advice provided by individual members of the SAB Lead Review Panel in developing the two documents and sought SAB peer review on December 6–7, 2010 [*see* **Federal Register** Notice dated November 10, 2010 (75 FR 69069)]. Materials from the December 6–7, 2010 meeting are posted on the SAB Web site at *http://yosemite.epa.gov/sab/SABPRODUCT.NSF/MeetingCal/D64DDC861587DB14852577910051BAD1?OpenDocument.*

The purpose of the upcoming teleconference is for the SAB Lead Review Panel to discuss its draft advisory report. The Panel's draft advisory report will be submitted to the chartered SAB for consideration and approval. A meeting agenda and the draft SAB review report will be posted at the above noted SAB Web site prior to the meeting.

Availability of Meeting Materials: Agendas and materials in support of the teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference. For technical questions and information concerning EPA's draft document, please contact Dr. Jennifer Seed at (202) 564–7634, or *seed.jennifer@epa.gov*.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via e-mail) at the contact information noted above by February 15, 2011 to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by February 15, 2011 so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. Submitters are requested to provide versions of signed documents, submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or

yeow.aaron@epa.gov. To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: January 20, 2011.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2011–1641 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9258–2]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel for the Reconsideration of the 2008 National Ambient Air Quality Standard (NAAQS).

DATES: The CASAC teleconferences will be held on Friday, February 18, 2011 from 1 p.m. to 5 p.m. (Eastern Time) and on Thursday, March 3, 2011 from 10 a.m. to 1 p.m. (Eastern Time).

ADDRESSES: The teleconferences will take place by phone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the teleconferences may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1300 Pennsylvania Avenue, NW., Washington, DC 20004; via telephone/voice mail (202) 546–2073; fax (202) 565–2098; or e-mail at *stallworth.holly@epa.gov*. General information concerning the CASAC may be found on the EPA Web site at *http://www.epa.gov/casac*.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463 5 U.S.C., App. 2, notice is hereby given that the CASAC Ozone Review Panel will hold two public teleconferences to provide additional advice on the strengths and limitations of the scientific evidence and technical information for EPA's reconsideration of the 2008 Ozone NAAQS. The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including Ozone. From 2005 to 2008, the CASAC Ozone Review Panel conducted scientific reviews of EPA's scientific assessments of the health and welfare effects of Ozone and other Photochemical Oxidants. On April 7, 2008 letter, the Panel provided comments on EPA's Final Rule for the National Ambient Air Quality Standards (NAAQS) for Ozone (73 FR 16436). The April 7, 2008 letter (EPA–CASAC–08–009) is one of several CASAC advisory reports provided to EPA to support the 2005–2008 Ozone review). The CASAC reports are available on the CASAC Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/WebReportsbyTopic CASAC!OpenView*.

On September 16, 2009, EPA Administrator Lisa Jackson announced her decision to reconsider the March 12, 2008 primary and secondary Ozone NAAQS to ensure they are scientifically sound and protective of public health and the environment. Pursuant to this decision, EPA proposed on January 6, 2009 to set different primary and secondary standards than those set in 2008 to provide requisite protection of public health and welfare, respectively (75 FR 2938–3052; January 19, 2010). Since the proposed standards are based on the scientific record from the 2008 rulemaking, including public comments and CASAC advice, EPA's Office of Air and Radiation requested the Ozone Review Panel that conducted the 2005–2008 review to provide comments on EPA's 2010 proposed Ozone standards. Accordingly, the SAB Staff Office reconvened the Ozone Review Panel to provide advice on the proposed reconsideration of the 2008 Ozone NAAQS. As discussed in 75 FR 1381–1382, this Panel (renamed "Ozone Review Panel for the Reconsideration of the 2008 NAAQS") held a public teleconference on January 25, 2010. A letter dated February 28, 2010 (EPA–CASAC 10–007), posted at *http://yosemite.epa.gov/sab/sabproduct.nsf/610BB57CFAC8A41C852576CF007076BD/$File/EPA-CASAC-10-007-unsigned.pdf*, was transmitted to the EPA Administrator providing comment on EPA's proposed reconsideration of the 2008 Ozone standards. The purpose of the February 18, 2011 and March 3, 2011 teleconferences is for this Panel to respond to additional charge questions from EPA regarding reconsideration of the 2008 Ozone NAAQS.

Technical Contacts: Any technical questions concerning EPA's charge questions may be directed to Susan Stone at *stone.susan@epa.gov* or (919) 541–1146.

Availability of Meeting Materials: The agenda, charge questions and any other meeting materials may be found posted at *http://www.epa.gov/casac* through the calendar link on the blue navigation bar.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* To be placed on the public speaker list for the February 18, 2011 teleconference, interested parties should notify Dr. Stallworth, DFO, by e-mail no later than February 11, 2011. To be placed on the public speaker list for the March 3, 2011 teleconference, interested parties should notify Dr. Stallworth no later than February 24, 2011. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the meeting should be received in the SAB Staff Office by February 7, 2011 so that the information may be made available to the Panel for its consideration prior to this meeting. Written statements should be supplied to the DFO via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr.

Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 20, 2011.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–1664 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0211; FRL–9258–6]

Partial Grant of Clean Air Act Waiver Application Submitted by Growth Energy To Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator

AGENCY: Environmental Protection Agency.

ACTION: Notice of Decision Granting a Partial Waiver.

SUMMARY: The Environmental Protection Agency (EPA) is taking additional final action on Growth Energy's application for a waiver submitted under section 211(f)(4) of the Clean Air Act. Today's partial waiver allows fuel and fuel additive manufacturers to introduce into commerce gasoline that contains greater than 10 volume percent ethanol and no more than 15 volume percent ethanol (E15) for use in model year (MY) 2001 through 2006 light-duty motor vehicles (passenger cars, light-duty trucks and medium-duty passenger vehicles), if certain conditions are fulfilled. In October 2010, we granted a partial waiver for E15 for use in MY2007 and newer light-duty motor vehicles subject to the same conditions. Taken together, the two waiver decisions allow the introduction into commerce of E15 for use in MY2001 and newer light-duty motor vehicles if those conditions are met.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0211. All documents and public comments in the docket are listed on the *http://www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742 and the fax number is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, Office of Transportation and Air Quality, *Mailcode:* 6405J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9718; *fax number:* (202) 343–2800; *e-mail address: Anderson.Robert@epa.gov.*

SUPPLEMENTAL INFORMATION:

Table of Contents

I. Executive Summary

A. Prior E15 Partial Waiver Decision

In March 2009, Growth Energy and 54 ethanol manufacturers petitioned the Environmental Protection Agency (EPA or Agency) to allow the introduction into commerce of up to 15 volume percent (vol%) ethanol in gasoline. Prior to Growth Energy's petition, ethanol was limited to 10 vol% in motor vehicle gasoline (E10). The petition requested that EPA exercise its authority under section 211(f)(4) of the Clean Air Act (CAA or Act) to waive the prohibition on the introduction of E15 into commerce under section 211(f)(1) of the Act. In April 2009, EPA invited public comment on Growth Energy's waiver request and received about 78,000 comments. On October 13, 2010, EPA took two actions on the waiver request based on the information available at that time ("October Waiver Decision").[1] First, it partially approved Growth Energy's waiver request to allow the introduction of E15 into commerce for use in MY2007 and newer light-duty motor vehicles, subject to several conditions. Second, the Agency denied the waiver request for MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and other nonroad engines, vehicles, and equipment. The Agency also deferred making a decision on the waiver request for MY2001–2006 light-duty motor vehicles to await the results of additional testing being conducted by the Department of Energy (DOE).

B. Waiver Decision for MY2001–2006 Light-Duty Motor Vehicles

In today's action, EPA is partially granting Growth Energy's waiver request for MY2001–2006 light-duty motor vehicles based on our analysis of the available information, including DOE and other test data and public comments. This partial grant waives the prohibition on fuel and fuel additive manufacturers and allows the introduction into commerce of gasoline containing greater than 10 vol% ethanol and no more than 15 vol% ethanol for use in MY2001–2006 light-duty motor vehicles, which includes passenger cars, light-duty trucks, and medium-duty passenger vehicles (large sport utility vehicles).[2] It is subject to the same conditions that apply to the partial waiver issued in October for MY2007

[1] *Partial Grant and Partial Denial of CAA Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator. See* 75 FR 68094, November 4, 2010.

[2] For purposes of today's decision, "MY2001–2006 light-duty motor vehicles" include MY2001–2006 light-duty vehicles (LDV), light-duty trucks (LDT), and medium-duty passenger vehicles (MDPV), the same types of motor vehicles as in the October Waiver Decision, but for the earlier model years 2001–2006.

and newer light-duty motor vehicles. Today's waiver decision together with the October Waiver Decision means that E15 may be introduced into commerce, subject to those conditions, for use in all MY2001 and newer light-duty motor vehicles.[3]

To receive a waiver under CAA section 211(f)(4), a fuel or fuel additive manufacturer must demonstrate that a new fuel or fuel additive will not cause or contribute to the failure of engines or vehicles to achieve compliance with the emission standards to which they have been certified over their useful life. The information submitted by Growth Energy was not sufficient to support a waiver covering introduction of E15 into commerce for use in MY2001–2006 light-duty motor vehicles. However, key data for responding to the waiver request for MY2001–2006 light-duty motor vehicles was provided by a DOE test program to determine the effect of long-term use of gasoline-ethanol blends, including E15, on the durability of emissions control systems, including catalysts, used in light-duty motor vehicles to control exhaust emissions (DOE Catalyst Study).[4]

In 2008, DOE began testing 19 MY2007 and newer light-duty motor vehicle models, and the resulting test data were an important part of the basis for EPA's October Waiver Decision, which granted a partial waiver for use of E15 in those model year and newer motor vehicles. In 2010, DOE began a second phase of its study with eight motor vehicle models to provide emissions-related data for MY2001–2006 light-duty motor vehicles. Many of the models were selected for their expected sensitivity to the effects of long-term use of higher gasoline-ethanol blends, such as E15, so that any potential emissions problems would be more likely to become apparent. The test fleet also included several high-sales volume vehicle models. As a whole, the test fleet was appropriately composed to provide important information for assessing the potential impact of E15 on emissions of MY2001–2006 light-duty motor vehicles.

In view of the ongoing DOE Catalyst Study, the Agency delayed making a decision on the waiver request for MY2001–2006 light-duty motor vehicles until the test program was completed and the results made available to the public. DOE testing was largely completed in November, and retesting of several models that experienced mechanical problems unrelated to fuel use was completed in December. The test results were made available to the public on a rolling basis, with EPA submitting data to the docket as soon as the data were received and checked for accuracy and completeness with DOE.

As described more fully in Section IV of this notice, EPA is making today's decision based on the results of the DOE Catalyst Study and other relevant test programs, as well as the Agency's engineering assessment that changes in regulatory requirements affecting MY2001–2006 light-duty motor vehicles generally led manufacturers to design and build vehicles able to use E15 without a significant impact on emissions. Consistent with past waiver decisions, the Agency is making its decision based on potential effects of E15 in four areas: (1) Exhaust emissions—immediate [5] and long-term (known as durability); (2) evaporative emissions—immediate and long-term; (3) the impact of materials compatibility on emissions; and (4) the impact of driveability and operability on emissions.

For MY2001–2006 light-duty motor vehicles, EPA concludes that the DOE Catalyst Study, other information and EPA's engineering analysis adequately demonstrate that the impact of E15 on overall exhaust emissions, including both immediate and long-term, will not cause or contribute to violations of the exhaust emissions standards for these motor vehicles. All but one of the vehicles that completed DOE testing met exhaust emission standards on average after the vehicles accumulated significant mileage, and were then tested, on E15. Although one vehicle tested on E15 slightly exceeded one emission standard, the exceedance does not appear related to fuel use since its counterpart tested on E0 (gasoline containing no ethanol) exceeded the same standard. Compliance with emission standards by the E15 test fleet as a whole is particularly compelling given that the vehicles tested were older, high mileage vehicles (reflecting their model year), and much of the testing was conducted at mileages beyond the vehicles' regulatory "full useful life" (FUL) of 100,000–120,000 miles, depending on vehicle type and model year. The test results also show that the vehicles aged and tested on E15 did not have significantly higher emissions than the vehicles aged and tested on E0, and some vehicles' emissions actually decreased on E15. Overall, the test results for MY2001–2006 are similar to the DOE test results for MY2007 and newer light-duty motor vehicles, indicating that the earlier model year vehicles are more like later model year vehicles in their ability to maintain emission control performance when operated on E15. The DOE test results thus strongly confirm EPA's engineering assessment that auto manufacturers responded to regulatory changes applicable to MY2001–2006 with design changes that made light-duty motor vehicles capable of maintaining exhaust emissions performance when operated on mid-level gasoline-ethanol blends, up to and including E15.

With respect to evaporative emissions, EPA concludes that analysis of test data and other available information and the Agency's engineering assessment adequately demonstrate for purposes of CAA section 211(f)(4), with the possible limited exception noted below, that the impact of E15 on overall evaporative emissions, including both immediate and durability-related, will not cause or contribute to MY2001–2006 light-duty motor vehicles exceeding their applicable evaporative emissions standards, so long as the fuel does not exceed a Reid Vapor Pressure (RVP) of 9.0 psi in the summertime volatility control season.[6] Analysis of available information suggests, but does not establish, the possibility that a limited number of vehicle models with emissions already very close to applicable evaporative emission standards might exceed the standards in-use if operated on E15. However, this possibility should be considered in light of information indicating that use of E15 by those vehicles will, overall, be better for the environment with respect to in-use evaporative emissions than would otherwise occur if a waiver were not

[3] It should be noted that a number of additional steps must be completed by various parties before E15 may be distributed and sold. These steps include but are not limited to submission of a complete E15 fuels registration application by the fuel and fuel additive manufacturers who wish to introduce E15 into commerce, and EPA review and approval of the application, under the regulations at 40 CFR Part 79. Various state laws may also affect the distribution and sale of E15.

[4] DOE embarked on the study, in consultation with EPA, auto manufacturers, fuel providers and others, after enactment of the Energy Independence and Security Act of 2007, which significantly expanded the federal Renewable Fuel Standard program by increasing the volume of renewable fuels that must be used in transportation fuel in order to reduce imported petroleum and emissions of greenhouse gases.

[5] In past waiver decisions, we have referred to "immediate" emissions as "instantaneous" emissions. "Immediate" and "instantaneous" are synonymous in this context.

[6] EPA regulates the Reid Vapor Pressure of gasoline sold at retail stations during the summer ozone season (June 1 to September 15) to reduce evaporative emissions from gasoline that contribute to ground-level ozone. Gasoline needs a higher vapor pressure in the wintertime for cold start purposes.

granted. In fact, E15 may result in somewhat lower in-use evaporative emissions compared to fuel currently sold in almost all of the country (E10), as a result of differences in the allowable RVP of the two gasoline-ethanol blends. As such, the possibility of a limited number of evaporative emission exceedances, under these somewhat unique circumstances, does not warrant denial of the request for a waiver with respect to these model year vehicles. Available information on materials compatibility and driveability also supports a partial waiver for MY2001–2006 light-duty motor vehicles. Further information and explanation concerning each of these findings are provided later in this notice.

C. Conditions on Today's Partial Waiver and Proposed Rule on Misfueling Mitigation

Like the waiver for MY2007 and newer light-duty motor vehicles, today's partial waiver is subject to several conditions to ensure fuel quality, limit the fuel's summertime vapor pressure, and mitigate the potential for other vehicles, engines and products to be misfueled with E15. Specifically, EPA is placing two types of conditions on the partial waiver granted today: (1) Those for mitigating the potential for misfueling of E15 in all vehicles, engines and equipment for which E15 is not approved; and (2) those addressing fuel and ethanol quality. All of the conditions are discussed in Section X of the October Waiver Decision (*see* 75 FR 68094, 68148 (November 4, 2010)) and are listed below in Section IV. EPA is applying the same conditions on introduction of E15 into commerce for use in MY2001–2006 light-duty motor vehicles that it applied to use of E15 in MY2007 and newer such vehicles, and for the same reasons, as explained in the October Waiver Decision. To meet the misfueling-related conditions, any fuel or fuel additive manufacturer subject to this waiver must obtain EPA approval of and implement a plan that meets the conditions for ensuring that the fuel or fuel additive is only introduced into commerce for use in MY2001 and newer light-duty motor vehicles, and not for use in other on- and off-road vehicles, engines and equipment for which E15 is not approved. See Section VI below.

To help ensure that E15 is used only in motor vehicles for which it is approved, EPA issued a notice of proposed rulemaking (NPRM) published concurrently with the October Waiver Decision ("Misfueling Mitigation NPRM," 75 FR 68044, November 4, 2010). In that NPRM, EPA proposed safeguards to provide the most practical way to mitigate the potential for misfueling of other vehicles, engines and equipment with E15. The Agency received many comments in response to the NPRM, particularly with regard to the proposed misfueling mitigation measures. EPA is now in the process of considering those comments in developing final mitigation measures so that vehicles, engines and products are appropriately fueled if E15 is introduced into commerce. As noted above, today's waiver decision authorizes, but does not require, E15 to be introduced into commerce (subject to several conditions), and a number of additional steps must be taken before that occurs. In addition, any significant shift in the marketplace from E10 to E15 will take time as producers, distributors and suppliers make the necessary adjustments. EPA is developing a program of misfueling mitigation measures that would work in tandem with the various steps involved in distributing and marketing E15 so that needed safeguards are timely and effective.

EPA expects that the mitigation measures that are adopted would satisfy the misfueling mitigation conditions of the partial waiver decision issued in October and today, and would promote the successful introduction of E15 into commerce. In addition to the misfueling mitigation conditions, E15 and the ethanol used to make E15 must also meet certain fuel and fuel additive quality specifications before it may be introduced into commerce.

II. Introduction

Section II of the October Waiver Decision includes a comprehensive review of the relevant CAA provisions and the amendments made to those provisions by the Energy Independence and Security Act of 2007. It also describes Growth Energy's waiver application and the public review process that EPA conducted as part of its consideration of the application. Today's partial waiver decision fully incorporates by reference Section II of the October Waiver Decision and provides additional information as needed to address the potential use of E15 in MY2001–2006 light-duty motor vehicles.

III. Method of Review

A full explanation of the method of review for waiver requests under CAA section 211(f)(4) is provided in Section III, Method of Review, in the October Waiver Decision. We fully incorporate by reference Section III of the October Waiver Decision into this partial waiver decision. For convenience, a brief description of our method of review is provided here.

Section 211(f)(4) clearly places upon the waiver applicant the burden of establishing that its fuel or fuel additive will not cause or contribute to the failure of vehicles or engines to meet their assigned emission standards over their useful lives. If interpreted literally, however, this burden of proof would be virtually impossible to meet as it requires the proof of a negative proposition: that no vehicle or engine will fail to meet emission standards to which it is subject. Recognizing that Congress contemplated a workable waiver provision, EPA has previously indicated that reliable statistical sampling and fleet testing protocols is one approach that could be used to demonstrate that a fuel or fuel additive under consideration would not cause or contribute to motor vehicles in the applicable national fleet failing to meet their applicable emissions standards.[7]

EPA has also stated that an applicant may make a demonstration based upon a reasonable engineering theory regarding emissions effects and support these judgments with confirmatory testing as an alternative to providing the amount of data necessary to conduct robust statistical analyses.[8] If a reasonable theory exists, based on good engineering judgment, which predicts the emission effects of a fuel or fuel additive, an applicant need only conduct a sufficient amount of testing or provide other data and analysis sufficient to demonstrate the validity of such a theory.[9] In making a waiver determination, EPA reviews all of the material in the public docket.

For EPA to grant a waiver, the available information must be sufficient to answer the essential statutory question of whether the proposed fuel or fuel additive will impact emission controls such that it causes or contributes to vehicles and engines exceeding their emission standards. What specific types of information and analysis may be relevant for assessing a specific fuel or fuel additive depends in part on the physical and chemical characteristics of the proposed fuel or fuel additive and the emission controls it would affect. Applicable methods of review and the type of information sufficient to make the required showing thus vary as necessary and appropriate for addressing the emission control

[7] *See* 43 FR 41425 (September 18, 1978).

[8] *See* 44 FR 12244 (February 23, 1979).

[9] *See* Waiver Decision on Application of E.I. DuPont de Nemours and Company (DuPont), 46 FR 6124 (February 28, 1983).

issues that a proposed fuel or fuel additive raises. As discussed below, the grant of a partial waiver in this case is based on a combination of engineering assessment, test data, and other information, which together provide a reliable factual and technical basis for making the judgment required under section 211(f)(4). This approach is consistent with the discretion provided under the statute and EPA's recognition in prior waiver decisions that more than one approach can be used to make the determination required under the statute, including combinations of test data and engineering assessment.

As noted previously, the emissions impact analysis for a waiver request must address the following four major areas [10]: (1) Exhaust emissions, immediate and long-term; (2) evaporative emissions, immediate and long-term; (3) materials compatibility; and (4) driveability and operability. EPA evaluates the emissions impacts in these four categories individually and collectively in making its waiver determination.

Exhaust and evaporative emissions data are analyzed according to the effects that a fuel or fuel additive is predicted to have on emissions over time. A fuel might have only an immediate effect on emissions (*i.e.,* the emission effects of the fuel or fuel additive are immediate and remain constant throughout the life of the vehicle or engine when operating on the waiver fuel). A fuel might instead or in addition affect the operation of the engine or related emission control hardware in a physical manner (*e.g.,* operating temperatures, component interaction, chemical changes, increased permeation, or materials degradation) that might lead to emissions deterioration over time. Depending on the type of effect a fuel may have, different types of testing or other information may be appropriate to evaluate the effect on emissions.

Materials compatibility issues can lead to substantial exhaust and evaporative emissions increases. In most cases, materials compatibility issues show up in emissions testing; however, there may be impacts that do not show up due to the way the testing is performed or because the tests simply do not capture the effect.

A change in the driveability of a motor vehicle that results in significant deviation from normal operation (*i.e.,* stalling, hesitation, *etc.*) could result in increased emissions. These increases may not be demonstrated in the test cycles used for certifying vehicles as complying with emission standards, but they are present during in-use operation. For example, a motor vehicle stall and subsequent restart can result in a significant emissions increase. Further, concerns exist that vehicles might be tampered with in an attempt to correct the driveability issue and emissions might increase as a result.

[10] *See* 44 FR 12244 (February 23, 1979).

IV. Analysis for MY2001–2006 Light-Duty Motor Vehicles

As described in detail below, DOE and other test data together with other available information and EPA's engineering analysis support granting a partial waiver for use of E15 in MY2001–2006 light-duty motor vehicles. As with EPA's waiver decision for MY2007 and newer light-duty motor vehicles, the DOE Catalyst Program provided critically important test data for assessing the ability of MY2001–2006 light-duty motor vehicles to meet applicable exhaust emission standards if operated on E15. DOE's test fleet was carefully assembled to be broadly representative of the national fleet for those model years and to discern any emission problems that might arise from use of E15. Results from DOE's testing strongly support a determination that E15 will not cause or contribute to MY2001–2006 light-duty motor vehicles exceeding their applicable exhaust emission standards. Analysis of other test data, including EPA compliance information, combined with EPA's engineering assessment shows that MY2001–2006 light-duty motor vehicles should generally be able to meet evaporative emission standards when operated on E15 so long as the fuel does not exceed a RVP of 9.0 psi in the summertime volatility control season. In fact, such vehicles should have somewhat lower evaporative emissions when operated on 9.0 psi E15 than when operated on currently available in-use fuel. Although our analysis suggests the possibility that a relatively small number of vehicles already emitting at close to applicable evaporative emission standards may exceed those standards on E15, that possibility does not warrant denial of the waiver, particularly in light of the evaporative emission benefits that 9.0 psi E15 is expected to achieve in comparison to commercially available in-use fuel.[11]

[11] As explained later in this notice, EPA has traditionally interpreted and applied CAA section 211(f)(4) to authorize a waiver for fuels or fuel additives that statistical analysis shows will not result in a significant increase in violations of the vehicle emissions standards. Even if EPA were to adopt a more stringent test for waiver decisions, it would not apply such a test in these circumstances, where the actual environmental impact of the fuel is neutral or positive. In the unique circumstances here, the potential emissions violation should not be considered significant, given their actual impact on in-use emissions is neutral or even positive. Also, since the EPA regulations for determining auto manufacturers' compliance with emission standards specify use of E0 fuel during compliance testing, manufacturers' compliance status will not be adversely affected by any emission failures that might occur in-use as the result of any immediate emissions impacts of E15.

In the October Waiver Decision, EPA discussed at length Growth Energy's request and the information provided by Growth Energy in its waiver application and by the public in comments on the request. As the Agency noted, the information provided for light-duty motor vehicles was generally not specific to model years. EPA described and addressed that information in discussing its decisions for MY2007 and newer light-duty motor vehicles and MY2000 and older light-duty motor vehicles. Rather than repeat the full discussion in the October Waiver Decision, we incorporate it by reference here and expand on it below as needed to address MY2001–2006 light-duty motor vehicles.

At the outset of our analysis for MY2001–2006 light-duty motor vehicles, it is useful to note that our analysis for these model years is somewhat different from that used for MY2007 and newer light-duty motor vehicles. DOE's Catalyst Study tested a large number of MY2007 and newer light-duty motor vehicles representing a cross section of the fleet. The size of the MY2007 and newer motor vehicle test fleet allowed a statistical analysis of the potential impact of a fuel or fuel additive on exhaust emissions. DOE's data and EPA's analysis of that data provided much of the basis for EPA's determination that E15 will not cause or contribute to MY2007 and newer light-duty motor vehicles failing to meet applicable emission standards. The data and analysis also confirmed EPA's engineering assessment that regulatory changes applicable to those model years likely resulted in manufacturers making design changes that allowed the vehicles to continue to comply with exhaust emission standards when operated on E15. For the other factors relevant to waiver determinations (e.g., evaporative emissions, materials compatibility), EPA employed engineering judgment based on and/or confirmed by available information, including data from DOE and other test programs.

For MY2001–2006 light-duty motor vehicles, DOE tested fewer vehicle models but selected models for their expected sensitivity to ethanol blends

and to achieve broad representation of the national vehicle fleet for these model years. As a result, while DOE's test fleet does not include enough vehicles to allow the same statistical analysis conducted for MY2007 and newer light-duty motor vehicles, it is composed in a way that provides data that is very informative about the expected effects of E15 on the in-use fleet, and confirms the engineering assessment that regulatory requirements applicable to MY2001–2006 light-duty motor vehicles resulted in emission control improvements sufficient to maintain compliance with applicable exhaust standards if these vehicles are operated on E15. For MY2001–2006 light-duty motor vehicles, EPA is thus utilizing a broad range of evidence relevant to making waiver decisions under CAA section 211(f)(4) and considering the DOE Catalyst Study in combination with other available test data and information and EPA's engineering assessment in determining whether a waiver for these model years is appropriate.

In evaluating Growth Energy's waiver request with respect to MY2001–2006 light-duty motor vehicles, EPA considered the potential impact of E15 on the four relevant emission–related categories listed previously. The technical issue is whether these motor vehicles would still meet the applicable emission standards over their fuel useful life if they operated in-use on E15 and emissions testing was performed using E15 as the fuel.[12]

In considering the potential impact of E15 on the four factors, we focused on MY2001–2006 light-duty motor vehicles subject to pre-Tier 2 emission standards (*i.e.,* the standards in effect before Tier 2 standards applied to all light-duty motor vehicles). As described in the October Waiver Decision, Tier 2 standards began phasing in with MY2004 and, according to EPA certification information, were fully phased in by MY2007 for passenger cars and several categories of light-duty trucks. EPA expected, and DOE testing confirmed, that Tier 2 standards and related compliance requirements prompted manufacturers to make changes to vehicles that helped maintain emission control under real-world conditions, including fueling with E10. The applicability of Tier 2 standards was thus found to be an important basis for partially granting the waiver request for MY2007 and newer model light-duty motor vehicles.

Since Tier 2 standards began to phase in with MY2004, many MY2004–2006 light-duty motor vehicles are subject to Tier 2 standards. Indeed, as illustrated by Figure IV.A–1, more than 60% of MY2005, and more than 80% of MY2006, light-duty motor vehicles are certified as complying with Tier 2 standards. EPA's reasons for partially granting the waiver with respect to MY2007 and newer light-duty motor vehicles also apply to MY2004–2006 Tier 2 vehicles. However, in its October Decision, EPA did not grant the partial waiver with respect to MY2004–2006 Tier 2 vehicles because the Agency expected most vehicle owners for those model years would not know what emission standards their vehicles are supposed to meet, and that information is not easily discerned from the vehicle itself. EPA thus decided to use a model year cut-off for delineating which model years were covered by the partial waiver. For purposes of today's decision, though, it is important to note that MY2004–06 vehicles certified to Tier 2 standards should be able to use E15 without adverse impacts on their emissions for the reasons given in the October Waiver Decision. The analysis in today's decision focuses on light-duty motor vehicles that are not certified to Tier 2 standards.

A. Exhaust Emissions

As described below, a number of regulatory actions took place by 2000 that placed emphasis on real-world testing of motor vehicles, which in turn led to changes in design of exhaust emission control systems. Those actions, together with actual compliance information, provide a strong basis for an engineering assessment that manufacturers improved exhaust emission controls for MY2001–2006 light-duty motor vehicles in ways similar in nature to Tier 2 motor vehicles and are likely sufficient to allow such vehicles to use E15 and still meet exhaust emission standards. DOE's testing of pre-Tier 2 vehicle models (including several expected to be sensitive to ethanol's impact on emissions control) strongly confirms that assessment and demonstrates that MY2001–2006 light-duty motor vehicles can operate on E15 without significant impact on exhaust emission control and that E15 is not expected to cause or contribute to failures to meet applicable exhaust emissions standards.

1. Long-term (Durability) Exhaust Emissions

The October Waiver Decision describes at length various changes in regulatory requirements since the 1970s that over time have required auto manufacturers to design and build increasingly cleaner vehicles that can maintain their emission control performance over the vehicles' FUL under real-world conditions. For today's decision, we focus on those changes that were applicable by or affected MY2001, since those changes are relevant to any engineering assessment of whether MY2001–2006 light-duty motor vehicles that are not Tier 2 vehicles would operate on E15 without significant loss of emission control.

a. Growth Energy's Submission and Public Comment Summary

As mentioned above, Growth Energy's submission and the information supplied by commenters regarding long-term exhaust emission impacts of E15 were generally not specific to the model year of motor vehicles. For a detailed discussion of Growth Energy's submission and summary of public comments with respect to the impact of long-term use of E15 on exhaust emissions, refer to section IV.A.1 for MY2007 and newer light-duty motor vehicles and IV.C.3.b.i for MY2000 and older light-duty motor vehicles of the October Waiver Decision.

b. EPA Analysis and Durability Studies

By MY2001, the federal National Low Emission Vehicle (NLEV) program for reducing exhaust emissions was fully phased in for all cars and light-duty trucks (LDT) up to 6000 lb. gross vehicle weight (GVW) (LDT 1s and 2s) (63 FR 926, January 7, 1998).[13] This program essentially adopted the existing California LEV standards (which began phasing in for California with MY1994) as a national vehicle program. NLEV motor vehicles were required to meet more stringent emission standards for emissions of all criteria pollutants,[14] which in turn required substantial

[12] Compliance with vehicle and engine standards is determined for certification and in-use (*i.e.,* recall) purposes using federal test procedures which include a specified test fuel that is E0. The purpose of the waiver process under CAA section 211(f)(4) is to determine whether a vehicle operated on the fuel or fuel additive for which a waiver is requested (here E15) would meet applicable emission standards after operating in-use and then testing using that fuel. In that way, section 211(f)(4) helps protect the emission control effectiveness of vehicles operated under real-world conditions, which ultimately determines the amount of emission reductions achieved.

[13] The program was fully phased in by MY1999 in the Northeast Trading Region (the region comprised of the states that meet the conditions specified under 40 CFR 86.1705(d)) within the NLEV program. The states that opted in include Connecticut, Delaware, the District of Columbia, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island and Virginia.

[14] Criteria pollutants are those pollutants, including precursors, for which EPA has set National Ambient Air Quality Standards under CAA section 109.

changes to emission control hardware and strategies compared with motor vehicles certified to the previous Tier 1 standards.

Light-duty trucks from 6001–8500 lb. GVW (*e.g.,* large pickup trucks and vans, known as LDT 3s and 4s) were not subject to NLEV standards, and instead transitioned directly from Tier 1 to Tier 2 standards. Many of the improvements made for smaller light-duty motor vehicles (*i.e.,* catalyst designs and washcoat formulation) may have been applied to these motor vehicles. These motor vehicles also emit at levels substantially below their applicable federal standard because, as discussed later in this section, many were also certified to a more stringent California emission standard. This "compliance margin," which is the difference between a vehicle's certified emission level and the applicable standard, suggests these heavier light-duty trucks benefited from at least some of the advances in exhaust emission controls developed for lighter trucks, and, in any event, can continue to comply with standards even if operated on E15, as discussed below.

Issuance in 2000 of more stringent Tier 2 standards (65 FR 6698, February 10, 2000) also affected manufacturers' planning. To comply with those standards, including compliance over vehicles' FUL,[15] manufacturers were required to focus on ensuring the durability of the exhaust and evaporative emission controls of their vehicles under real-world conditions. Although Tier 2 standards only began to phase in with MY2004, manufacturers were allowed to earn credit towards compliance with those standards in earlier model years. As a result, they had a strong incentive to develop and apply emission control hardware and strategies resembling future Tier 2 designs to earlier model year light-duty motor vehicles.

Overall, the transition from Tier 1 to NLEV and then to Tier 2 exhaust standards called for design changes that all moved in the same direction of increased control of exhaust emissions, through increasingly sophisticated emissions control systems aimed at reducing the level of emissions created by the combustion of the fuel in the engine combined with increased control of these emissions by the catalyst system. This increasing sophistication was based on better air fuel ratio control, and increased efficiency, durability and faster light-off of the catalyst. While Tier 2 standards called for the most sophisticated engine and catalyst system designs, the NLEV standards prompted major redesign efforts by manufacturers that were later expanded and advanced even further to meet, and earn credits towards compliance with, Tier 2 standards. From an engineering perspective, the emissions control systems of pre-Tier 2, NLEV vehicles are significantly more robust than those used in MY2000 and older vehicles and more like those of Tier 2 vehicles in terms of the degree of sophistication of engine controls and catalyst technology.

Review of the emission control and related changes made by manufacturers for MY2001–2006 confirms that the LEV and NLEV programs involved use of more sophisticated technologies and strategies. From its decades-long role in certifying and overseeing in-use compliance of light-duty motor vehicles, EPA is aware that manufacturers made a number of improvements to reduce emissions at cold start, provide better fuel control, and make their emission control systems more durable. These improvements included independent catalysts per bank on V-engines, higher cell density catalyst substrates with thinner cell walls for lower thermal inertia/faster light-off, stereo oxygen sensors on V-engines, and improved catalyst washcoats with improved light-off and better resistance to thermal deterioration.[16] In addition, manufacturers improved oxygen sensor designs for better durability and improved oxygen sensor heater control strategies to reduce the likelihood of cracking due to thermal shock. These technologies were developed even further for Tier 2 vehicles.

The phase-in of these various exhaust emission control programs for MY2001–2006 light-duty motor vehicles is shown in Figure IV.A–1. As the figure illustrates, the percentage of Tier 2 vehicles significantly increased between MY2004 and MY2006 such that the large majority of the MY2005 and MY2006 light-duty motor vehicle fleet met the more stringent standards applicable to MY2007 and newer motor vehicles.

[15] FUL is 100,000 miles for NLEV passenger cars and light-duty truck category 1; 120,000 miles for NLEV light-duty truck category 2; and 120,000 miles for Tier 1 light-duty truck categories 3 and 4. Light-duty trucks up to 6000 lbs. GVW are composed of light-duty truck categories 1 and 2 where category 1 has a loaded vehicle weight equal to 3,750 lbs. and category 2 has a loaded vehicle weight greater than 3,750 lbs. Light-duty trucks of 6001–8500 lbs. GVW are composed of light-duty truck categories 3 and 4 where category 3 has an adjusted loaded vehicle weight less than or equal to 5,750 lbs and category 4 has an adjusted loaded vehicle weight greater than 5,750 lbs.

[16] Close-coupled faster light-off catalysts, faster light-off oxygen sensors, and more sophisticated cold start strategies enable faster transition from open loop to closed loop operation for reduced cold start emissions.

[17] Interim Non-Tier 2 refers to MY2004 or newer vehicles not certified to Tier 2 FTP exhaust emission standards during the Tier 2 phase in period. Interim Non-Tier 2 emission standards included all of the Tier 2 emission standard bins in addition to bins unique to the Interim Non-Tier 2 program. The Interim Non-Tier 2 fleet average NO_X standard was 0.30 g/mi compared to the Tier 2 fleet average NO_X standard of 0.07 g/mile. The Interim Non-Tier 2 standards were more stringent than both the NLEV and Tier 1 standards.

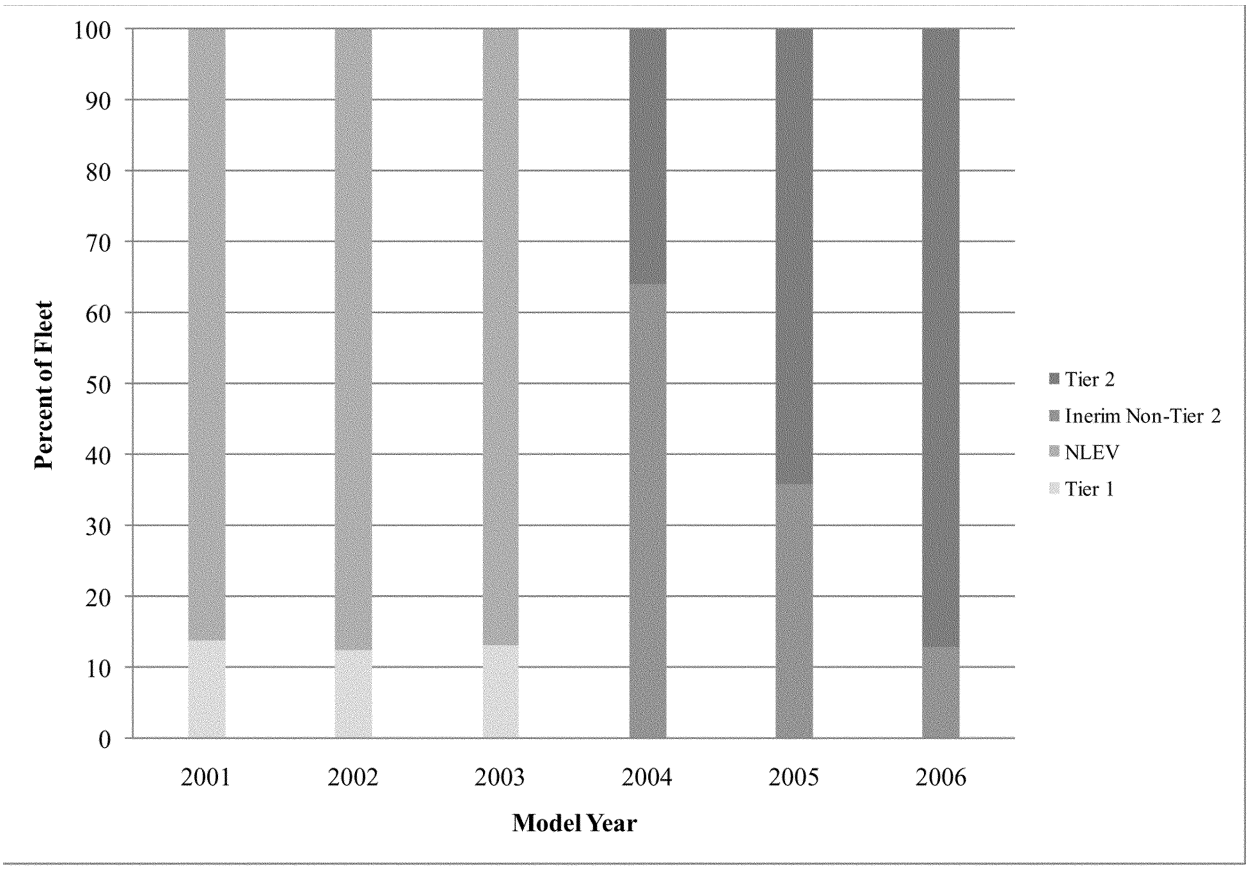


Figure IV.A-1—Fleet Tailpipe Emission Standards for MY2001-2006 Light-duty Motor Vehicles[17]

Another important regulatory change for improving the exhaust emissions control durability of MY2001–2006 light-duty motor vehicles was the Compliance Assurance Program ("CAP2000"), which took effect by MY2000 for light-duty motor vehicles. CAP2000 placed more emphasis on in-use performance of vehicle emission controls, including the potential impacts of operation on different available in-use fuels. In particular, the In-use Verification Program (IUVP) introduced under CAP2000 requires manufacturers to perform exhaust and evaporative emissions tests on customer vehicles in the in-use fleet to confirm the durability projections that manufacturers make at certification. These tests must be performed at low and high mileage intervals and include at least one vehicle per test group [18] at 75% of FUL. This emphasis on real-world vehicle testing to ensure durable emission controls prompted manufacturers to consider different commercially available fuels (including ethanol blends up to E10) when developing and testing their emissions systems for MY2000 and later.

Section VI.A of the Misfueling Mitigation NPRM describes the growing market penetration of E10 over time. In the late 1990s, when manufacturers were planning for MY2001, national availability of E10 was increasing, and E10 was already the predominant form of gasoline sold in several major metropolitan areas. For example, by 2000, E10 comprised nearly 15% of the U.S. gasoline market, and for certain major metropolitan areas such as Chicago and Milwaukee, the gasoline market entirely shifted to E10 by around 1996. With the advent of CAP2000 and with E10 pervasive in several major markets, manufacturers had a strong incentive to plan for ethanol exposure in designing for durable emissions performance.

Finally, the Supplemental Federal Test Procedure (SFTP) compliance requirements began to phase in with MY2001 and were fully phased in with MY2004. These standards further increased manufacturers' incentives to design emissions controls that would be durable in use and with exposure to available gasoline-ethanol blends. The SFTP compliance requirements expanded motor vehicle emission testing to better represent actual consumer driving habits and conditions by including the US06 test (a high speed and high acceleration cycle) and the SCO3 test (an air conditioning test cycle run in a environmental test chamber at 95 °F). In response to these requirements, manufacturers developed increasingly robust emissions control systems capable of withstanding the higher engine and catalyst temperatures experienced during these more severe cycles without simply relying on enrichment of the air-to-fuel ratio (which causes increased emissions) for temperature control. This improved ability to handle higher temperatures would also help emission control

[18] EPA certifies light-duty motor vehicles on a test group basis. A test group is a group of vehicles having similar design and emission characteristics.

systems withstand enleanment [19] from ethanol use.

Another consideration in our engineering analysis is the extent to which MY2001–2006 light-duty motor vehicles, when tested on E0 (as required for determining auto manufacturers' compliance with emission standards), emit at levels below the applicable standards and therefore have a compliance margin. Compliance margins are generally designed into motor vehicles by manufacturers to account for possible variations in production vehicles and changes to vehicle emissions control systems from actual field usage, such as the type of driving employed and the type of fuel used. The larger the compliance margin, the more likely it is that vehicles would accommodate any emissions increases from fueling with E15 and continue to meet emission standards in-use. As discussed in more detail later in this decision, a survey of certification data [20] shows that the average FUL compliance margin (which accounts for in-use deterioration) projected at the time of certification for the entire MY2001–2006 light-duty motor vehicle fleet was approximately 66%. In-use data from the IUVP program indicates that motor vehicles actually achieved a similar compliance margin when operated in real-world conditions. The size of the compliance margins for MY2001–2006 light-duty motor vehicles suggests manufacturers were in fact designing and building motor vehicles that were significantly cleaner than required as part of a planned migration to technologies capable of meeting the tighter Tier 2 standards.

Based on our engineering analysis of the expected impact of relevant regulatory changes and certification and IUVP data, we believe that the regulatory changes affecting MY2001–2006 light-duty motor vehicles prompted manufacturers to design those MY2001–2006 vehicles using technology similar to the technology used for Tier 2 motor vehicles. As with Tier 2 motor vehicles, these technology changes would be expected to maintain the durability of the performance of emission control systems when motor vehicles are operated on E10 and also allow the motor vehicles to operate over time on E15 without significant changes in exhaust emissions. The designs of the emission control systems of MY2001–2006 light-duty motor vehicles also included a large compliance margin to address, among other things, variations in in-use driving patterns and fuels, and this large compliance margin would be expected to offset exhaust emissions increases that might be associated with the long-term use of E15. The combination of these factors leads to the engineering conclusion that the long-term use of E15 by MY2001–2006 light-duty motor vehicles is not expected to lead to significant emission increases and to cause or contribute to failures to meet applicable exhaust emissions standards.

i. Description of DOE Catalyst Study for MY2001–2006 Motor Vehicles

The results of DOE's Catalyst Study for MY2001–2006 light-duty motor vehicles provide strong confirmation that those vehicles should be able to operate on E15 and continue to comply with applicable exhaust emission standards. As described in detail below, DOE selected vehicle models so that the test fleet would broadly represent the national MY2001–2006 light-duty motor vehicle fleet and be likely to reveal any adverse emissions impacts from long-term operation on E15. DOE also followed all other aspects of the test protocol it used for MY2007 and newer motor vehicle testing to assure appropriate and consistent rigor in testing of MY2001–2006 motor vehicles. DOE test results indicate that the changes manufacturers made to MY2001–2006 light-duty motor vehicle emission controls, calibration, hardware, etc., in response to regulatory changes in fact resulted in vehicle exhaust emissions control systems, including the catalyst, that are capable of withstanding the additional enleanment caused by E15 and maintaining exhaust emission performance on E15 over the FUL of the motor vehicles.

To evaluate the actual impacts of E15 on MY2001–2006 light-duty motor vehicles, DOE tested eight MY2000–2003 motor vehicle models,[21] including high sales volume models produced by several light-duty motor vehicle manufacturers. The specific purpose of the program was to evaluate the long-term effects of E0, E10, E15, and E20 on catalyst durability of MY2001–2006 light-duty motor vehicles that were subject to pre-Tier 2 standards (*i.e.,* NLEV or Tier 1). A number of criteria were used to select motor vehicle models for the program. In particular, vehicle selection was based on high sales volume models so that the test fleet would be broadly representative of the in-use fleet. Since the number of models tested for MY2001–2006 was not as large as the number tested for newer model years, models were also selected for expected emissions related sensitivity (particularly in terms of their ability to apply learned fuel trim from closed loop to open loop operation [22]) so that the test fleet would be more likely to include vehicles that would reveal any adverse impacts of E15. In addition, one-half of the motor vehicle models were selected for their likely sensitivity to ethanol-gasoline blends as indicated by the results the Coordinating Research Council (CRC) Mid-level Ethanol Blends Catalyst Durability Study Screening (E–87–1). CRC is a research organization comprised of auto manufacturers and oil companies.

Testing of all vehicles followed the same protocol as that used for MY2007 and newer light-duty motor vehicles, although the NLEV or Tier 1 vehicles were all used vehicles with relatively high mileage due to their age. *See* Table IV.A–1—Vehicle Attribute Summary for the list of specific models.

[19] Enleanment refers to increasing the amount of oxygen in the mixture of air and fuel that enters the engine for combustion. Enrichment refers to increasing the amount of fuel in that mixture. At any one air to fuel ratio, adding ethanol to the fuel adds additional oxygen to the mixture of air and fuel, tending to enlean the mixture.

[20] These data are submitted by manufacturers to EPA's Certification and Fuel Economy Information System to demonstrate compliance with the applicable emission standards and are part of the application process to receive a certificate of conformity. The CAA requires that all motor vehicles be covered by a certificate of conformity before they may enter into commerce.

[21] The MY2000 vehicle models selected were representative of all MY2001 and later pre-Tier 2 vehicles since they were certified as meeting Tier 1 or NLEV standards.

[22] *See* October Waiver Decision Section IV.A for a full discussion of the relevance of learned fuel trim to waiver determinations for gasoline-ethanol blends.

TABLE IV.A–1—VEHICLE ATTRIBUTE SUMMARY

Project Vehicle Summary		Engine		Engine Family	Emissions standard				Starting odometer (×1000 miles)	
Year	Vehicle	Disp	Config			NMOG	CO	NO_X	E0	E15
Southwest Research Institute										
2000 ...	Chevrolet Silverado	5.3	V8	YGMXT05.3181	Tier 1/LDT 3	0.460	6.4	0.98	111	112
2002 ...	Nissan Frontier	2.4	I4	2NSXT02.4C4B	NLEV (LEV)	0.130	5.5	0.5	95	91
2002 ...	Dodge Durango	4.7	V8	2CRXT04.75B0	Tier 1/LDT 3	0.460	6.4	0.98	71	60
Transportation Research Center										
2003 ...	Toyota Camry	2.4	I4	3TYXV02.4HHA ...	ULEV	0.055	4.2	0.3	77	77
2003 ...	Ford Taurus	3	V6	3FMXV03.0VF3	NLEV (LEV)	0.090	4.2	0.3	93	88
2003 ...	Chevrolet Cavalier	2.2	I4	3GMXV02.2025	NLEV (LEV)	0.090	4.2	0.3	78	81
Environmental Testing Corp										
2000 ...	Honda Accord	2.3	I4	YHNXV02.3PF3 ...	NLEV (LEV)	0.090	4.2	0.3	106	95
2000 ...	Ford Focus	2	I4	YFMXV02.0VF3 ...	NLEV (LEV)	0.090	4.2	0.3	103	85

For testing purposes, at least two vehicles of the same model were matched to prevent confounding of the data by differences in vehicle attributes. Specifically, the test group, engine displacement, evaporative emissions control family, model year, powertrain control unit calibration, axle ratios, wheel size, and tire size were constrained to be identical within a vehicle set. Physical inspections of the vehicles were conducted to eliminate obviously problematic vehicles (such as those with gross fluid leaks, obvious and excessive body damage, etc.). Odometer reading was also used to identify candidate vehicles with the goal of restricting the difference in odometer readings within a vehicle set to a maximum of 10,000 miles in order to facilitate data comparisons between the vehicles. One vehicle from each set was aged on E0, one was aged on E15, and each vehicle was tested on both E0 and E15. Additional vehicles were aged on E20 or E10.[23]

The assignment of a particular vehicle to a particular fuel was random and was accomplished prior to conducting any emissions tests on the vehicles. Obtaining suitable matched sets of vehicles was challenging for several of the older model year vehicles for the simple reason that these were older vehicles with various driving histories. As a result, there were a few instances where it was necessary to test vehicles with mileages that were not within the 10,000 mile odometer range target for matched vehicles in order to obtain a suitably-matched set of vehicles.

ii. DOE Catalyst Study Results

As noted above, the results from the DOE Catalyst Study for MY2001–2006 light-duty motor vehicles confirm the engineering analysis that long-term use of E15 is not expected to lead to significant emissions increases or contribute to those vehicles exceeding their exhaust emission standards over their FUL. Emission test results and the applicable emission standards[24] for the vehicles aged on E0 ("E0 vehicles") and the vehicles aged on E15 ("E15 vehicles") at the start, middle, and end of the test program are shown in Tables IV.A–2 and 3. There were no trends or patterns that appeared fuel related. No significant increases in long-term exhaust emissions were observed with the E15 vehicles. Furthermore, the test results show that the vehicles aged and tested on E15 did not have significantly higher emissions than the vehicles aged and tested on E0, and some vehicles' emissions actually decreased on E15. Overall, the exhaust emission test results across test vehicles were generally similar with regard to deterioration and failure rates to the test results observed for the Tier 2 vehicle test fleet (which included some MY2005 and 2006 motor vehicles) and discussed in the October Waiver Decision.

All E15 vehicles except one were below their emissions limits at the end of the test. One E15 vehicle exceeded its non-methane organic gas (NMOG) emissions limits at the end of the test program. The vehicle, a 2000 Honda Accord, was just above its FUL NMOG standard after 50,000 miles of aging.[25] The exceedance of the NMOG standard did not appear to be related to E15 since the NMOG emissions of the E0 counterpart motor vehicle also exceeded the standard after only 25,000 miles of aging. Two other E0 motor vehicles (2003 Chevy Cavalier and 2003 Toyota Camry) also failed the NMOG standard but their E15 counterpart did not.

All motor vehicles except for the E0 Accord were below their carbon monoxide (CO) emissions limits at the end of the test. One end-of-test program data point for the E15 Frontier was over the standard but the test point average was well below the standard. All motor vehicles were below their oxides of nitrogen (NO_X) emissions limits at the end of the test program.

Testing of older motor vehicles did pose challenges since they had relatively high mileages and their maintenance and driving histories were not well known. As a result, test results for these motor vehicles showed greater variability than the results for the newer motor vehicles of the Tier 2 test fleet. There were also mechanical issues to address during mileage accumulation. Considering the higher variability expected in this situation, there were generally small changes in emissions (both increases and decreases) with mileage accumulation for most of the motor vehicles (with the exception of the Honda Accord samples) with no indication of significant deterioration of the exhaust emission control system, including the catalyst, due to E15.[26] The

[23] As discussed previously, EPA relied on the vehicles using E15 and E0 for aging and test results, as that allows the emissions impact of the candidate fuel to be compared to the emissions impact of the fuel used for testing for compliance with the certification standards.

[24] Total hydrocarbons (THC), non-methane hydrocarbons (NMHC), non-methane organic gases (NMOG), nitrogen oxides (NOx), and carbon monoxide (CO).

[25] In general, EPA may take action to compel a manufacturer to recall and remedy a problem after determining that a substantial number of properly maintained and operated vehicles fail to conform to EPA standards in actual use. EPA will use the information from the DOE test program to help it identify future vehicle test classes as part of its overall vehicle compliance program.

[26] The exhaust emissions of some vehicles actually decreased over the course of the testing program. There are a few possible reasons for this result. For example, "TOP TIER Detergent Gasoline" was used during the aging cycles. With unknown

relative durability of exhaust emissions control performance is particularly notable given the high mileage of the test vehicles at the end of testing. The results from the DOE test program thus provide compelling support for the conclusion that the long-term use of E15 will not cause or contribute to MY2001–2006 light-duty motor vehicles exceeding their exhaust emission standards over their FUL.

TABLE IV.A–2—E15 EMISSION TEST RESULTS COMPARED TO THE RESPECTIVE CERTIFICATION STANDARDS AT START, MIDDLE, AND END OF TEST

Year	Make	Model	Cert Standard	THC	NMHC	NMOG	CO	NO_X
E15 Start of Test Program Pass/Fail Results								
2002 ...	Nissan	Frontier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2002 ...	Dodge	Durango	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
2003 ...	Chevy	Cavalier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Ford	Taurus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Toyota	Camry	ULEV	N/A	N/A	Pass	Pass	Pass.
2000 ...	Ford	Focus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2000 ...	Honda	Accord	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2000 ...	Chevy	Silverado	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
E15 Middle Test Program Pass/Fail Results								
2002 ...	Nissan	Frontier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2002 ...	Dodge	Durango	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
2003 ...	Chevy	Cavalier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Ford	Taurus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Toyota	Camry	ULEV	N/A	N/A	Pass	Pass	Pass.
2000 ...	Ford	Focus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2000 ...	Honda	Accord	NLEV(LEV)	N/A	N/A	Pass*	Pass	Pass.
2000 ...	Chevy	Silverado	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
E15 End of Test Program Pass/Fail Results								
2002 ...	Nissan	Frontier	NLEV(LEV)	N/A	N/A	Pass	Pass*	Pass.
2002 ...	Dodge	Durango	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
2003 ...	Chevy	Cavalier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Ford	Taurus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Toyota	Camry	ULEV	N/A	N/A	Pass	Pass	Pass.
2000 ...	Ford	Focus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2000 ...	Honda	Accord	NLEV(LEV)	N/A	N/A	Fail	Pass	Pass.
2000 ...	Chevy	Silverado	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.

* Indicates that average of composites met standards, but one test result exceeded standard.

TABLE IV.A–3—E0 EMISSION TEST RESULTS COMPARED TO THE RESPECTIVE CERTIFICATION STANDARDS AT START, MIDDLE, AND END OF TEST

Year	Make	Model	Cert Standard	THC	NMHC	NMOG	CO	NO_X
E0 Start of Test Program Pass/Fail Results								
2002 ...	Nissan	Frontier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2002 ...	Dodge	Durango	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
2003 ...	Chevy	Cavalier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Ford	Taurus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Toyota	Camry	ULEV	N/A	N/A	Pass*	Pass	Pass.
2000 ...	Ford	Focus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2000 ...	Honda	Accord	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2000 ...	Chevy	Silverado	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
E0 Middle Test Program Pass/Fail Results								
2002 ...	Nissan	Frontier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2002 ...	Dodge	Durango	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
2003 ...	Chevy	Cavalier	NLEV(LEV)	N/A	N/A	Pass*	Pass	Pass.
2003 ...	Ford	Taurus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Toyota	Camry	ULEV	N/A	N/A	Pass	Pass	Pass.
2000 ...	Ford	Focus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2000 ...	Honda	Accord	NLEV(LEV)	N/A	N/A	Fail	Fail	Pass.
2000 ...	Chevy	Silverado	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.

aging conditions and fuel quality prior to the testing and mileage accumulation, some vehicles may have become cleaner between the start of the test and the midpoint of the test due to the detergent additives in the aging fuel. In addition, the standard Road Cycle used for the mileage accumulation may have helped restore catalyst activity in some vehicles if they were never driven hard enough (high speed and/or high load) during previous aging.

TABLE IV.A–3—E0 EMISSION TEST RESULTS COMPARED TO THE RESPECTIVE CERTIFICATION STANDARDS AT START, MIDDLE, AND END OF TEST—Continued

Year	Make	Model	Cert Standard	THC	NMHC	NMOG	CO	NO_X
E0 End of Test Program Pass/Fail Results								
2002 ...	Nissan	Frontier	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2002 ...	Dodge	Durango	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.
2003 ...	Chevy	Cavalier	NLEV(LEV)	N/A	N/A	Fail	Pass	Pass.
2003 ...	Ford	Taurus	NLEV(LEV)	N/A	N/A	Pass	Pass	Pass.
2003 ...	Toyota	Camry	ULEV	N/A	N/A	Fail	Pass	Pass.
2000 ...	Ford	Focus	NLEV(LEV)	N/A	N/A	Pass*	Pass	Pass.
2000 ...	Honda	Accord	NLEV(LEV)	N/A	N/A	Fail	Fail	Pass.
2000 ...	Chevy	Silverado	Tier 1/LDT3	Pass	Pass	N/A	Pass	Pass.

* Indicates that average of composites met standards, but one test result exceeded standard.

2. Immediate Exhaust Emissions

Instantaneous or immediate impacts of a fuel or fuel additive are those that are experienced essentially immediately upon switching from the original fuel. The immediate exhaust emission impacts of interest are any that are caused by E15 in comparison to the test fuel on which motor vehicles are tested for compliance with the applicable standards (E0). Immediate exhaust emission impacts must be taken into consideration along with the long-term or durability emission impacts discussed in the previous section in assessing the waiver.

a. Growth Energy's Submission and Public Comment Summary

As mentioned above, Growth Energy's submission and the information supplied by commenters regarding immediate exhaust emission impacts of E15 on light-duty motor vehicles were not specific to the model year of the motor vehicles. For more information, including a detailed discussion of Growth Energy's submission and summary of public comments on immediate exhaust emission impacts, refer to section IV.A.2 for MY2007 and newer light-duty motor vehicles and IV.C.3.b.ii for MY2000 and older light-duty motor vehicles of the October Waiver Decision.

b. EPA Analysis

Since the earliest days of gasoline-ethanol blends, many test programs have been carried out on light-duty motor vehicles and trucks to quantify the immediate emissions impacts of blending ethanol into gasoline. The common theme across these various test programs is that, consistent with combustion theory, the enleanment of the air-to-fuel (A/F) ratio caused by the oxygen in ethanol leads to an immediate reduction in HC and CO emissions and a corresponding increase in NO_X emissions. While other factors influence this, such as the combustion characteristics of the ethanol itself, other changes that occur in the gasoline when ethanol is added, and the test conditions under which the emissions are measured which can cause some variations in study results, the bottom line is that the immediate emissions changes from increased levels of ethanol are fairly well known.

More recent data and information [27] show that (1) newer motor vehicles exhibit similar immediate emission impact trends as the data and modeling show for older motor vehicles, and (2) the immediate emission impacts of E15 continue to show the same trends as E10 with the effects being slightly larger for E15 due to its higher ethanol content and therefore the increased enleanment due to its higher oxygen content. Thus, MY2001–2006 light-duty motor vehicles are expected to have immediate emissions impacts similar to MY2007 and newer, and MY2000 and older, light-duty motor vehicles, and the magnitude of the E15 impact is expected to be relatively small. As the analysis in the October Waiver Decision for Tier 2 vehicles shows, non-methane hydrocarbon (NMHC) and CO emissions are expected to decrease for MY2001–2006 light-duty motor vehicles while NO_X emissions are expected to increase between 5 and 10% (depending on how other fuel properties change). This estimated impact is based on extrapolation from E10 modeling using the Agency's Predictive Models.[28]

Although the overall weight of the available data shows that E15 will cause a small immediate increase in NO_X emissions, the issue is whether such increases, by themselves or in combination with long-term durability effects, would cause or contribute to MY2001–2006 light-duty motor vehicles to exceed their emissions standards. Given the relatively small magnitude of the immediate NO_X emissions increase in relation to the large compliance margins that motor vehicle manufacturers have traditionally built in to the products they certify, and the lack of any significant increase in NO_X emissions deterioration with E15 in comparison to E0, it is reasonable to expect that E15 will not cause or contribute to compliant MY2001–2006 light-duty motor vehicles exceeding their emissions standards.

Available information on the compliance margins of MY2001–2006 light-duty motor vehicles indicates that these vehicles have compliance margins even larger than the average compliance margin manufacturers typically provide. Average compliance margins projected during certification for MY2001–2006 light-duty motor vehicles are shown in Table IV.A–4.[29]

[27] CRC E74b, DOE Pilot Study, DOE Catalyst Study, and the RIT Study, all of which are discussed at length in the October Waiver Decision.

[28] A detailed description of the development of the EPA Predictive Models is available in a Technical Support Document: "Analysis of California's Request for Waiver of the Reformulated Gasoline Oxygen Content Requirement for California Covered Areas," EPA420–R–01–016, June 2001.

[29] Based on data submitted to EPA's Certification and Fuel Economy Information System and available on the EPA Web site at *http://www.epa.gov/otaq/crttst.htm.*

TABLE IV.A–4—AVERAGE CERTIFICATION COMPLIANCE MARGIN (PERCENT BY POLLUTANT) FOR MY2001–2006 LIGHT-DUTY MOTOR VEHICLES

	Percent Compliance Margin by Pollutant					
	NMOG	NMHC	Total HC	NO_X	CO	Overall
MY2001–2006 Tier 2 & NLEV	51%	N/A	N/A	65%	75%	63%
MY2001–2003 NLEV	49%	N/A	N/A	71	78	66
MY2001–2003 Tier 1 LDT 3 & 4	N/A	74%	80%	73	71	74

Data collected from EPA's IUVP also show large compliance margins for light-duty motor vehicles operating in real-world conditions. Based on data from IUVP testing of MY2001–2006 light-duty motor vehicles as of August 2010, the average compliance margin was 56%, 69%, and 76% for hydrocarbons (NMOG, NMHC, and Total HC), NO_X, and CO, respectively. These large certification program and in-use testing compliance margins indicate that MY2001–2006 light-duty motor vehicles on average would absorb the immediate emissions impact of E15 on NO_X emissions without exceeding the applicable emission standards.

In addition, the results of the recently completed DOE Catalyst Study provide direct evidence that MY2001–2006 light-duty motor vehicles would accommodate the immediate impact of E15 on NO_X emissions and still comply with applicable standards. While the Catalyst Study was carried out to assess long-term (durability) exhaust emissions impacts, the immediate emission impacts of ethanol are also captured in the testing. All of the motor vehicles tested for the MY2001–2006 program continued to comply with their NOx emission standards at FUL despite both the immediate and durability impacts of E15 on emissions. The results from the DOE test program thus support the conclusion that the immediate emissions impact of E15 will not cause or contribute to MY2001–2006 light-duty motor vehicles exceeding their exhaust emission standards over their FUL.

B. Evaporative Emissions

Assessment of the impact of E15 on evaporative emissions compliance requires consideration of the applicable evaporative emissions standards to which the particular motor vehicles were certified. There are now five main components of motor vehicle evaporative emissions that are addressed by standards: (1) Diurnal (evaporative emissions that come off the fuel system as a motor vehicle heats up during the course of the day); (2) hot soak (evaporative emissions that come off a hot motor vehicle as it cools down after the engine is shut off); (3) running loss (evaporative emissions that come off the fuel system during motor vehicle operation); (4) permeation (evaporative emissions that come through the walls of elastomers in the fuel system and are measured as part of the diurnal test); and (5) unintended leaks due to deterioration/damage that is now largely monitored through onboard diagnostic standards.

As with exhaust emissions, emission control improvements adopted in response to applicable regulatory requirements are important to the consideration of the potential impact of a fuel or fuel additive on evaporative emissions, both immediate and long-term. EPA has set evaporative emission standards for motor vehicles since 1971. During the ensuing years, evaporative standards have continued to evolve, resulting in technology and designs that achieve additional evaporative emissions reductions. A number of regulatory actions occurred by MY2001 that placed an emphasis on the control of evaporative emissions and on real-world testing of motor vehicles, which in turn led to changes in evaporative emission control systems. These regulatory changes together with test data and information and analysis concerning compliance margins support the conclusion that MY2001–2006 light-duty motor vehicles operated on E15 would generally continue to comply with evaporative emission standards and likely achieve actual evaporative emission levels somewhat lower than what they currently experience when operated on in-use fuel.

1. Immediate Evaporative Emissions

a. Growth Energy's Submission and Public Comment Summary

Growth Energy's submission and the information supplied by commenters regarding immediate evaporative emission impacts of E15 were not specific to the model year of the motor vehicles. For more information, including a detailed discussion of Growth Energy's submission and summary of public comments regarding immediate evaporative emissions, refer to section IV.A.3 for MY2007 and newer light-duty motor vehicles and IV.C.3.c for MY2000 and older light-duty motor vehicles of the October Waiver Decision.

b. EPA Analysis and Test Programs

As discussed in the October Waiver Decision, prior to MY1999, evaporative emissions standards addressed diurnal and hot soak emissions, but the test procedures for determining compliance did not require control of running loss and permeation emissions. These latter emissions became subject to control with the enhanced evaporative emissions requirements and were fully phased in for light-duty motor vehicles and light-duty trucks by MY1999. These requirements included both new emission standards and new test procedures: The two-day and three-day diurnal tests with new canister loading procedures, and a running loss test. Prior to the enhanced evaporative requirements, the diurnal evaporative emissions test was only 1 hour and there was no running loss measurement. The longer diurnal measurement and the addition of the running loss test made the control of emissions from both permeation and running losses more critical. In addition to the new procedures, the regulatory useful life of covered vehicles was extended from 5 years/50,000 miles to 10 years/100,000 miles for light-duty motor vehicles.

Along with the enhanced evaporative emissions requirements, EPA introduced the On Board Diagnostic (OBD) requirements for evaporative leak detection monitors; those requirements were fully phased in with MY1999. OBD required motor vehicles to detect a leak equivalent to 0.040 inch in the fuel or evaporative emissions system. Beginning in MY2001, EPA allowed manufacturers to comply with California OBD regulations, which required motor vehicles to detect a leak equivalent to a 0.020 inch. While not required federally, according to EPA certification data for MY2001–2006, many manufacturers developed one leak detection system that complied with the more stringent California requirement for use in vehicles for sale in all 50 states.

As described in the exhaust emissions section above, CAP2000 took effect beginning with MY2000 and was designed to place more emphasis on in-use performance of vehicle emission controls, including the fact that vehicles operate nationwide on different available fuels. In particular, CAP2000 introduced the IUVP program, which requires manufacturers to perform exhaust and evaporative emissions tests on customer in-use vehicles. These tests must be performed at low and high mileage intervals. This emphasis on real-world vehicle testing prompted manufacturers to consider different commercially available fuels (including E10) when developing and testing their emissions systems. Also under CAP2000, manufacturers are required to focus on using an effective durability process for predicting in-use deterioration as part of the process of certifying vehicles as complying with applicable evaporative emission standards. For this process, manufacturers are required to use fuel representative of commercial gasoline that will generally be available at retail outlets for the mileage accumulation on their durability demonstration vehicles.

Based on the enhanced evaporative emission standards and test procedures, the CAP2000 requirements, and the OBD leak detection requirement, our engineering assessment is that regulatory changes prompted manufacturers to make the evaporative emission systems of MY2001–2006 light-duty motor vehicles, in comparison to prior model year vehicles, more compatible from an emissions perspective with fuels that would be encountered in the marketplace, including ethanol blends. As such, MY2001–2006 light-duty motor vehicles generally would be expected to include design elements that would better control evaporative emissions than prior model year vehicles when fueled on ethanol blends, moving in the direction of the design elements implemented for Tier 2.

It should also be noted that for MY2004–2006 Tier 2 vehicles, manufacturers were required to use E10 for the full mileage accumulation period used in the certification durability demonstration process to demonstrate evaporative emissions durability. In addition, Tier 2 evaporative emissions standards were significantly lower (over a 50% reduction). These Tier 2 requirements prompted manufacturers to further change materials to those with improved permeation barriers with ethanol. For purposes of the evaporative emissions discussion below, it is important to note that a large percentage of MY2004–2006 motor vehicles certified to Tier 2 evaporative emission standards should be able to use E15 without adverse impacts on their evaporative emissions for the reasons given in the October Waiver Decision. The analysis in today's decision of the potential E15 impact on evaporative emissions focuses on light-duty motor vehicles that are certified to enhanced evaporative emission standards (pre-Tier 2 standards). Figure IV.B–1 shows the fleet percentage by evaporative emissions standard level for MY2001–2006 light-duty motor vehicles.

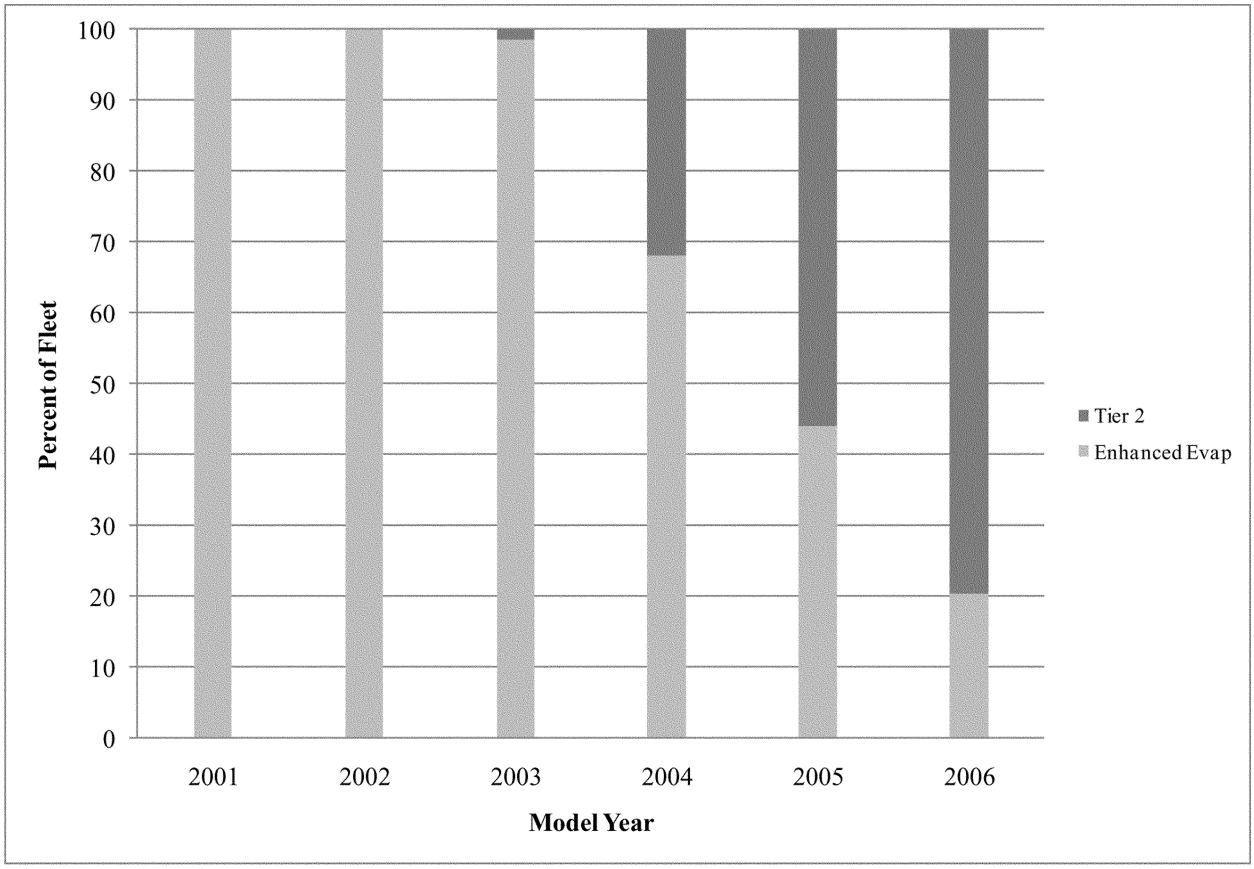


Figure IV.B-1—Fleet Evaporative Emissions Standards for MY2001-2006 Light-duty Motor Vehicles

i. Coordinating Research Council Test Programs—Results

EPA examined available test data and other information to evaluate whether expected enhancement to evaporative emissions control systems were in fact sufficient to permit MY2001–2006 light-duty motor vehicles to operate on E15 without significant adverse impact on immediate evaporative emissions.

In section IV.A.3 of the October Waiver Decision, EPA discussed the impact of ethanol on diurnal emissions as a result of ethanol's effect on fuel volatility absent countervailing changes to fuel or emission controls. EPA reviewed the CRC E–77 test programs [30] and found they support the conclusion that evaporative emissions (excluding permeation) measured on the diurnal test with E10 and E20 are likely to be comparable to those with E0, at the same RVP. This conclusion also applies to E15 by interpolation. Testing performed on E0, E10, and E20 shows that diurnal emissions, with the exception of permeation, are a function of the volatility of the fuel, not the ethanol content. As a result, EPA concluded that for Tier 2 vehicles E15, with adequate control of volatility, would not adversely affect vehicles' diurnal evaporative emissions with the possible exception of permeation emissions. This conclusion is applicable to MY2001–2006 light-duty motor vehicles as well as to MY2007 and newer light-duty motor vehicles.

The impact of gasoline volatility on diurnal evaporative emissions led EPA to condition the introduction of E15 into commerce for MY2007 and newer light-duty motor vehicles on E15 having no more than 9.0 RVP during the summertime period when RVP is controlled. For the same evaporative emission control reasons, EPA is applying the same RVP limit condition to today's waiver for use of E15 in MY2001–2006 light-duty motor vehicles. As EPA explained in the October Waiver Decision, the CRC E–77 test program indicated that as the volatility of the fuel increased, the number of motor vehicles which experienced canister emissions breakthrough also increased, with three of five enhanced evaporative vehicles experiencing canister breakthrough at 10.0 psi RVP. These elevated diurnal emissions with increased volatility are expected, since the increased volatility of 10.0 psi versus 9.0 psi fuel results in roughly a 25% increase in evaporative vapor generation that must be captured by the canister, beyond the amount of vapor generation that must be captured during evaporative emission testing using E0 fuel. The canister breakthrough measured in the CRC E–77 program was enough to cause these enhanced evaporative vehicles to exceed their evaporative emissions standard on E10 fuel. It should be noted, however, that the CRC diurnal tests were done on a more severe temperature cycle of 65 °F—105 °F (California cycle), as opposed to the federal requirement of 72 °F—96 °F. These test results nonetheless confirm the expectation that ethanol blends with volatility higher than 9.0 psi RVP during the summer will lead to motor vehicles exceeding their evaporative emissions standard in-use.

At the same time, the Agency is not aware of any data showing that motor vehicles would continue to meet their evaporative emissions standards when tested using E15 with an RVP greater than 9.0 psi. Given the significant potential for increased evaporative emissions at higher gasoline volatility levels and the lack of any data to indicate this would not cause a problem with compliance with the standard, the E15 waiver can only be considered in the context of E15 that maintains the same volatility as required of the E0 test fuel. As long as the volatility of the fuel does not exceed 9.0 psi during the summer, diurnal emissions from E15 are not anticipated to cause the motor vehicles to exceed their evaporative emissions standards in-use.

As a related but separate matter, as discussed in section IX of the October Waiver Decision, EPA interprets CAA section 211(h)(4) as limiting the 1.0 psi waiver to gasoline-ethanol blends that contain 10 vol% ethanol, including limiting the provision concerning "deemed to be in full compliance" to the same 10 vol% blends. This interpretation is consistent with how EPA has historically implemented CAA section 211(h)(4) through 40 CFR 80.27(d), which provides that gasoline-ethanol blends that contain at least 9 vol% ethanol and not more than 10 vol% ethanol qualify for the 1.0 psi waiver of the applicable RVP standard. EPA has invited comment on this issue in the Misfueling Mitigation NPRM (75 FR 68044, 68061 (November 4, 2010)).

E15 does not appear to raise any issues with respect to hot soak and running loss emissions from MY2001–2006 light-duty motor vehicles, for the same reasons applicable to MY2007 and newer motor vehicles. Data from the CRC E–77 test programs suggest that there may be some correlation between hot soak and running loss [31] emissions and ethanol content, but the impact is small, of questionable statistical significance, and may be related to permeation that occurs during the testing (Figures IV.B–2 and 3). While there was an increase in the measured hot soak and running loss emissions with the E10 fuel compared to the E0 fuel, the emissions from the E20 fuel were comparable to the emissions from the E0 fuel, and lower than the emissions from the E10 fuel. We expect by interpolation that emissions from E15 would be between the emissions from E10 and E20 and that any emissions increase would be too small to result in evaporative emission standard exceedances.

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[30] Enhanced Evaporative Emission Vehicles (CRC Report: E–77–2), March 2010, and Evaporative Emissions from In-Use Vehicles: Test Fleet Expansion (CRC Report: E–77–2b), June 2010.

[31] Running loss emissions measured in the CRC E–77 programs did not use the certification cycle. The study was focused on the worst case for permeation emissions and therefore used back-to-back LA92 cycles to increase the tank temperature with more aggressive driving. The certification cycle, which uses the Urban Dynamometer Driving Schedule, followed by a two-minute idle, two New York City Cycles followed by a two-minute idle, and another Urban Dynamometer Driving Schedule followed by a two-minute idle, has many stops and starts, making it more difficult to purge the canister. There was no canister breakthrough measured during running loss tests in the study.

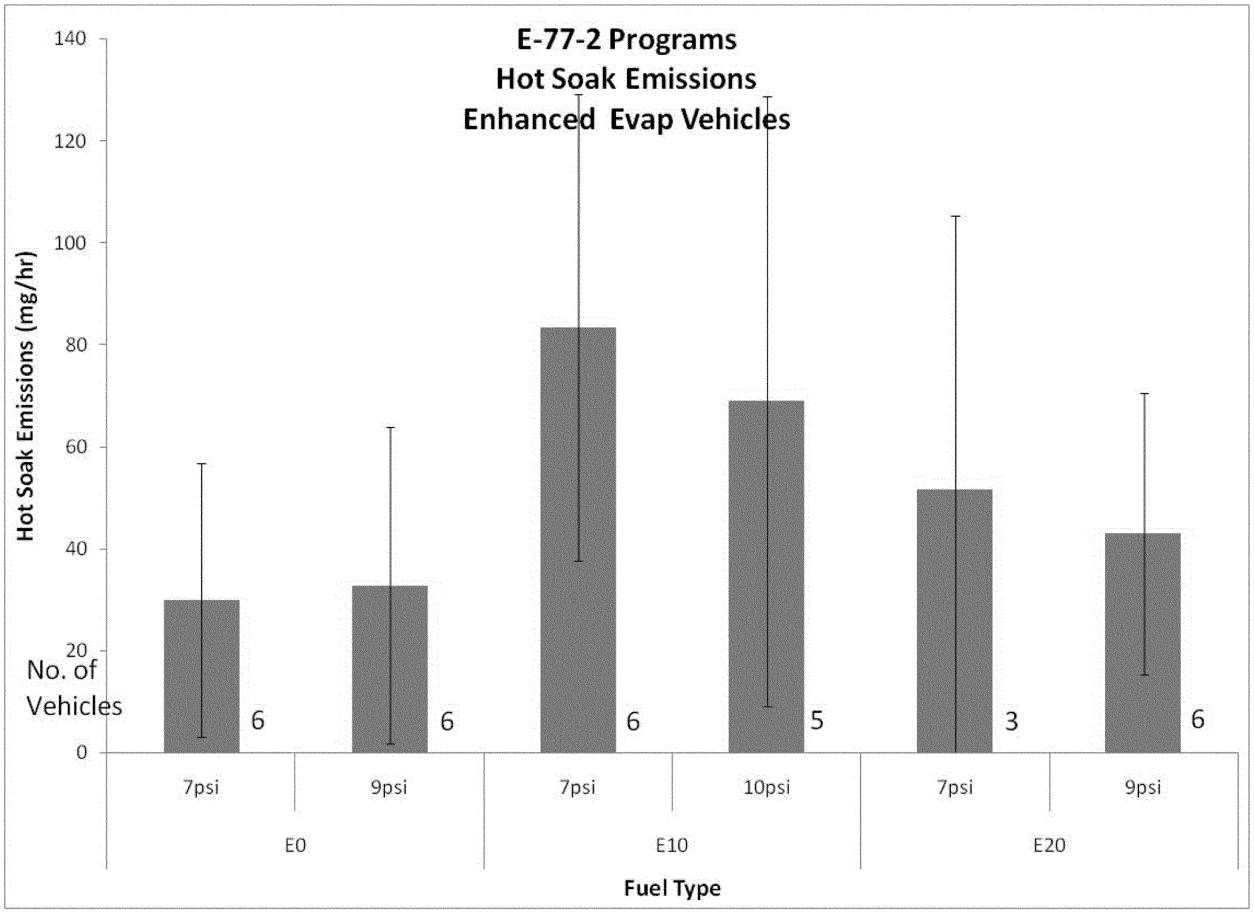

Figure IV.B-2—Hot Soak Emissions of Enhanced Evaporative Vehicles (with error bars representing 95% confidence intervals)

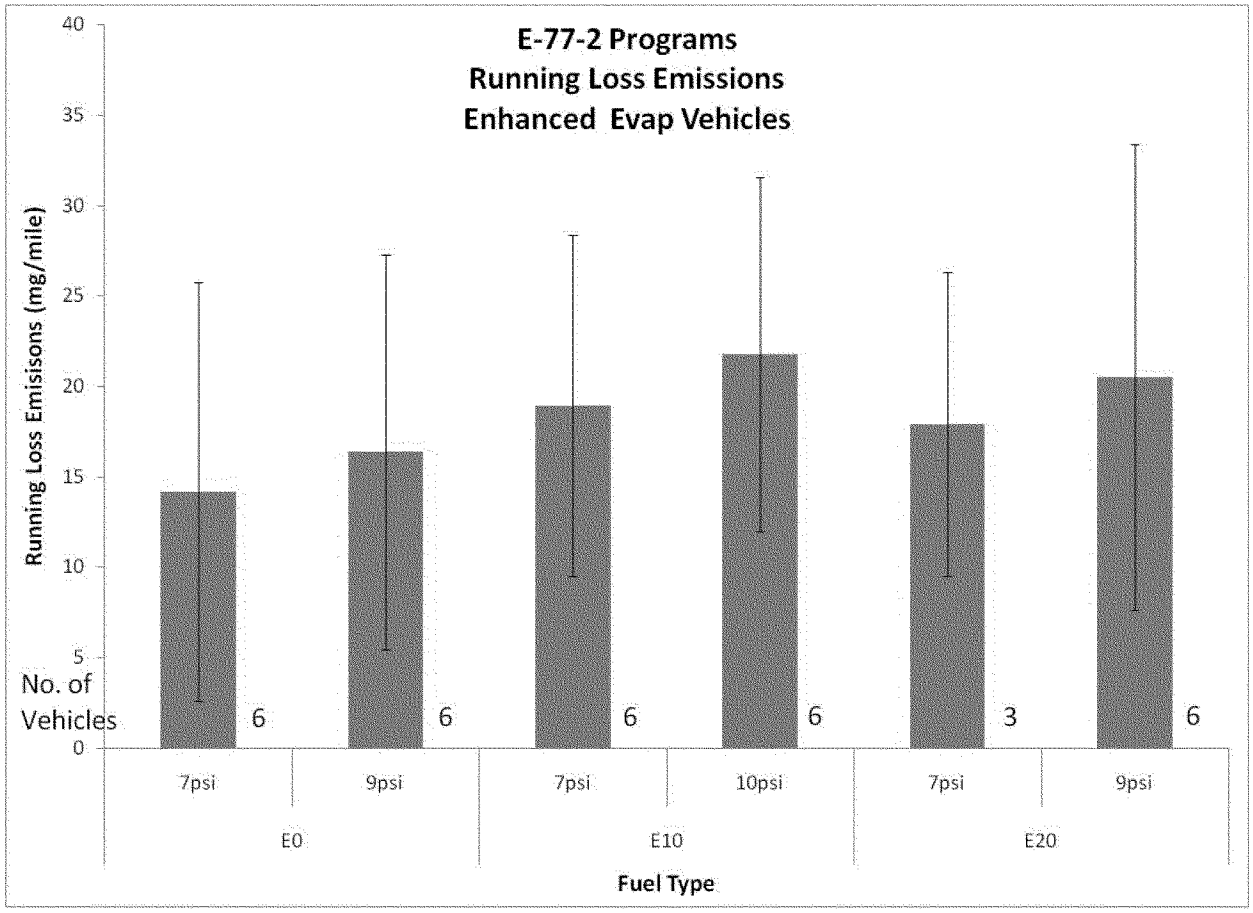

Figure IV.B-3—Running Loss Emissions of Enhanced Evaporative Vehicles

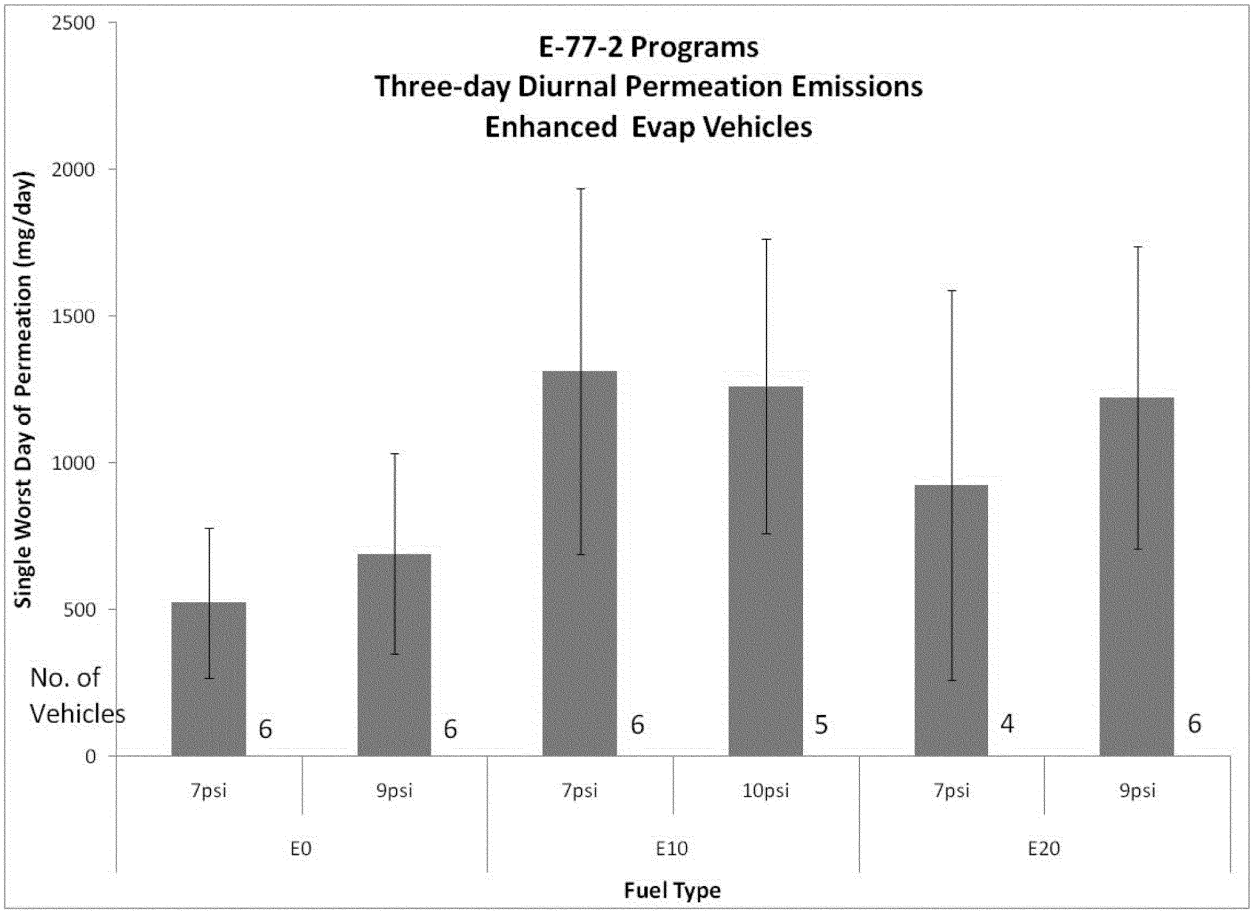

Figure IV.B-4—Single Worst Day of Three-day Diurnal Permeation Emissions of Enhanced Evaporative Vehicles

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As described in the October Waiver Decision, while the CRC E–77 test programs were valuable in assessing diurnal emissions, their primary purpose was to allow the quantification and modeling of evaporative emissions from permeation separate and apart from the other evaporative emissions for E0, E10, and E20. Some key findings of the test programs were that (1) gasoline-ethanol blends can significantly increase permeation emissions compared to pure gasoline; and (2) permeation emissions are a function of the presence of ethanol in the gasoline irrespective of concentration (especially in the E6 to E20 range). Consequently, results for E15 would be anticipated to be comparable to those for E10 and E20 having the same RVP.

ii. Coordinating Research Council Test Programs—Analysis

We believe CRC E–65 and E–77 test results are useful for indicating the potential magnitude of permeation emission increases for the vehicles in the test programs as well as for the MY2001–2006 motor vehicle fleet. The CRC E–65 and E–77 test programs covered a large segment of the MY2001–2006 light-duty motor vehicle fleet (high sales volume models). While the test programs used unique test procedures designed to isolate the effects of ethanol on permeation,[32] we have no reason to believe that the test procedures are more or less stringent than the federal test procedures in measuring permeation, since permeation is affected much more by the ethanol content of the fuel than by changes in temperature and fuel volatility. Therefore, while the overall results of the CRC E–65 and E–77 test programs cannot be directly compared to federal emission standards, the observed impacts on permeation are appropriate to use for generally assessing potential evaporative emission increases from E15.

For pre-Tier 2 MY2001–2006 light-duty motor vehicles, the results of the CRC test programs indicate that the permeation emissions of these vehicles are likely to increase with use of ethanol-gasoline blends to a greater extent than is expected for MY2007 and newer motor vehicles.[33] The issue thus becomes whether the increase will cause or contribute to MY2001–2006 light-duty motor vehicles exceeding their evaporative emission standards. We used the results of the CRC test programs to estimate the increase in evaporative emissions from the permeation effect of an E10–20 fuel (and therefore E15 by interpolation) for vehicles in the programs, since they represent a large segment of the national fleet. We began by averaging the results of the CRC E–65 and E–77 programs together for each of the models tested

[32] For example, the California diurnal temperature profile of 65 to 105 °F and fuel with an RVP of 9 psi were used.

[33] Compare Figure IV.B–4 in today's notice with Figure IV.A–3 in the October Waiver Decision.

given the limited sample size of each program and the fact that ethanol content alone, versus RVP or the specific ethanol volume percentage of the fuel, has the greatest effect on permeation. Then, we calculated the permeation change (E0 to E10–20) for each vehicle model.[34] Next, we added that vehicle model's permeation increase to the vehicle model's projected evaporative emission level (as determined for certifying compliance with emission standards) to estimate what the vehicle model's projected evaporative emissions would be if operated on E15. The results of this analysis show that all of the vehicle models tested in the CRC programs would meet their evaporative emissions standard even with the calculated permeation increase (Figure IV.B–1). Hence, while the permeation impact of E10 and E20, and therefore E15 by interpolation, on these vehicle models is projected to be larger than for E0, the vehicle models also have very large compliance margins that would allow them to still meet their evaporative emission standards on E15.

TABLE IV.B–1—ENHANCED EVAPORATIVE VEHICLES PERMEATION MEASURED IN CRC E65 AND E–77(B)

MY	Make & model	E0 7 psi (mg)	E0 9 psi (mg)	E10 7 psi (mg)	E10 10 psi (mg)	E20 9 psi (mg)	Avg. E0 (mg)	Avg. E10 and E20 (mg)	Delta E0 to E10–20 (mg)	Cert Level (g)	Projected Emissions (g)
1999	Honda Accord	367	628	1260	1548	1103	498	1304	806	1.0	1.8
2001	Toyota Corolla	383	500	1783	1794	1775	441	1784	1343	0.4	1.7
2001	Dodge Caravan	398	406	1087	1406	1548	402	1347	945	1.0	1.9
2004	Ford Escape	494	1102	524	492	752	798	589	−209	0.9	0.7
2000	Mitsubishi Galant	603	706	895	828	751	655	824	170	0.6	0.8
2001	Toyota Tacoma	91	.....	.....	.....	508	91	508	418	0.4	0.8
2000	Honda Odyssey	458	.....	.....	.....	1765	458	1765	1308	0.7	2.0
2002	Nissan Altima	1172	1500	2583	2777	1959	1336	2439	1103	0.8	1.9
2004	Toyota Highlander*	294	202	.....	.....	451	249	157	.....	0.3	0.4

*Tier 2 vehicle

As noted above, the vehicles tested in the CRC programs represent a broad cross-section of the national light-duty motor vehicle fleet, so our analysis indicates that most MY2001–2006 light-duty motor vehicles would still meet applicable evaporative emission standards if operated on E15. However, the test programs were not fully representative as they included no General Motors models or larger light-duty trucks. Thus, there may be some vehicles in the fleet with smaller compliance margins such that the impact of permeation could increase their total evaporative emissions beyond the standard to which they were certified.

Even if a small number of vehicle models might exceed evaporative emission standards in-use when operated on E15, we believe that a waiver is appropriate for two reasons. One, any increase in evaporative emission standard exceedances is expected to be limited since all the CRC motor vehicles tested continued to meet their evaporative emission standards and those motor vehicles represent a large segment of the national fleet. In past waiver decisions, EPA has applied statistical tests that are failed if the fuel or fuel additive being considered would increase the number of motor vehicles exceeding their emissions standard by a significant amount. For example, see the discussion of the Petrocoal Waiver in *MVMA* v. *EPA,* 768 F.2d 385, 399 (DC Cir. 1985) ("Petrocoal Waiver, 46 FR at 48,978. The Deteriorated Emissions Test is designed to provide a 90 percent probability of failure of the test if 25 percent or more of the vehicle fleet tested would fail to meet emission standards using the waiver fuel or fuel additive."). This was based on EPA's longstanding interpretation that the criteria in CAA section 211(f)(4) could be met where a fuel or fuel additive would not cause or contribute to a "significant" number of motor vehicles in the national fleet failing their emission standards. *See MVMA,* 768 F.2d at 391 ("This burden, which Congress has imposed on the applicant, if interpreted literally, is virtually impossible to meet as it requires proof of a negative proposition, *i.e.,* that no vehicle will fail to meet emission standards with respect to which it has been certified. Taken literally, it would require the testing of every vehicle. Recognizing that Congress contemplated a workable waiver provision, mitigation of this stringent burden was deemed necessary. For purposes of the waiver provision, EPA has previously indicated that reliable statistical sampling and fleet testing protocols may be used to demonstrate that a fuel under consideration would not cause or contribute to a significant failure of emission standards by vehicles in the national fleet.") The statistical tests used by EPA were intended to identify failures of a statistically significant number of motor vehicles resulting from the fuel or fuel additive itself as opposed to other non-fuel related causes. Consequently, the statistical tests do not bar a waiver for a fuel or fuel additive that would increase the number of motor vehicles exceeding their applicable emission standards by an amount smaller than the statistical tests were designed to confidently discern. While EPA is not applying those statistical tests in this case, they represent the Agency's past judgment that a possible increase in a limited number of motor vehicles exceeding their applicable emission standards is not necessarily a basis for denying a waiver request.

In this case, the CRC test data indicate that the large majority of MY2001–2006 vehicle models have compliance margins adequate to meet their evaporative emissions standard when operated on E15. EPA's engineering assessment is that the degree of control of permeation emissions from E15 exhibited in the CRC test programs (although less than the degree of control exhibited by Tier 2 vehicles) and the size of compliance margins likely result in large part from the response to EPA's regulatory changes discussed above.

[34] We also averaged the ethanol blends together to compare to E0. As noted above, the effect of ethanol blends on permeation emissions is essentially constant across E6, E10 and E20, so it is appropriate to average the emissions increases resulting from the different blends to obtain a more robust result.

Manufacturers were improving their evaporative emissions systems so they would be more effective at controlling evaporative emissions from in-use fuels, including fuels containing ethanol. The regulatory changes also generally applied to the kinds of vehicles not included in the CRC test program, so similar levels of permeation emission control and compliance margins could also be expected in those vehicles. There is thus the possibility of, at most, limited emission standard exceedances in the MY2001–2006 light-duty motor vehicle fleet with the use of E15, considering the results of the CRC test programs, EPA's analysis using the compliance margins of those vehicles, and the expectation of similar emissions levels and compliance margins for other MY2001–2006 vehicles. This judgment is based on all of the information before the Agency, including the engineering assessment discussed above.

A second reason that a waiver is appropriate in this case is that the environment would likely benefit from, and in any event would not be harmed by, the impact of E15 use on evaporative emissions of MY2001–2006 light-duty motor vehicles. As explained in the Misfueling Mitigation NPRM, E10 is now the pervasive fuel in the national motor vehicle fuel market. The use of E10 already results in some permeation increases, resulting from its ethanol content, and E15 would cause no greater permeation emissions than E10. As a result, permeation emissions from the use of E15 should not lead to any actual increase in exceedances of the evaporative emissions standards in the in-use fleet of MY2001–2006 light-duty motor vehicles compared to no use of E15. In addition, as a result of the CAA's 1 psi waiver for E10, the use of E10 results in significant additional evaporative emissions from canister breakthrough, resulting from the fuel's higher volatility at 10.0 psi RVP. Since a waiver for E15 would not allow RVP greater than 9.0 psi, the lower volatility of E15 would lead to significantly lower evaporative emissions than would otherwise result from canister breakthrough with E10. To the extent it is used in the marketplace, E15 would likely replace the use of E10.[35] Therefore, its use would likely benefit, and would not harm, the environment by reducing in-use vehicle evaporative emissions.[36] In these somewhat unique circumstances, EPA believes that any limited number of motor vehicles exceeding their evaporative emission standards when using E15 should not be considered significant for purposes of determining whether to grant a waiver under section 211(f)(4).[37]

This interpretation and approach is also appropriate as it furthers the goals of Congress in the recent amendments to the Renewable Fuel Standard (RFS) program under section 211(o). Congress' purpose in enacting the EISA amendments to section 211(o) was to increase the volume of renewable fuel, including gasoline-ethanol blends, to improve the nation's energy and economic security. Granting a waiver for E15 is consistent with and advances these goals. This provides further support for EPA's decision that it is appropriate to grant a partial waiver for E15 where it would not cause or contribute to a significant number of motor vehicles exceeding their evaporative emission standards, especially given the fact that E15 use would not increase, but would likely reduce, actual in-use evaporative emissions when compared to E10 use.

2. Long-term (Durability) Evaporative Emissions

Considering regulatory changes applicable to MY2001–2006 light-duty motor vehicles, the Agency believes that manufacturers generally designed their enhanced evaporative emission control systems for long-term exposure to E10 and that the systems should be compatible and durable with E15 use over the FUL of the motor vehicle.

As mentioned previously, CAP 2000 requires MY2001–2006 motor vehicle evaporative emission systems to be tested on in-use vehicles exposed to market fuel, including fuels containing ethanol. Further, in MY1999, along with enhanced evaporative emissions requirements, OBD leak detection requirements were introduced with the more stringent California requirement adopted optionally by manufacturers in 2001 to enable the sale of vehicles in all 50 states with one leak detection system. To avoid excessive warranty costs and potential recalls, manufacturers needed to ensure the evaporative emissions control and fuel systems would be compatible with and durable to market fuel, including fuels containing ethanol.[38] As a result of these requirements, manufacturers had a strong incentive to develop evaporative emission systems that are robust to market fuels, including fuels containing ethanol. Manufacturers also design to account for production variability in materials and tolerances. Robustness in the design of these components provides a safety margin that, according to the compliance margin data discussed above, results in vehicles actually emitting at levels well below required levels. There is thus an engineering basis for expecting robustness in design to allow MY2001–2006 motor vehicle evaporative emission systems to maintain durable emissions control with long-term use of E15.

Available data from IUVP, EPA's in-use surveillance program, and manufacturer emission defect information reports support that these vehicles can maintain evaporative emission control with long-term E15 use. The data are robust given the nature of these programs. IUVP, as previously described, requires manufacturers to perform exhaust and evaporative emissions tests on in-use vehicles, including at high mileage, and submit the data to EPA. EPA itself conducts an ongoing surveillance program at its Ann Arbor laboratory to assess vehicle emissions a few years after vehicles enter customer service. EPA typically recruits two- or three-year-old vehicles from vehicle owners for this program. These vehicles are chosen for a variety of reasons, ranging from issues of past emissions performance to gaining a better understanding of how new technologies are working. As for defects, manufacturers are required to report

[35] E10 is already the predominant gasoline fuel in most of the country and it is reasonable to assume that, if and when E15 is introduced into the marketplace, it would be in a market where fuel ethanol is already available and sold as E10.

[36] E15 use would also not affect vehicle manufacturers' compliance status since in-use testing for recall and other regulatory purposes is conducted on E0 fuel, and any effect of E15 on immediate evaporative emissions is transient and would not affect results of compliance testing on E0 fuel.

[37] It is important to note that the relevant comparison for evaluating whether a fuel or fuel additive will have an impact on failures of emission standards is a comparison between the proposed fuel or additive (here E15) and the fuel on which vehicles are tested for purposes of determining auto manufacturers' compliance with emission standards (E0). While E15 may result in limited additional exceedances of evaporative emission standards in comparison to E0, it will reduce actual in-use evaporative emissions compared to E10, the fuel it is expected to replace. We believe it is appropriate to consider both E15's limited potential for increasing exceedances of standards when compared to E0 fuel, and this real-world evaporative emissions benefit of E15 in considering the significance of any such exceedances, in deciding whether to grant a waiver for E15 use in MY2001–2006 light-duty motor vehicles.

[38] Manufacturers are required by the CAA to warrant that their vehicles are free from defects in materials and workmanship which would cause such vehicle to fail to conform to applicable regulations for the two year/24,000 mile warranty period. These vehicles are also subject to the recall provisions of Section 207 of the CAA which requires a manufacture to remedy non-conformities if the Administrator has determined that a substantial number of any class or category of vehicles do not conform to the regulations when in actual use throughout their useful life.

emission-related defects to EPA. An emission-related defect is a defect in design, materials, or workmanship in a device, system, or assembly, as described in the approved application for certification.

Review of the data from these programs indicates there have been no detected defects (*e.g.,* leaks from material softening, swelling, or cracking) or evaporative test failures attributable to ethanol exposure over time for MY2001–2006 light-duty motor vehicles, notwithstanding the long-term and expanding use of E10 across the country. As previously mentioned, E10 has been exclusively utilized as gasoline fuel in major U.S. cities since as early as 1996. By 2006, many, if not most, U.S. major metropolitan areas (for example, those cities utilizing reformulated gasoline) were using E10 and close to half of the U.S. gasoline market was comprised of E10. Now over 80 percent of the U.S. market is E10. For these periods, EPA is unaware of any significant problems associated with the use of the fuel in MY2001–2006 (or newer) light-duty motor vehicles. The lack of any reported problems with use of E10, coupled with the large compliance margins of most MY2001–2006 light-duty motor vehicles, indicates that MY2001–2006 light-duty motor vehicles generally should be able to accommodate E15 without exceeding evaporative emission standards. Even if a small subset of the MY2001–2006 fleet experienced some decrease in evaporative emissions control durability on E15, it is unlikely to outweigh the evaporative emission benefits resulting from E15's lower volatility compared to commercially available E10.

Several commenters recommended that we wait for the results of the CRC E91 "Evaporative Emissions Durability Testing" program which is studying the impact of E10 and E20 on permeation emissions. The test results are expected by the end of 2011. The Agency does not believe it is necessary to await the program's results to decide the waiver request for MY2001–2006 light-duty motor vehicles. In view of the lack of ethanol-related problems documented in our IUVP, in-use surveillance, and defect report data and information, and our engineering analysis, we expect that MY2001–2006 light-duty motor vehicles are likely to have evaporative emission control systems with a margin of safety sufficient to generally enable them to operate on E15 without experiencing long-term deterioration. Any evaporative emission standard exceedances that might occur are expected to be small and offset by the environmental benefit of the evaporative emission benefits of E15 compared to E10.

C. Materials Compatibility

As explained previously, materials compatibility is a factor in considering a waiver request since poor materials compatibility can lead to serious exhaust and evaporative emissions compliance problems not only immediately upon using the new fuel or fuel additive, but especially over time.

1. Growth Energy's Submission and Public Comment Summary

As with the exhaust and evaporative emissions sections above, Growth Energy's submission and the information supplied by commenters regarding materials compatibility impacts of E15 were not specific to the model year of the motor vehicles. For information on Growth Energy's submission and public comments on materials compatibility, refer to section IV.A.4 for MY2007 and newer light-duty motor vehicles and section IV.C.3.d for MY2000 and older light-duty motor vehicles of the October Waiver Decision.

2. EPA Analysis and Conclusions

The Agency has reviewed the studies that have shown generally acceptable materials compatibility in newer motor vehicles with ethanol up to 10 vol%, but degradation of certain metals, elastomers, plastics, and vehicle finishes with higher dosages.[39] However, most of these studies, including the Minnesota Compatibility Study, were on component parts using laboratory bench tests rather than durability studies of whole vehicle fuel systems simulating real-world vehicle use. In addition, there is no way to correlate the results of the study with MY2001–2006 motor vehicles. Many different materials were used over the years and we do not have data that shows which manufacturers used which specific materials at various points in time.

As the Agency noted in the October Waiver Decision, newer motor vehicles, including NLEVs, were designed to encounter more regular ethanol exposure compared to earlier model year motor vehicles. The Agency believes that the CAP2000 in-use testing and durability demonstration requirements as well as the introduction of OBD leak detection monitors and enhanced evaporative emission test procedures have led manufacturers to design vehicles using materials that will continue to function properly with respect to evaporative emissions when ethanol blends are used. This includes materials compatible with long-term use of ethanol blends, as the standards apply for the useful life of the vehicle, and the IUVP test program and the OBD leak detection requirement monitor compliance throughout the useful life. As discussed in the long-term evaporative emissions section of this notice, data from IUVP, EPA's in-use surveillance program, and manufacturer emission defect information reports have not detected any failures attributable to ethanol up to E10. Based on the Agency's engineering judgment and this supplemental information, and the generally large evaporative emissions compliance margin for these vehicles, EPA does not expect that there will be materials compatibility issues with E15 that would cause MY2001–2006 light-duty motor vehicles to exceed their evaporative emission standards over their FUL. For exhaust emissions, the same kind of information supports the same conclusion. In addition, the results of the DOE Catalyst Study support this conclusion, as E15 was used for long-term aging of the vehicles and the Study did not uncover any emissions deterioration problems with E15 in comparison to E0 that would result in materials compatibility issues.

D. Driveability and Operability

1. Growth Energy's Submission and Public Comment Summary

As with the exhaust and evaporative emissions and material compatibility sections above, Growth Energy's submission and information supplied by commenters regarding driveability and operability impacts of E15 were not specific to the model year of the motor vehicles. For information on Growth Energy's submission and public comments on driveability and operability, refer to section IV.A.5 for MY2007 and newer light-duty motor vehicles and IV.C.3.e for MY2000 and older light-duty motor vehicles of the October Waiver Decision.

2. EPA Analysis and Conclusions

Our engineering judgment as confirmed by the results of DOE's Catalyst Study is that MY2001–2006 light-duty motor vehicles (NLEV and some remaining Tier 1 trucks) are similar enough to MY2007 and newer Tier 2 motor vehicles in design of the emissions control systems that the analysis and conclusions presented in the October Waiver Decision apply to MY2001–2006 light-duty motor vehicles applies. The Agency's review of the data

[39] SAE J1297, revised July, 2007, Surface Vehicle Information Report, Alternative Fuels.

and information from the different test programs finds no specific reports of driveability, operability or OBD issues across many different vehicles and duty cycles including lab testing and in-use operation. Thus, while the potential exists for some vehicles more sensitive to ethanol to experience driveability or operability issues, the frequency is likely not more than what is currently experienced in-use today. Therefore, the Agency does not anticipate that there will be driveability, operability or OBD issues with E15 on properly operated and maintained MY2001–2006 light-duty motor vehicles.

E. Conclusions

As described in the preceding sections, EPA evaluated the potential impact of E15 with respect to the four emission-related categories for MY2001–2006 light-duty motor vehicles. Based on results from the DOE Catalyst Study and other information, coupled with our engineering judgment, EPA believes the evidence supports the conclusion that MY2001–2006 light-duty motor vehicles will not exceed their emission standards over their FUL when operated on E15. Where there is a possibility of such exceedances, the somewhat unique circumstances here warrant determining that such a possibility is not significant. Therefore, EPA is partially granting the waiver for MY2001–2006 light-duty motor vehicles.

The October Waiver Decision granted a partial waiver with respect to MY2007 and newer light-duty motor vehicles, and today's decision grants a partial waiver with respect to MY2001–2006 light-duty motor vehicles. The two waiver decisions taken together allow introduction of E15 into commerce for use in MY2001 and newer light-duty motor vehicles.

V. Legal Issues Arising In This Partial Waiver Decision

We fully incorporate by reference Section IX of the October Waiver Decision into this decision. Section IX, entitled "Legal Issues Arising in This Partial Waiver Decision," presents discussion regarding legal issues arising from issuing these partial waiver decisions. We incorporate that discussion here as our rationale is the same for this decision.

VI. Waiver Conditions

We fully incorporate by reference Section X of the October Waiver Decision into this decision. Section X, entitled "Waiver Conditions," provides a more detailed explanation regarding the conditions placed on these partial waiver decisions. We incorporate that discussion here as our rationale is the same for this decision.

VII. Partial Waiver Decision and Conditions

Based on all the data and information described above and in the October Waiver Decision, the waiver request application submitted by Growth Energy for its gasoline-ethanol blend with up to 15 vol% ethanol is partially and conditionally granted as follows:

(1) The partial waiver applies only to fuels or fuel additives introduced into commerce for use in MY2001 and newer light-duty motor vehicles, light-duty trucks, and medium duty passenger vehicles (hereafter "MY2001 and newer light-duty motor vehicles") as certified under Section 206 of the Act. The waiver does not apply to fuels or fuel additives introduced into commerce for use in pre-MY2001 motor vehicles, heavy-duty gasoline engines or vehicles, or motorcycles certified under section 206 of the Act, or any nonroad engines, nonroad vehicles, or motorcycles certified under section 213(a) of the Act.

(2) The waiver applies to the blending of greater than 10 vol% and no more than 15 vol% anhydrous ethanol into gasoline,[40] and the ethanol must meet the specifications for fuel ethanol found in the ASTM International specification D4806–10.[41]

(3) The final fuel must have a Reid Vapor Pressure not in excess of 9.0 psi during the time period from May 1 to September 15.

(4) Fuel and fuel additive manufacturers subject to this partial waiver must submit to EPA a plan, for EPA's approval, and must fully implement that EPA-approved plan, prior to introduction of the fuel or fuel additive into commerce as appropriate. The plan must include provisions that will implement all reasonable precautions for ensuring that the fuel or fuel additive (*i.e.* gasoline intended for use in E15, ethanol intended for use in E15, or final E15 blend) is only introduced into commerce for use in MY2001 and newer light-duty motor vehicles. The plan must be sent to the following address: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 6405J, Washington, DC 20460.

Reasonable precautions in a plan must include, but are not limited to, the following conditions on this partial waiver:

(a)(i) Reasonable measures for ensuring that any retail fuel pump dispensers that are dispensing a gasoline produced with greater than 10 vol% ethanol and no more than 15 vol% ethanol are clearly labeled for ensuring that consumers do not misfuel the waivered gasoline-ethanol blend into vehicles or engines not covered by the waiver. The label shall convey the following information:

(A) The fuel being dispensed contains 15% ethanol maximum;

(B) The fuel is for use in only MY2001 and newer gasoline cars, MY2001 and newer light-duty trucks and all flex-fuel vehicles;

(C) Federal law prohibits the use of the fuel in other vehicles and engines; and

(D) Using E15 in vehicles and engines not approved for use might damage those vehicles and engines.

(ii) The fuel or fuel additive manufacturer must submit the label it intends to use for EPA approval prior to its use on any fuel pump dispenser.

(b) Reasonable measures for ensuring that product transfer documents accompanying the shipment of a gasoline produced with greater than 10 vol% ethanol and no more than 15 vol% ethanol properly document the volume of ethanol.

(c)(i) Participation in a survey of compliance at fuel retail dispensing facilities. The fuel or fuel additive manufacturer must submit a statistically sound survey plan to EPA for its approval and begin implementing the survey plan prior to the introduction of E15 into the marketplace. The results of the survey must be provided to EPA.[42] The fuel or fuel additive manufacturer conducting a survey may choose from either of the following two options:

(ii) *Individual survey option:* Conduct a survey of labels and ethanol content at retail stations wherever your gasoline, ethanol, or ethanol blend may be distributed if it may be blended as E15. The survey plan must be approved by EPA prior to conducting the survey plan.

(iii) *Nationwide survey option:* Contract with an individual survey organization to perform a nationwide survey program of sampling and testing designed to provide oversight of all retail stations that sell gasoline. The

[40] Gasoline in this case may be gasoline blendstocks that produce gasoline upon the addition of the specified amount of ethanol covered by the waiver.

[41] ASTM International D4806–10, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel.

[42] In a Notice of Proposed Rulemaking published on November 4, 2010 in the **Federal Register** (*see* 75 FR 68044), EPA proposed a more detailed labeling, product transfer documents, and survey plan.

survey plan must be approved by EPA prior to conducting the survey plan.

(d) Any other reasonable measures EPA determines are appropriate.

(5) Failure to fully implement any condition of this partial waiver means the fuel or fuel additive introduced into commerce is not covered by this partial wavier.

These conditions are the same as those provided in the October partial waiver for MY2007 and newer light-duty motor vehicles. They have been modified here only to reflect the combined model years covering MY2001 and newer.

This partial waiver decision is final agency action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by March 28, 2011. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

Dated: January 21, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–1646 Filed 1–25–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0988; FRL–8856–2]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 29964–EUP–RR from Pioneer Hi-Bred International, Inc. requesting an experimental use permit (EUP) for combined and single trait corn containing one or more of the following plant-incorporated protectants (PIPs): (1) [Bt11] *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material (via elements of vector pZO1502) necessary for its production in corn (SYN–BTØ11–1), (2) [DAS–59122–7] *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (PHP17662 T–DNA) in event DAS59122–7 corn (Organisation for Economic Co-operation and Development (OECD) Unique Identifier: DAS–59122–7), (3) [MIR162] *Bacillus thuringiensis* Vip3Aa20 and the genetic material necessary for its production (vector pNOV1300) in event MIR162 maize (SYN–IR162–4), (4) [MIR604] Modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in corn (SYN–IR604–8), (5) [TC1507] *Bacillus thuringiensis* Cry1F protein and the genetic material (plasmid insert PHI8999A) necessary for its production in corn event DAS–Ø15Ø7–1, and (6) [MON810] *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material necessary for its production (Vestor PV–ZMCT01) in event MON 810 corn (OECD Unique Identifier: MON–ØØ81Ø–6). The focus of the EUP are the three breeding stacks: (1) MIR604 × 1507 × 59122 × MON 810, (2) MIR604 × 59122 × MON810, and (3) MIR604 × 1507. The Agency has determined that the permit may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0988, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0988. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons interested in agricultural biotechnology or those who

are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 5 of FIFRA, 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Pioneer Hi-Bred International, Inc., (29964–EUP–RR).

Pesticide Chemicals: (1) [TC1507] *Bacillus thuringiensis* Cry1F protein and the genetic material (plasmid insert PHI8999A) necessary for its production in corn event DAS–Ø15Ø7–1, (2) [DAS–59122–7] *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (PHP17662 T–DNA) in event DAS59122–7 corn (OECD Unique Identifier: DAS–59122–7), (3) [MON810] *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material necessary for its production (Vestor PV–ZMCT01) in event MON 810 corn (OECD Unique Identifier: MON–ØØ81Ø–6)], and (4) [MIR604] Modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in corn (SYN–IR604–8).

Summary of Request: This application is for use on 3,336 acres between February 2011 and June 2012. Two protocols will be conducted, including: Insect resistance management and efficacy/expression. States and Commonwealth involved include: Arkansas, California, Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Washington, and Wisconsin.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application as described under **ADDRESSES**.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 12, 2011.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2011–1473 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0830; FRL–8854–2]

Pesticides; Science Policies; Notice of Withdrawal and Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announces the withdrawal of two pesticide science policy documents that are no longer in use, entitled: "The Incorporation of Water Treatment Effects on Pesticide Removal and Transformations in Food Quality Protection Act (FQPA) Drinking Water Assessments," dated October 25, 2001, and "Drinking Water Screening Level Assessments," dated September 1, 2000. EPA also announces the availability of two updated pesticide science policy documents, entitled: "The Development and Use of the Index Reservoir in Drinking Water Exposure Assessments," dated April 15, 2010, and "Guidance on Development and Use of Percent Cropped Area Adjustment," dated September 9, 2010.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–

8578; fax number: (703) 308–6181; e-mail address: *echeverria.marietta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action, however, may be of interest to persons who produce or formulate pesticides or who register pesticide products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0830. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

The Food Quality Protection Act of 1996 significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*) and the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Working with stakeholders and a Federal advisory committee, the Agency identified several science policy issues that were key to the implementation of FQPA and tolerance reassessment. In the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA published a framework to describe the issues, and the public participation process that EPA would use to review the documents developed to address the issues identified. Following that process, EPA then issued a series of draft and revised documents concerning the nine science policy issues that were identified. The documents are available at *http://www.epa.gov/oppfead1/trac/science/.* Since that time, EPA has periodically identified the need to update the documents to ensure that the policy and guidance provided is current. This **Federal Register** notice announces the withdrawal of two obsolete documents and the availability of two updated documents.

III. Status Update for Pesticide Science Policy Documents

A. Withdrawn Documents

EPA is withdrawing the pesticide science policy document "The Incorporation of Water Treatment Effects on Pesticide Removal and Transformations in Food Quality Protection Act (FQPA) Drinking Water Assessments," dated October 25, 2001, because it is obsolete. When drafted in 2001, this science policy document was developed with two objectives: (1) To present a preliminary literature review on the impact of different treatment processes on pesticide removal and transformation in treated drinking water derived from ground and surface water sources; and (2) to describe how OPP would consider the impacts of drinking water treatment in drinking water exposure assessments under FQPA. Since the issuance of this policy document, OPP has adjusted its methods for estimating pesticide concentrations in drinking water, using a variety of data and different models. Up to date information on the methods, models and databases used for drinking water exposure assessments is available at *http://www.epa.gov/pesticides/science/models_db.htm.*

EPA is also withdrawing the science policy document entitled: "Drinking Water Screening Level Assessments," dated September 1, 2000, because the information it provided has been superseded by the two updated documents whose availability is announced in the next section.

B. Updated Documents

The updated science policy document entitled "Development and Use of the Index Reservoir in Drinking Water Exposure Assessments," dated April 15, 2010, updates and supersedes the science policy document entitled "Guidance for Use of the Index Reservoir in Drinking Water Exposure Assessments," dated November 16, 1999. It also reflects changes in procedures, error corrections, and editorial modifications to improve clarity and completeness. This science policy document is intended to provide guidance on the development and use of the index reservoir scenario for use in estimating pesticide concentrations in drinking water derived from vulnerable surface water supplies. Between 1996, after passage of the FQPA, and 2000 the Agency used the "standard pond" as an interim scenario for drinking water exposure. In 2000, the Agency began using the index reservoir scenario to represent a watershed capable of supporting a drinking water facility that is prone to high pesticide concentrations. With the use of the index reservoir scenario, the Office of Pesticide Programs was able to improve the quality and accuracy of its models for estimating pesticide concentrations in drinking water. This updated pesticide science policy document is available online at *http://www.epa.gov/oppefed1/models/water/index_reservoir_dwa.html.*

The updated science policy document entitled "Development and Use of Percent Cropped Area Adjustment Factors in Drinking Water Exposure Assessments," dated September 9, 2010, merges two previous documents, entitled "Percent Crop Area Adjustment to Tier 2 Surface Water Model Estimates for Pesticide Drinking Water Exposure Assessments," dated December 7, 1999, and "Use of Regional Percent Crop Area Factors in Refined Drinking Water Assessments," dated July 23, 2003, and supersedes both of them. The updated science policy document is intended to provide guidance on the development and use of the percent cropped area (PCA) adjustment factors in estimating the exposure in drinking water derived from vulnerable surface water supplies. Since the passage of FQPA in 1996 through 2000, the Agency assumed the entire area of the watershed was planted with the crop of interest (*i.e.* crop coverage). In 2000, the Agency began using the PCA adjustment factor to account for the percentage of the watersheds planted with a crop, recognizing that a watershed large enough to support a drinking water facility will not usually be planted completely with a single crop. Use of this factor improves the quality and accuracy of OPP's modeling of drinking water exposure for pesticides. This updated pesticide science policy document is available online at *http://www.epa.gov/oppefed1/models/water/pca_adjustment_dwa.html.*

IV. Policies Not Rules

The policy documents discussed in this notice are intended to provide guidance to EPA personnel and decision makers, and to the public. As a guidance

document and not a rule, the policies in this guidance are not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should not be applied.

List of Subjects

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

Dated: January 19, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–1633 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–8861–4]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a June 16, 2010 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the June 16, 2010 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the Agency received notice from Waterbury Companies, Inc. to withdraw its cancellation request for product 9444–170. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective January 26, 2011.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–0123; *fax number:* (703) 308–8090; *e-mail address: tatinclaux.maia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0014. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of 54 products registered under FIFRA section 3 or section 24(c). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Product name	Active ingredients
000004–00059	Bonide Rose & Flower Dust	Malathion Carbaryl Captan.
000228–00629	SFM E–PRO 75 EG Herbicide	Sulfometuron.
000228–00683	ET–002	Sulfometuron.
000279–03392	CB–38–3 WB	Piperonyl Butoxide Pyrethrins.
000432–00800	Esbiol 90% Concentrate	S-Bioallethrin.
000432–00801	Esbiothrin 90% Concentrate	Esbiothrin.
000432–00802	Bioallethrin 90% Concentrate	Bioallethrin.
000432–00841	DS 215 Professional Insecticide	S-Bioallethrin Deltamethrin.
000432–00848	DS 210 Professional Insecticide	S-Bioallethrin Deltamethrin.
000432–0870	Esbiol 300 Insecticide	S-Bioallethrin.
000432–0871	Esbiol 2000 Insecticide	S-Bioallethrin.
000498–0149	Chase-MM Flying and Crawling Insect Killer	Bioallethrin MGK 264 Permethrin.
000498–00170	Spraypak Wasp & Hornet Killer, Formula 2	d-Allethrin Phenothrin.
000769–00594	R&M Permethrin Flea & Tick Dip #2	MGK 264 Permethrin.
000769-–0965	Sureco Permethrin Powder	Permethrin.
002517–00022	Double Duty Bird Guard	Paradichlorobenzene.
002517–00049	Sergeant's Pump Soap for Dogs	Bioallethrin MGK 264 Phenothrin.
002517–00059	Sergeant's Skip-Flea Soap (with D-Phenothrin)	MGK 264 Phenothrin.
002517–00067	Sergeant's Flea and Tick Dip	MGK 264 Permethrin.
002517–00074	Sergeant's Flea & Tick Spray	MGK 264 Permethrin.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Product name	Active ingredients
002724–00698	Tetraperm Wasp & Hornet Killer FEQ 23 II	Piperonyl Butoxide Tetramethrin Permethrin.
004822–00271	#271 Raid Roach & Ant Killer and Treatment	Tetramethrin Permethrin.
004822–00423	Raid Wasp & Hornet Killer XIII	Tetramethrin Permethrin.
004822–00456	Raid Pip 1	Permethrin.
004822–00462	Whitmire Flea & Tick Dip	MGK 264 Permethrin.
004822–00470	Raid PP	Permethrin.
004822–00488	Raid—CK	MGK 264 Permethrin Pyriproxyfen.
004822–00514	Raid F1K Formula H2A	Tetramethrin Permethrin.
004822–00533	Raid Reach & Kill Outdoor Ant & Roach Killer	Tetramethrin Permethrin.
008112–00001	Lion-Tiger Mosquito Coils	d-Allethrin.
009688–00053	Chemisco Flea Control A	Bioallethrin MGK 264 Phenothrin.
010088–00021	ESPC Emulsifiable Synergized Pyrethrum Concentrate.	MGK 264 Piperonyl Butoxide Pyrethrins.
010807–00003	Misty Blaster Insect Spray	MGK 264 Piperonyl Butoxide Pyrethrins.
010807–00027	Misty Mizer Insecticide	MGK 264 Piperonyl Butoxide Pyrethrins.
010807–00044	Misty Mizer Economy Insecticide	MGK 264 Piperonyl Butoxide Pyrethrins.
010807–00096	Misty Space Spray Insecticide	MGK 264 Piperonyl Butoxide Pyrethrins.
010807–00188	Misty Industrial Insect Killer	Piperonyl Butoxide Pyrethrins Permethrin.
010807–00197	Misty Anti-Crawl III	Piperonyl Butoxide Tetramethrin Permethrin.
010807–00198	Misty Wasp & Hornet Killer IV	Piperonyl Butoxide Tetramethrin Permethrin.
013799–00024	Four Paws Magic Coat Plus II	Bioallethrin MGK 264 Phenothrin.
033176–00021	Airysol Brand Insect Killer	Bioallethrin MGK 264 Piperonyl Butoxide.
040849–00016	Enforcer Flea & Tick Powder for Pets	MGK 264 Piperonyl Butoxide Pyrethrins.
058630–00003	Varpel Rope	Paradichlorobenzene.
061483–00068	Permectrin 25% Wettable Powder	Permethrin.
062355–00001	Concern Houseplant and Garden Insect Killer	Piperonyl Butoxide Pyrethrins.
064537–00001	Cocksec Mosquito Coil	d-Allethrin.
075101–00002	Tanalith®T	Permethrin.
075101–00003	Tanalith®T Plus	IPBC Permethrin.
080203–00001	Go Away	Permethrin.
084396–00028	Sungro Pyreth #3	Piperonyl Butoxide Pyrethrins.
CA880005	Dormant Flowable Emulsion	Mineral Oil—includes paraffin oil.
CA960011	Mefenoxam EC	D-Alanine,N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester.
MN940003	Malathion 5 EC	Malathion.
OR040002	Caparol 4L	Prometryn.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Co. No.	Company name and address
4	Bonide Products, Inc., Agent Registrations By Design, Inc., P.O. Box 1019, Salem, VA 24153–3805.
228	Nufarm Americas Inc., 150 Harvester Dr, Suite 200, Burr Ridge, IL 60527.
279	FMC Corp. Agricultural Products Group, 1735 Market St, Rm. 1978, Philadelphia, PA 19103.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Co. No.	Company name and address
432	Bayer Environmental Science, 2 T. W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
498	Chase Products Co., P.O. Box 70, Maywood, IL 60153.
769	Value Gardens Supply, LLC, P.O. Box 585, Saint Joseph, MO 64502.
2517	Sergeant's Pet Care Products, Inc., 2625 South 158th Plaza, Omaha, NE 68130–1703.
2724	Wellmark International, 1501 E. Woodfield Rd, Suite 200 West, Schaumburg, IL 60173.
4822	S.C. Johnson & Son, Inc., 1525 Howe St., Racine, WI 53403.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Co. No.	Company name and address
8112	Lion Chemical Co., Ltd., 1330 Dillon Heights Ave., Baltimore, MD 21228.
9688	Chemsico, Div of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
10088	Athea Laboratories Inc., P.O. Box 240014, Milwaukee, WI 53224.
10807	Amrep, Inc., 990 Industrial Park Drive, Marietta, GA 30062.
13799	Four Paws Products LTD, 50 Wireless Boulevard, Hauppauge, NY 11788.
33176	Amrep, Inc., 990 Industrial Park Drive, Marietta, GA 30062.
40849	ZEP Inc., 1310 Seaboard Industrial Blvd. NW, Atlanta, GA 30318.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Co. No.	Company name and address
58630	Woodstream Corporation, 69 North Locust St., P.O. Box 327, Lititz, PA 17543–0327.
61483	KMG–Bernuth, Inc., 9555 W. Sam Houston Pkwy South, Suite 600, Houston, TX 77099.
62355	Miracle-Gro Lawn Products Inc., 14111 Scottslawn Rd, Marysville, OH 43041.
64537	Dainihon Jochugiku Co., Ltd, 1330 Dillon Heights Ave., Baltimore, MD 21228.
75101	Arch Wood Protection Limited, 5660 New Northside Drive, Ste 1100, Atlanta, GA 30328.
80203	Starensier, Inc., 10 Mulliken Way, P.O. Box 408, Newburyport, MA 01950–0508.
84396	Sungro Products, LLC, 810 E. 18th St., Los Angeles, CA 90021.
CA960011; OR040002.	Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300.
CA880005	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
MN940003	Arysta Lifescience North America, LLC, 155401 Weston Parkway, Suite 150, Cary, NC 27513.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the June 16, 2010 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are subject of this notice is January 26, 2011. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of June 16, 2010 (75 FR 34117) (FRL–8827–1). The comment period closed on December 13, 2010.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until January 26, 2012, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 11, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–1124 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0008; FRL–8856–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this Notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number specified within the table below, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number specified for the pesticide of interest as shown in the registration application summaries. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity

or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting in a docket that addresses multiple products, please indicate to which registration number(s) your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this Notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration Numbers:* 100–617, 100–618. Docket Number: EPA–HQ–OPP–2009–1009. Company name and address: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. Active ingredient: Propiconazole. Proposed Use(s): Mint, onion subgroups 3–07 A and B, and berry subgroups 13–07 A, B, and G. Contact: Lisa Jones, (703) 308–9424, *jones.lisa@epa.gov.*

2. *Registration Numbers:* 100–1067, 100–1217. Docket Number: EPA–HQ–OPP–2010–0637. Company name and address: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. Active ingredient: Paraquat dichloride. Proposed Use(s): Atemoya, biriba, black sapote, canistel, cherimoya, custard apple, feijoa, Ilama, jaboticaba, longan, lychee, mamey sapote, mango, pawpaw, pomegranate, pulasan, rambutan, sapodilla, soursop, Spanish lime, star apple, starfruit, sugar apple, wax jambu, and white sapote. Contact: Hope Johnson, (703) 305–5410, *johnson.hope@epa.gov.*

3. *Registration Numbers:* 352–728, 352–729, 352–730. Docket Number: EPA–HQ–OPP–2010–0888. Company name and address: DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. Active ingredient: Chlorantraniliprole. Proposed Use(s): Bushberry subgroup, large shrub/tree berry subgroup, low growing berry subgroup, Ti palm roots, Ti palm leaves, root and tuber vegetables, leaves of foot and tuber vegetables, sugar beet molasses, bulb onion subgroup, peanut nutmeat, peanut hay and dried tea leaves. Contact: Kable Bo Davis, (703) 306–0415, *davis.kable@epa.gov.*

4. *Registration Numbers:* 59639–139, 59639–140. Docket Number: EPA–HQ–OPP–2009–0481. Company name and address: Valent U.S.A. Corporation, 1600 Riviera Ave, Suite 200, Walnut

Creek, CA 94596. Active ingredient: Fluopicolide Technical. Proposed Use(s): Brassica leafy greens subgroup 5B, potatoes, sugar beets, carrots, and rotational wheat. Contact: Janet Whitehurst, (703) 305–6129, *whitehurst.janet@epa.gov.*

5. *Registration Number:* 59639–142. Docket Number: EPA–HQ–OPP–2009–0481. Company name and address: Valent U.S.A. Corporation, 1600 Riviera Ave, Suite 200, Walnut Creek, CA 94596. Active ingredient: Fluopicolide and Propamocarb Hydrochloride. Proposed Use(s): Potatoes, sugar beets, carrots, and rotational wheat. Contact: Janet Whitehurst, (703) 305–6129, *whitehurst.janet@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 10, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–1261 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0008; FRL–8862–3]

Menthol and Propetamphos; Registration Review Proposed Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decisions for the pesticides listed in the table in Unit II.A. and opens a public comment period on the proposed decisions. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before March 28, 2011.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II.A., by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility's telephone number is (703) 305–5805.

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

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility's telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the table in Unit II.A.

For general information on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the chemical review manager listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not

contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decisions for the pesticides shown in the table in this unit, and opens a 60-day public comment period on the proposed decisions. Menthol is a biochemical pesticide used to control mites in over-wintering bee hives. Propetamphos is an organophosphate (OP) insecticide used for non-residential indoor crack and crevice treatment to control crawling insects, primarily, ants, cockroaches, and fleas. Propetamphos acts as a contact and stomach action poison with long residual effects. It shares a common mechanism of toxicity with other OPs, namely, a common biochemical interaction with the cholinesterase enzyme.

TABLE—REGISTRATION REVIEW PROPOSED DECISIONS

Registration review case name and No.	Pesticide Docket ID No.	Chemical review manager, telephone number, E-mail address
Menthol; Case 4063	EPA–HQ–OPP–2009–0900	Colin G. Walsh; (703) 308–0298; *walsh.colin@epa.gov.*
Propetamphos; Case 2550	EPA–HQ–OPP–2007–1195	Kylie Rothwell; (703) 308–8055; *rothwell.kylie@epa.gov.*

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan, for public comment. A Final Work Plan was posted to the docket following public comment on the initial docket. The documents in the initial dockets described the Agency's rationales for not conducting additional risk assessments for the registration review of the pesticides included in the table in this unit. These proposed registration review decisions continue to be supported by those rationales included in documents in the initial dockets. Following public comment, the Agency will issue registration review decisions for products containing the pesticides listed in the table in this unit.

The registration review program is being conducted under Congressionally-mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006 and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the table in this unit. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a "Response to Comments Memorandum" in the docket. The registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review.* Links to earlier documents related to the registration review of these pesticides are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm.*

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

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Administrative practice and procedure, Menthol and propetamphos, Pesticides and pests.

Dated: January 20, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–1638 Filed 1–21–11; 4:15 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8856–9]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been canceled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Attention: Maia Tatinclaux.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–1017. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: *tatinclaux.maia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 46 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

The request to cancel the product with EPA Reg. No. 066330–00264 would terminate the last butylate product registered for use in the United States.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Active ingredient
000121–00098	Cutter Insect Repellent El	d-Allethrin.
000192–00204	Dexol Mole Killer Pellets2	Zinc phosphide.
000239–02381	Triox Vegetation Killer	Prometon.
000239–02664	Weed B Gon Ready-Spray	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1); Mecoprop, dimethylamine salt; 2,4-D, dimethylamine salt.
000270–00319	AEH Super Concentrate Weed, Grass and Brush Killer	Glufosinate.
000432–00552	Pramex 57% Manufacturing Concentrate	Permethrin.
000432–00786	Permanone 40% EC LPI	Permethrin.
000432–01076	Permanone 40 EC Alternate	Permethrin.
000432–01133	Permanone 3.4 E.C	Permethrin.
000432–01141	Permanone Eighty	Permethrin.
000538–00218	Scotts Lawn Pro Lawn Weed Control Plus Fertilizer	MCPA (and salts and esters) Mecoprop (and salts and esters).
000538–00222	Scott's Lawn Pro Weed N' 'Feed	MCPA (and salts and esters) Mecoprop (and salts and esters).
001022–00476	Chapman PQ–8	Copper, bis.
001022–00490	PQ–57	Copper, bis.
001022–00491	PQ–15 RTU Clear Wood Preservative	Copper, bis.
001022–00492	PQ–20	Copper, bis.
001022–00493	PQ–15	Copper, bis.
001022–00503	PQ–7	Copper, bis.
001022–00504	PQ–56 RTU	Copper, bis.
001022–00505	PQ–20 R–T–U Wood Preservative	Copper, bis.
002382–00128	Duocide L.A. IGR	MGK 264. Piperonyl butoxide. Pyrethrins. Permethrin. Pyriproxyfen.
002596–00119	Hartz Rabon Flea and Tick Dip for Dogs and Cats	Garadona (cis-isomer).
004822–00512	Raid 260PO	Sodium chlorite.
007424–00009	Jasco Termin-8 H2O Clear Wood Preservative	Zinc naphthenate.
008660–00178	Golden Vigoro Moss Control Plus Lawn Fertilizer	Ferrous sulfate monohydrate.
008660–00205	Koos Moss Control 16–2–4	Ferrous sulfate monohydrate.
008660–00248	Lawn Food 10–4–6 Plus Moss Killer	Ferrous sulfate monohydrate.
008848–00038	Black Jack Home & Garden #11 Multi-Purpose Insect Spray.	Phenothrin. Tetramethrin.
009499–00001	Oxalis/Spurge X	Ammonium thiosulfate.
010806–00105	Pro/Pak Shure Shot Wasp & Hornet Spray	Phenothrin. Tetramethrin.
013283–00013	Rainbow Wasp & Ant Spray	Bioallethrin.
033660–00003	Trifluralin Technical	Trifluralin.
040849–00052	Enforcer Wasp & Hornet Killer XI	Phenothrin. Tetramethrin.
062719–00619	Oxyfluorfen Technical	Oxyfluorfen.
062719–00620	Oxyfluorfen 4 SC Herbicide	Oxyfluorfen.
066330–00068	Nutrapic	Chloropicrin.
066330–00264	Sutan + 6.7E	Butylate.
073049–00258	Neopynamim Technical	Tetramethrin.
073510–00008	Marketquest One Drop Flea & Tick Control-2	Permethrin.
082498–00005	Glyphosate Technical	Glyphosate.
083933–00001	Bioguard Paste	Sodium fluoride. Boric acid.
ID960006	Fyfanon ULV	Malathion.
LA000004	Fyfanon ULV	Malathion.
LA040013	Penncap-M, Microencapsulated Insecticide	Methyl parathion.
NJ950003	Fyfanon ULV	Malathion.
NV960001	Fyfanon ULV	Malathion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
121	Spectrum, a div. of United Industries Corp., P.O. Box 142642 St. Louis, MO 63114–0642.
192	Value Gardens Supply, LLC, P.O. Box 585, Saint Joseph, MO 64052.
239	Scotts Company, The, D/B/A The Ortho Group, P.O. Box 190, Marysville, OH 43040.
270	Farnam Companies, Inc., D/B/A Central Life Sciences, 301 West Osborn Road, Phoenix, AZ 85013.
432	Bayer Environmental Science, 2 T. W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
538	Scotts Company, The, 14111 Scottslawn Road, Marysville, OH 43041.
1022	IBC Manufacturing Co., 416 E. Brooks Rd., Memphis, TN 38109.
2382	Virbac AH, Inc., 13001 St. Charles Rock Road, Bridgeton, MO 63044.
2596	Hartz Mountain Corporation, The, 400 Plaza Drive, Secaucus, NJ 07094.
4822	S.C. Johnson & Son, Inc., 1525 Howe St., Racine, WI 53403.
7424	Jasco Chemical Corporation, 200 Westerly Road, Bellingham, WA 98226.
8660	United Industries Corp., D/B/A Sylorr Plant Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
8848	Safeguard Chemical Corp., 411 Wales Ave., Bronx, NY 10454.
9499	National Chelating Company, 8203 West 20th St., Suite A, Greeley, CO 80634–4696.
10806	Contact Industries, Div. of Safeguard Chemical Corp., 411 Wales Ave., Bronx, NY 10454.
13283	Rainbow Technology Corporation, 8203 West 20th St., Suite A, Greeley, CO 80634–4696.
33660	Industria Prodotti Chimici S.P.A., 122 C St., NW., Suite 740, Washington, DC 20001.
40849	ZEP Inc., 1310 Seaboard Industrial Blvd., NW., Atlanta, GA 30318.
62719	Dow AgroSciences LLC, 9330 Zionsville Road, 308/2E, Indianapolis, IN 46268–1054.
66330	Arysta Lifescience North America, LLC, 155401 Weston Parkway, Suite 150, Cary, NC 27513.
73049	Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048–6316.
73510	Marketquest, Inc., Agent: Registrations By Design, Inc., P.O. Box 1019, Salem, VA 24153–3805.
82498	Agri Packaging & Logistics, Inc., 2509 South Frontage Road, Sardis, MS 38666.
83933	Preschiem Pty. Ltd., 12733 Director's Loop, Woodbridge, VA 22192.
ID960006, LA000004, NJ950003, NV960001.	Cheminova, Inc. Washington Office, 1600 Wilson Boulevard, Suite 700, Arlington, VA 22209.
LA040013	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 11, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–1666 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1145; FRL–9257–9]

Release of Final Document Related to the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The Office of Air Quality Planning and Standards (OAQPS) of EPA is announcing the availability of a document titled, *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur (January 14, 2011 version) (Policy Assessment).* The Policy Assessment contains staff analyses of the scientific bases for alternative policy options for consideration by the Agency prior to rulemaking.

DATES: This version of Policy Assessment will be available on or about January 14, 2011; a final version is expected to be released around the end of January.

ADDRESSES: The document will be available primarily via the Internet at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_pa.html.*

FOR FURTHER INFORMATION CONTACT: For questions related to this document, please contact Dr. Richard Scheffe, Office of Air Quality Planning and Standards (Mail code C304–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *scheffe.rich@epa.gov* telephone: 919–541–4650; fax: 919–541–2357.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Presently, EPA is reviewing the secondary NAAQS for oxides of nitrogen and sulfur.[1] The document announced today, *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur (January 14, 2011 version),* contains staff analyses of the scientific bases for alternative policy options for consideration by the Agency prior to rulemaking. This document, which builds upon the historical "Staff Paper," will serve to "bridge the gap" between the available scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the standards.[2] The current and potential alternative standards for oxides of nitrogen and sulfur are considered in terms of the basic elements of the NAAQS: Indicator, averaging time, form, and level. The Policy Assessment builds upon information presented in the *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Ecological Criteria: Final report* (ISA, EPA EPA/600/R–08/082F, December 2008) and the quantitative risk and exposure assessment document (REA)—*Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur* (EPA–452/R–09–008a and EPA–452/R–09–008b; September 2009).

A first draft Policy Assessment (EPA–452/P–10–006) was released in March 2010 to facilitate discussion with the Clean Air Scientific Advisory Committee (CASAC) at an April 1–2, 2010 meeting on the overall structure, areas of focus, and level of detail to be included in the Policy Assessment (75 FR 10479–10481, March 2010). CASAC's comments on the first draft Policy Assessment encouraged the development of a document focused on the key policy-relevant issues that draws from and is not repetitive of information in the ISA and REA. These comments were considered in developing a second draft Policy Assessment (EPA 452/P–10–008, September 2010). The EPA presented an overview of the second draft Policy Assessment at a CASAC meeting on October 6–7, 2010 (75 FR 54871–54872).

CASAC (EPA–CASAC–11–003) and public comments on the second draft Policy Assessment were considered by EPA staff in developing this version of the final Policy Assessment which is available through the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_pa.html.* CASAC has requested a February 15–16, 2011, meeting to review EPA's final Policy Assessment. EPA is releasing this January 14, 2011, version of the final Policy Assessment at this time, prior to final document production, to provide sufficient time for CASAC review of the document in advance of this meeting. EPA will continue with final document production, including final reference checks and document formatting, and release the final version of this Policy Assessment around the end of January.

Dated: January 14, 2011.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–1639 Filed 1–25–11; 8:45 am]

BILLING CODE 6560–50–P

[1] The EPA's initial overall plan for this review was presented in the *Integrated Review Plan for the National Ambient Air Quality Standards for Nitrogen Dioxide and Sulfur Dioxide* (EPA–452/R–08–006, December 2007). Documents related to the current review of the secondary NAAQS for oxides of nitrogen and sulfur are available at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html.*

[2] See *http://www.epa.gov/ttn/naaqs/review.html* for a copy of Administrator Jackson's May 21, 2009, memorandum and for additional information on the NAAQS review process.

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011961–009.

Title: The Maritime Credit Agreement.

Parties: Alianca Navegacao e Logistica Ltda. & Cia.; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company, Limited; Dole Ocean Cargo Express; Hamburg-Süd; Hoegh Autoliners A/S; Hyundai Merchant Marine Co. Ltd.; Independent Container Line Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Safmarine Container Lines N.V.; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Company (S.A.G.) ; Wallenius Wilhelmsen Logistics AS; YangMing

Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add Hanjin Shipping Co., Ltd. as a party to the agreement.

Agreement No.: 201175–003.

Title: Port of NY/NJ Sustainable Services Agreement.

Parties: APM Terminals North America, Inc.; Global Terminal & Container Services LLC; Maher Terminals LLC; New York Container Terminal, Inc.; and Port Newark Container Terminal LLC.

Filing Party: Carol N. Lambos, Esq.; The Lambos Firm, LLP; 303 South Broadway Suite 410; Tarrytown, NY 10591.

Synopsis: The amendment revises the name of a member in the agreement to New York Container Terminal LLC.

Dated: January 21, 2011.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–1677 Filed 1–25–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

Dandino Inc. dba Danielli dba Winston (NVO & OFF), 157 W. 27th Street, Los Angeles, CA 90007. Officers: Carlos Gonzales, Vice President (Qualifying Individual), Yaniv Daniel, President.
Application Type: New NVO & OFF License.

Goldstar Global Logistic, LLC (NVO & OFF), 7 Prince Lane, Westbury, NY 11590. Officer: Kunj B. Kalra, President (Qualifying Individual).
Application Type: New NVO & OFF License.

JRM Freight Corp. (NVO), 14388 SW. 96 Lane, Miami, FL 33186. Officer: Juan R. Albanes, Treasurer/President/Secretary (Qualifying Individual).
Application Type: New NVO License.

Makro Logistics Group, LLC (NVO & OFF), 2229 NW. 79 Avenue, Doral, FL 33122. Officers: Paul F. Mendoza, COO (Qualifying Individual), Marcela Mendoza, President.
Application Type: QI Change.

SAPIA Logistics, Inc. (NVO & OFF), 1331 Gemini Street, Suite 103, Houston, TX 77058. Officers: Vernon Darko, President (Qualifying Individual), Eric Miller, Vice President.
Application Type: New NVO & OFF License.

Seagull Global Logistics USA Limited Liability Company (OFF), 124 Jackson Avenue, Princeton, NJ 08540. Officers: Ashutosh L. Korde, Member/Manager (Qualifying Individual), Nitin Agarwal, Director.
Application Type: New OFF License.

Dated: January 21, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–1682 Filed 1–25–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date Reissued
004094N	All Transport, Inc., 8369 NW. 66th Street, Miami, FL 33166	December 24, 2010.
004413N	Industrial Connections, Inc., 300 Park Blvd., Suite 165, Itasca, IL 60143	December 12, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–1680 Filed 1–25–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date: February 9, 2011, 9 a.m.–2:30 p.m. February 10, 2011, 10 a.m.–3 p.m.

Place: St. Regis Hotel, 923 16th Street, NW., Washington, DC 20006, (202) 638–2626.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department, the Center for Medicare and Medicaid Services, and the Office of the National Coordinator. A discussion of a letter to the HHS Secretary regarding quality measures and a letter to the Secretary regarding Electronic Funds Transfer (EFT) operating rules and remittance will also take place. In the afternoon there will be a discussion of the Community Health Data Initiative.

On the morning of the second day there will be a review of the final letters regarding quality measures, and EFT operating rules and remittance. There will also be a discussion regarding bridging Systematized Nomenclature of Medicine—Clinical Terms (SNOWMED CT) and international classifications and the IOM Report *Digital Infrastructure for the Learning Health System: The Foundation for Continuous Improvement in Health and Health Care.* Subcommittees will also present their reports.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and second day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS website (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: January 20, 2011.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–1654 Filed 1–25–11; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Development of the Guide to Patient and Family Engagement in Health Care Quality and Safety in the Hospital Setting." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 15th, 2010 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by February 25, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Development of the Guide to Patient and Family Engagement in Health Care Quality and Safety in the Hospital Setting

Improving the quality and safety of health care in the United States is one of the most significant challenges facing the American health care system. Too many Americans continue to receive health care that is not grounded in a reliable evidence base of what is proven appropriate, safe, and effective. Extensive studies conducted during recent decades demonstrate that the U.S. health care system provides continuing unwarranted variation and costly, inefficient, and simply unsafe care. Involving patients and families in improving quality and safety in hospitals has the potential to improve health care experiences, delivery, and outcomes. AHRQ has been at the forefront of supporting increased involvement for patients, families, and the public in all aspects of health care.

This project will develop a program to help patients, families, and health professionals in the hospital support one another to improve quality and safety. To accomplish these goals, patients and families must be able to express what they want from their hospital care and how they want to be involved and then effectively communicate this information with health professionals. Conversely, health professionals must be able to understand what patients want to do and what is appropriate for them to do and feel that they have the system supports and tools to facilitate these actions.

To address this issue and help fulfill AHRQ's mission of health care quality improvement, AHRQ will develop a set of interventions and materials, entitled the Guide to Patient and Family Engagement in Health Care Quality and Safety in the Hospital Setting ("the Guide"), for use by patients, their family members, health care professionals, and hospital leaders to foster patient and family engagement around the issues of hospital safety and quality.

The goals of this project are to:

(1) Identify the barriers and facilitators to implementing the Guide, including how barriers were overcome;

(2) Assess staff satisfaction with the Guide and change in staff behavior before and after implementation of the Guide including organizational culture with respect to patient and family engagement and patient- and family-centered care;

(3) Assess patient satisfaction with the Guide and change in patient experience of care before and after implementation of the Guide including patient/family involvement in their own health care and patient/family involvement in quality improvement and patient safety activities; and,

(4) Refine the Guide as necessary to improve implementation and effectiveness. The Guide will be tested in three hospitals which will vary in terms of size, location, teaching status, and ownership.

This study is being conducted by AHRQ through its contractor, the American Institutes for Research (AIR), pursuant to AHRQ's statutory authority to promote health care quality improvement by conducting and supporting research that develops and presents scientific evidence regarding all aspects of health care, including the development and assessment of methods for enhancing patient participation in their own care and for facilitating shared patient-physician decision-making. 42 U.S.C. 299(b)(1)(A).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Semi-structured interviews will be conducted in-person with hospital staff and hospital leaders from each of the participating health care facilities. Both pre- and post-implementation interviews will be conducted and separate interview guides will be used for staff and leaders. Pre-implementation, the interviews will focus on current knowledge, attitudes and beliefs around patient and family engagement and on the current organizational culture and climate surrounding patient and family engagement. Post-implementation,

interviews will be conducted to understand the hospital's experiences implementing the Guide interventions, including how easy or difficult the Guide was to implement; the perceived effects of the Guide implementation; and the sustainability of the Guide interventions.

(2) Collection of documentation from each participating facility. The purpose of this collection of documentation is to gather documentation of the implementation of the Guide and to document policies and procedures related to patient and family engagement through a review of records and other materials. To the extent that it is available, the following types of documentation will be collected:

- Background on organizational structure and vision.
- Policies and procedures related to Component 1 and Component 2 strategies of the Guide.
- Tools used to foster communication between patients, family members and health care team.
- Policies and procedures related to patient and family engagement, patient- and family-centered care, quality and safety.

This task will consist of forwarding emails and or photocopying and sending documents to the project team both pre- and post-implementation.

(3) Bi-weekly semi-structured interviews will be conducted by telephone with the implementation coordinators from each participating facility. At each hospital site, an implementation coordinator will be responsible for overseeing implementation activities and serving as a primary point-of-contact. Interviews with these individuals will provide a complete understanding of the Guide implementation and the ability to track the implementation in real time. These interviews will occur bi-weekly for 9 months.

(4) Observation of Guide implementation around different activities targeted in the Guide components. The purpose of these observations is to directly assess how the Guide is being implemented and to determine which follow up questions from the semi-structured interview protocol should be prioritized or removed during the in-person semi-structured interviews. As such, observations will occur post-implementation only. Observations will be conducted by the project staff so this data collection does not impose a burden on the participating hospitals; therefore it is not included in Exhibit 1.

(5) Focus groups with patients and family members at each of the participating sites. The purpose of these groups is to elicit information about patients' and families' experiences of care at the hospital along with their reactions to tools in the Guide and their implementation. Three focus groups of up to 8 individuals will be conducted at each hospital post implementation. One focus group will be conducted with patients only, one with family members only and one with patients and family members together.

(6) Staff Survey with hospital staff. The purpose of the pre- and post-implementation Staff Survey is to assess changes in organizational culture related to patient safety and engagement, and to assess significant changes in staff knowledge, attitudes, and behaviors. Items from the Medical College of Georgia (MCG) Patient- and Family-Centered Care Culture Survey will be used in this data collection activity. The survey items will be supplemented with questions from AHRQ's Hospital Survey on Patient Safety Culture (HSOPS) and from the Army Medical Department Climate Survey. At each of the three hospital sites, it is estimated that survey responses will be collected from at least 50 health professionals. The same questionnaire will be used at pre- and post-implementation.

(7) Patient Survey. The patient survey which will be administered pre-implementation and again at post-implementation will be built around the CAHPS® Hospital Survey (HCAHPS) domains that assess aspects of patient-physician interaction around the hospital stay, including Communication with Nurses, Communication with Doctors, Communication about Medicines, Responsiveness of Hospital Staff, and Discharge Information. These scales directly assess the aspects of the hospital stay and encounters that we are hoping the Guide will affect. Additional questions to address any aspects of care covered by the Guide that are not adequately addressed by the HCAHPS composites will also be included in this survey. Additionally, measures from the Patient Activation Measures (PAM) Survey will also be included. The same questionnaire will be used pre- and post-implementation.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours for the respondents' time to participate in this project. Semi-structured interviews will be conducted with about 4 hospital staff members both pre and post-implementation and requires one hour to complete. Semi-structured interviews will also be conducted with 2 hospital leaders, pre and post-implementation, and will take one hour to complete. Collection of documentation will occur twice at each hospital and requires 4 hours to complete. Bi-weekly semi-structured interviews will be conducted with the implementation coordinator at each hospital. A total of 18 interviews per hospital over a 9 month period will occur with each interview taking about 30 minutes. Focus groups will take place separately with patients, their families, and both patients and their families and will last for about an hour and a half. The staff survey will be completed by approximately 50 hospital staff members from each hospital, pre and post-implementation, and requires 15 minutes to complete. The patient survey will be conducted twice, pre and post-implementation, by about 884 patients across all 3 participating hospitals and will take 30 minutes to complete. The total annualized burden hours are estimated to be 1,190 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this project. The total cost burden is estimated to be $27,316.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Semi-structured leader interviews—pre-implementation	3	4	1	12
Semi-structured leader interviews—post-implementation	3	4	1	12
Semi-structured staff interviews—pre-implementation	3	8	1	24
Semi-structured staff interviews—post-implementation	3	8	1	24
Collection of documentation	3	2	4	24
Bi-weekly semi-structured interviews	3	18	30/60	27

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Data collection activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Focus group with patients	24	1	90/60	36
Focus group with patients' family	24	1	90/60	36
Focus group with patients & family	24	1	90/60	36
Staff survey	3	100	15/60	75
Patient survey	884	2	30/60	884
Total	977	na	na	1,190

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly rate *	Total cost burden
Semi-structured leader interviews—pre-implementation	3	12	$43.74	$525
Semi-structured leader interviews—post-implementation	3	12	43.74	525
Semi-structured staff interviews—pre-implementation	3	24	33.51	804
Semi-structured staff interviews—post-implementation	3	24	33.51	804
Collection of documentation	3	24	21.16	508
Bi-weekly semi-structured interviews	3	27	33.51	905
Focus group with patients	24	36	20.90	752
Focus group with patients' family	24	36	20.90	752
Focus group with patients & family	24	36	20.90	752
Staff survey	3	75	33.51	2,513
Patient survey—pre-implementation	884	884	20.90	18,476
Total	977	1,190	n/a	27,316

* Based upon the mean of the wages for 11–9111 Medical & Health Services Manager ($43.74), 29–000 Healthcare Practitioner and Technical Occupations ($33.51), 43–6011 Executive Secretaries and Administrative Assistants ($21.16) and 00–0000 All Occupations ($20.90), May 2009 National Occupational Employment and Wage Estimates. United States, "U.S. Department of Labor, Bureau of Labor Statistics." *http://www.bls.gov/oes/current/oes_nat.htm#b29-0000.*

Estimated Annual Costs to the Federal Government

Exhibit 3 below breaks down the costs related to this study. Since this study will span two years, the costs have been annualized over a two year period. The total annualized cost is estimated to be $536,396.50.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Guide Development	$526,214	$263,107
Data Collection Activities	310,006	155,003
Data Processing and Analysis	110,620	55,310
Project Management	20,270	10,135
Overhead	105,683	52,842
Total	1,072,793	536,396.50

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 11, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–1542 Filed 1–25–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Standardizing Antibiotic Use in Long-term Care Settings." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 15th, 2010 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by February 25, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQs desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Standardizing Antibiotic Use in Long-term Care Settings

This project seeks to contribute to AHRQ's mission by optimizing antibiotic prescribing practices in nursing homes. Nursing homes serve as one of our most fertile breeding grounds for antibiotic-resistant strains of bacteria. Nursing home residents, with their combination of the effects of normal aging and multiple chronic diseases, have relatively high rates of infection. With high rates of respiratory, urinary, skin, and other infection comes a very high rate of antibiotic use that gives rise to Methicillin-resistant Staphylococcus aureus (MRSA), Vancomycin-resistant Enterococci (VRE), fluoroquinolone-resistant strains of a variety of bacteria, and multi-drug resistant organisms (MDROs). Inappropriate antibiotic prescribing practices by primary care clinicians caring for residents in long-term care (LTC) communities is becoming a major public health concern. Antibiotics are among the most commonly prescribed pharmaceuticals in LTC settings, yet reports indicate that a high proportion of antibiotic prescriptions are inappropriate.

In an effort to reduce antibiotic overprescribing, Loeb and colleagues developed minimum criteria for the initiation of antibiotics in LTC setting. The criteria have been tested in several studies, but their implementation and tests of validity have been limited. In particular, though Loeb and colleagues developed distinct minimum criteria for several types of infection (skin and soft-tissue, respiratory, urinary tract, and unexplained fever), a rigorous evaluation has been conducted only for urinary tract infections.

This project will assess an approach to using the Loeb criteria that requires minimal changes in facility procedures and, therefore, is likely to be widely adopted by nursing homes. The intervention makes use of a Communication and Order Form (COF), which has been designed by the researchers and will be used by the nurses and physicians to guide their decision-making about whether to order an antibiotic for a specific resident experiencing a specific infection.

Twelve nursing homes will participate in this project with eight assigned to the intervention and four serving as controls. The eight intervention sites will be divided into two groups of four sites each, with one group receiving an additional follow-up training 2 months after the intervention.

The objectives of the study are to:

1. Implement a quality improvement (QI) intervention program to optimize antibiotic prescribing practices;

2. Evaluate the effect of the QI intervention on antibiotic prescribing practices including validation of the Loeb minimum criteria; and

3. Develop and execute a dissemination plan to ensure wide dissemination of the findings and recommendations for improving antibiotic prescribing behaviors in LTC settings.

This study is being conducted by AHRQ through its contractor, the American Institutes for Research (AIR), pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness, and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

The following data collection activities and trainings will be implemented to achieve the first two objectives of this project:

1. Loeb Criteria Communication and Order Form—This form will be completed by staff in the eight intervention nursing homes to determine if the Loeb criteria have been met. The COF provides a logical decision model for determining the need for an antibiotic. Facility staff will complete the paper form and the data from the forms will be entered into a database by the project researchers. Based on a preliminary review of the infection logs at 4 nursing homes, we estimate that staff nurses will complete an average of 17 COFs per month per nursing home at the 8 nursing homes that will use the COF during the 6-month intervention period.

2. Medical record reviews (MMR)—To be conducted by research staff to collect outcome data to determine antibiotic prescribing practices and their effects and to assess the resident's health and functional status, which are potentially important control variables. Outcome and control variables will be obtained by monthly chart review and review of the Nursing Home Minimum Data Set (MDS) for a period of 9 months: Three months preceding the initiation of the QI intervention (for which the charts of all eligible residents will be abstracted for a 3 month period at one time), and every other month during a 6-month period following the inception of the intervention (for which the charts of all eligible residents will be abstracted for the preceding two months) AHRQ's contractor will conduct the data abstraction at all 12 facilities (treatment and control). Since this data collection will not impose a burden on the facility staff, OMB clearance is not required.

3. Staff training—Prior to implementation, the staff (administrators, nurses, and physicians) at all eight intervention sites will be trained in the proper use of the Loeb Criteria COF. Staff at four of the intervention sites will be trained a second time 2 months after the initial training. We estimate that an average of

24 nurses and 2 physicians will be trained at each nursing home.

4. Pre-implementation semi-structured interview—The purpose of this interview is to gain an understanding of (1) how the staff and the department(s) and/or wider facility perceive quality improvement, in general; (2) the amount of experience the site has in QI and its processes for handling infections; (3) why the facility decided to adopt the Loeb Criteria COF; and (4) the facility's goals for the Loeb Criteria COP implementation. Four staff members will be interviewed at each nursing home: Two champions (likely the administrator, director of nursing, and/or the assistant director of nursing), one line nurse, and one staff physician. Questions vary by respondent type.

5. Post-training semi-structured interview—The purpose of this interview is to measure the staff's (1) perceived adequacy of the training; (2) their reactions to the training; and (3) their plans for implementation. The same four persons at each nursing home who were interviewed for the pre-implementation semi-structured interviews will participate in this interview. Questions vary by respondent type.

6. Post-implementation semi-structured interview—The purpose of this interview is to identify (1) facilitators and barriers to implementation; (2) how barriers were overcome; (3) what barriers remain; (4) perceived impacts of the Loeb Criteria COP on the use of antibiotics within the facility; and (5) the facility's view on the business case for Loeb Criteria COP. The same four persons at each nursing home who participated in the previous semi-structured interviews will participate in this interview. Questions do not vary by respondent type.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours the nursing homes' time to participate in this project. All of the data collections and training in Exhibit 1 pertain only to the eight intervention nursing homes. The Loeb Criteria COF will be completed approximately 17 times a month for 6 months (102 total) by staff at each nursing home and will require about 5 minutes to complete. Staff training will be attended by all nursing and medical staff members at each nursing home (an average of 24 nurses and two physicians per facility) and will last 1 hour. All eight intervention facilities will receive training once at the start of the intervention and four of the eight facilities will receive a second training one month later to see if reinforcement results in improved performance. The pre-implementation, post training and post-implementation semi structured interviews will be completed by the same four staff members at each nursing home consisting of two champions (likely the administrator, director of nursing, and/or the assistant director of nursing), one line nurse, and one staff physician. Each interview will be scheduled for 1 hour. The total annual burden is estimated to be 476 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this project. The total annual cost burden is estimated to be $17,508.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of nursing homes	Number of responses per nursing home	Hours per response	Total burden hours
Loeb Criteria COF	8	102	5/60	68
Staff training				
Initial Training	8	26	1	208
Re-training	4	26	1	104
Pre-implementation semi-structured interview	8	4	1	32
Post training semi-structured interview	8	4	1	32
Post-implementation semi-structured interview	8	4	1	32
Total	44	na	na	476

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of nursing homes	Total burden hours	Average hourly wage rate *	Total cost burden
Loeb Criteria COF	8	68	$33	$2,244
Staff training				
Initial Training	8	208	36	7,488
Re-training	4	104	36	3,744
Pre-implementation semi-structured interview	8	32	42	1,344
Post training semi-structured interview	8	32	42	1,344
Post-implementation semi-structured interview	8	32	42	1,344
Total	44	476	na	17,508

* Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States May 2009, "U.S. Department of Labor, Bureau of Labor Statistics." $33 is the average wage for nurses who will complete the COF. $36 is the weighted average wage of 24 nurses at $33 per hour and 2 physicians at $70 per hour who will be trained. $42 is the weighted average wage of 3 nurses and administrators at $33 per hour and 1 physician at $70 per hour who will be interviewed.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annual cost to the government for funding this project. Although data collection will require less than one year, the entire project will span 2 years. The total cost of this research is estimated to be $999,554.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$103,498	$51,749
Data Collection Activities	361,178	180,589
Data Processing and Analysis	193,830	96,915
Publication of Results	48,497	24,249
Project Management	65,334	32,667
Overhead	227,217	113,609
Total	999,554	499,777

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 11, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–1540 Filed 1–25–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Member Conflict Review, Program Announcement (PA) 07–318, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., March 9, 2011 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, telephone: (304) 285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of "Member Conflict Review, PA 07–318."

Contact Person for More Information: M. Chris Langub, PhD, Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, Georgia 30333; Telephone: (404) 498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–1615 Filed 1–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement Program for the National Academic Centers of Excellence in Youth Violence Prevention (U01), Funding Opportunity Announcement (FOA) CE10–004, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned meeting:

Times and Dates:

8 a.m.–5 p.m., February 17, 2011 (Closed).

8 a.m.–5 p.m., February 18, 2011 (Closed).

Place: Atlanta Marriot Marquis Hotel, 265 Peachtree Center Avenue, Atlanta, Georgia 30303, *Telephone:* (404) 521–0000.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to "Cooperative Agreement Program for the National Academic Centers of Excellence in Youth Violence Prevention (U01), FOA CE10–004, initial review".

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: J. Felix Rogers, PhD, M.P.H., Extramural Research Program Office, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop F–63, Atlanta, Georgia 30341, *Telephone:* (770) 488–4334.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 19, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–1601 Filed 1–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Pregnancy Risk Assessment Monitoring System (PRAMS), DP11–001 Panel D, Initial Review

Notice of Cancellation: This notice was published in the **Federal Register** on December 13, 2010, Volume 75, Number 238, page 77645.

This SEP previously scheduled to convene on February 25, 2011, is cancelled in its entirety.

Contact Person for More Information: Donald Blackman, PhD, Scientific Review Officer, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, Georgia 30341, Telephone: (770) 488–3023, E-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 20, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–1599 Filed 1–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) (last amended at 75 FR 14176–14178, dated March 24, 2010 and more recently at 75 FR 82405, dated December 30, 2010) and Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority (last amended at 75 FR 20364–65, dated April 19, 2010 and more recently at 75 FR 53304–05, dated August 31, 2010) are amended to reflect the establishment of a new Center for Consumer Information and Insurance Oversight within CMS and the disestablishment of the Office of Consumer Information and Insurance Oversight within the Office of the Secretary, as follows:

(1) Under Part A, Chapter AA, Section AA.10 Organization, delete the following: "Office of Consumer Information and Insurance Oversight (AU)."

(2) Under Part A, delete Chapter AU, "Office of Consumer Information and Insurance Oversight," in its entirety.

(3) Under Part F, CMS, FC. 10 Organizations, insert the following new Center for Consumer Information and Insurance Oversight (FCR).

(4) Under Part F, CMS, FC. 20 Functions, insert the following description of the Center for Consumer Information and Insurance Oversight (FCR):

Center for Consumer Information and Insurance Oversight (FCR)

- Provides national leadership in setting and enforcing standards for health insurance that promote fair and reasonable practices to ensure affordable, quality health care coverage is available to all Americans.
- Provides consumers with comprehensive information on insurance coverage options currently available so they may make informed choices on the best health insurance for themselves and their families and issues consumer assistance grants to States.
- Implements, monitors compliance with, and enforces the new rules governing the insurance market such as the prohibition on rescissions and on pre-existing condition exclusions for children. Conducts external appeals for States that do not have that authority.
- Implements, monitors compliance with, and enforces the new rules regarding medical loss ratio standards and the insurance premium rate review process, and issues premium rate review grants to States.
- Administers the Pre-Existing Condition Insurance Plan program and associated grant funding to States, the Early Retiree Reinsurance Program, and the Consumer Operated and Oriented Plan program.
- Collects, compiles and maintains comparative pricing data for an Internet portal providing information on insurance options, and provides assistance to enable consumers to obtain maximum benefit from the new health insurance system.
- Collects, compiles and maintains comparative pricing data for the Department's Web site, provides assistance to enable consumers to understand the new health insurance laws and regulations, and establishes and issues consumer assistance grants to States.
- Develops and implements policies and rules governing State-based Exchanges, establishes and issues Exchange Planning and Establishment to States, oversees the operations of State-based Exchanges, and administers Exchange in States that elect not to establish their own.

(Authority: 44 U.S.C. 3101)

Dated: January 20, 2011.

Donald M. Berwick,

Administrator.

[FR Doc. 2011–1580 Filed 1–21–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects:

Title: Computerized Support Enforcement Systems.

OMB No. 0980–0271.

Description: The information being collected is mandated by Section 454(16) of the Social Security Act which provides for the establishment and operation by the State agency, in accordance with an initial and annually updated advance automated data processing planning document (APD) approved under section 452(d) of the title, of a statewide automated data processing and information retrieval system. The system must meet the requirements of section 454A.

In addition, Section 454A(e)(1) requires that States create a State Case Registry (SCR) within their statewide automated child support systems, to include information on IV–D cases and non-IV–D orders established or modified in the State on or after October 1, 1998. Section 454A(e)(5) requires States to regularly update their cases in the SCR.

The data being collected for the APD are a combination of narrative, budgets

and scheduled which are used to provide funding approvals on an annual basis and to monitor and oversee system development. Child support has separated regulations under 45 CFR 307.15 related to submittal of APDs supplemental authority for enhanced funding system development and substantial penalties for non-compliance with the statutory deadline of October 1, 2000. The information collection requirements for the development and maintenance of child support enforcement automated systems are addressed in 45 CER part 95 and the information collection.

Respondents: Courts and State Child Support Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Non-IV–D data for SCR: Courts	3,045	447	0.03	39,472.34
Child Data for IV–D cases for SCR: Courts	3,045	213	0.08	53,832.56
States: Transmission to the FCR	54	52	0	
Estimated Total Annual Burden Hours				93,304.89

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 18, 2011.

Robert Sargis,

Reports Clearance, Officer.

[FR Doc. 2011–1534 Filed 1–25–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Protection and Advocacy (P&A) Voting Access Application and Annual Report.

OMB No. 0970–0326.

Description:

This is a revision to include the application for the previously cleared Help America Vote Act (HAVA) Annual report.

An application is required by Federal statute (the Help America Vote Act (HAVA) of 2002, Pub. L. 107–252, Section 291, Payments for Protection and Advocacy Systems, 42 U.S.C. 15461). Each State Protection & Advocacy (P&A) System must prepare an application in accordance with the program announcement.

There is no application kit; the P&As application may be in the format of its choice. It must, however, be signed by the P&As Executive Director or the designated representative, and contain the assurances as outlined under Part I. C. Use of Funds. The P&As designated representatives may signify their agreement with the conditions/assurances by signing and returning the assurance document Attachment B, found in Part IV of this Instruction.

The assurance document signed by the Executive Director of the P&A, or other designated person, should be submitted with the application to the Administration on Developmental Disabilities.

An annual report is required by Federal statute (the Help America Vote Act (HAVA) of 2002, Public Law 107–252, Section 291, Payments for Protection and Advocacy Systems, 42 U.S.C. 15461) Each State Protection & Advocacy (P&A) System must prepare and submit an annual report at the end of every fiscal year. The report addresses the activities conducted with the funds provided during the year. The information from the annual report will be aggregated into an annual profile of how HAVA funds have been spent. The report will also provide an overview of the P&A goals and accomplishments and permit the Administration on Developmental Disabilities to track progress to monitor grant activities.

Respondents: Protection & Advocacy Systems—All States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, American Samoa, and Guam.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average per response	Total burden hours
Protection and Advocacy (P&A) Voting Access Application	55	1	20	1,100
Protection and Advocacy (P&A) Voting Access Annual Report+	55	1	16	880
Estimated Total Annual Burden Hours:				1,980

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 19, 2011.

Robert Sargis,

Reports Clearance, Officer.

[FR Doc. 2011–1535 Filed 1–25–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Developmental Disabilities Annual Protection and Advocacy Systems Program Performance Report.

OMB No. 0980–0160.

Description: This information collection is required by federal statute. Each State Protection and Advocacy System must prepare and submit a program Performance Report for the preceding fiscal year of activities and accomplishments and of conditions in the State. The information in the Annual Report will be aggregated into a national profile of Protection and Advocacy Systems. It will also provide the Administration on Developmental Disabilities (ADD) with an overview of program trends and achievements and will enable ADD to respond to administration and congressional requests for specific information on program activities. This information will also be used to submit a Centennial Report to Congress as well as to comply with requirements in the Government Performance and Results Act of 1993.

Respondents: Protection & Advocacy Systems.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Developmental disabilities Protection and Advocacy Program Performance Report	57	1	44	2,508
Estimated Total Annual Burden Hours:				2,508

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 19, 2011.

Robert Sargis,

Reports Clearance, Officer.

[FR Doc. 2011–1538 Filed 1–25–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Tobacco Products Scientific Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Tobacco Products Scientific Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 1 and 2, 2011, from 8 a.m. until 5 p.m.

Location: Center for Tobacco Products, 9200 Corporate Blvd., Rockville, MD, 20850. The telephone number is 1–877–287–1373.

Contact Person: Caryn Cohen, Office of Science, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373 (choose option 4), e-mail: *TPSAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the

Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 1 and 2, 2011, the Committee will continue to (1) receive updates from the Menthol Report Subcommittee and (2) receive and discuss presentations regarding the data requested by the Committee at the March 30 and 31, 2010, meeting of the Tobacco Products Advisory Committee.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: On March 1, 2011, from 10:30 a.m. to 5 p.m. and on March 2, 2011, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 15, 2011. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. on March 1, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 8, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 9, 2011.

Closed Committee Deliberations: On March 1, 2011, from 8 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). This portion of the meeting must be closed because the Committee will be discussing confidential data provided by the Federal Trade Commission and the tobacco industry.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA 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 Caryn Cohen at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 20, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–1578 Filed 1–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0012]

Self-Defense of Vessels of the United States

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to Section 912 of the 2010 Coast Guard Authorization Act, the Coast Guard is reviewing its policy regarding standard rules for the use of force for self-defense of vessels of the United States and is requesting comments on the current policy.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before March 1, 2011, or reach the Docket Management Facility by that date.

ADDRESSES: You may submit written comments identified by docket number USCG–2011–0012 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this notice or policy, please call or email LCDR John Reardon, Office of Maritime and International Law, United States Coast Guard; telephone 202–372–1129; *john.c.reardon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on this notice and policy. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2011–0012) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and type "USCG–2011–0012" in the "Keyword"

box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments and related material: To view the comments and Coast Guard Port Security Advisory (PSA) 3–09, which provides guidance to the maritime industry with regard to the use of force against pirates, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0012" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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

Background and Purpose

In accordance with Section 912 of the Coast Guard Authorization Act of 2010 (CGAA), the Coast Guard is seeking input from the public and representatives of industry and labor in order to determine if the current authorization in 33 U.S.C. 383, Resistance of pirates by merchant vessels, and the guidance published by the Coast Guard in Port Security Advisory (PSA) 3–09 provide an adequate framework for standard rules for the use of force for self defense of vessels of the United States.

Section 912 of the CGAA states that an owner, operator, time charterer, master, mariner, or individual who uses force or authorizes the use of force to defend a vessel of the United States against an act of piracy shall not be liable for monetary damages for any injury or death caused by such force to any person engaging in an act of piracy if such force was in accordance with standard rules for the use of force in self-defense of vessels prescribed by the Secretary.

Guidance which may aid the maritime industry with regard to the use of force against pirates is currently provided in PSA 3–09. The Coast Guard seeks public input as to the continued viability of PSA 3–09 as the standard policy. PSA 3–09 provides guidance to United States flagged commercial vessels and embarked personnel, including contract security personnel not entitled to sovereign immunity and operating in High Risk Waters, for employment of force in self-defense or defense of others, as well as defense of the vessel. PSA 3–09 restates existing common law and international law principles in this area. It does not establish new standards or duties with respect to the right of self-defense or defense of others. The guidance is intended to aid companies in the development of their vessel security plan submissions for operating within High Risk Waters and does not mandate specific actions at particular points of time and does not prevent an individual from acting in self-defense or defense of others.

We encourage you to provide your comments as we review the existing policy on the use of force for self-defense of vessels in light of Section 912 of the CGAA.

Authority

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: January 18, 2011.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–1571 Filed 1–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0069]

Agency Information Collection Activities: Proposed Collection; Comment Request, OMB No. 1660–0010; Implementation of Coastal Barrier Resources Act

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0010, Form Number(s): None.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning applications for National Flood Insurance Program insurance for buildings located in Coastal Barrier Resources System communities.

DATES: Comments must be submitted on or before March 28, 2011.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2010–0069. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2010–0069 in the subject line.

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 read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Chang, Insurance Examiner, Risk Insurance Division, Mitigation Directorate, 202–212–4712 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or *e-mail address: FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Coastal Barrier Resources Act (16 U.S.C. 3501, *et seq.;* Pub. L. 97–348) and the Coastal Barrier Improvement Act of

1990 (Pub. L. 101– 591) are Federal laws that were enacted on October 18, 1982, and November 16, 1990, respectively, as part of a Department of the Interior (DOI) initiative to preserve the ecological integrity of areas DOI designates as coastal barriers and otherwise protected areas. The laws provide this protection by prohibiting all Federal expenditures or financial assistance including flood insurance for residential or commercial development in areas identified with the system. When an application for flood insurance is submitted for buildings located in Coastal Barrier Resources System (CBRS) communities, documentation must be submitted as evidence of eligibility. Part 71 of 44 CFR implements section 11 of the Coastal Barrier Resources Act and section 9 of the Coastal Barrier Improvement Act of 1990, as those Acts amend the National Flood Insurance Act of 1968 (42 U.S.C. 4001, *et seq.*). The documentation required in 44 CFR 71.4 is provided to FEMA for a determination that a building which is located on a designated coastal barrier and for which an application for flood insurance is being made, is neither new construction nor a substantial improvement, and therefore, is eligible for National Flood Insurance Program (NFIP) coverage. If the information is not collected, NFIP policies might be provided for buildings, which are legally ineligible for it, thus exposing the Federal Government to an insurance liability Congress chose to limit.

Collection of Information

Title: Implementation of Coastal Barrier Resources Act.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0010.

Form Titles and Numbers: No forms.

Abstract: When an application for flood insurance is submitted for buildings located in CBRS communities, one of the following types of documentation must be submitted as evidence of eligibility: (a) Certification from a community official stating the building is not located in a designated CBRS area; (b) A legally valid building permit or certification from a community official stating that the start date of a building's construction preceded the date that the community was identified in the CBRS; or (c) Certification from the governmental body overseeing the area indicating that the building is used in a manner consistent with the purpose for which the area is protected.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; Farms; Federal Government; and State, local or Tribal governments.

Estimated Total Annual Burden Hours: 672.5 burden hours.

ANNUAL HOUR BURDEN

Data collection activity/instrument	No. of respondents	Frequency of responses	Hour burden per response	Annual responses	Total annual burden hours
	(A)	(B)	(C)	(D) = (AxB)	(CxD)
—FEMA Flood Insurance Rate Map —Legally Valid Building Permit —Written and Signed Statement from a Community Official	2690	1	.25	2690	672.5
TOTAL	2690	1	.25	2690	672.5

Estimated Cost: The estimate annual operations and maintenance costs for technical services is $2690.00. There are no annual start-up or capital costs.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: January 5, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–1591 Filed 1–25–11; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0061]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–NEW; Logistics Capability Assessment Tool (LCAT)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 008–0–1, LCAT Booklet.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before February 25, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer

for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Logistics Capability Assessment Tool (LCAT).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 008–0–1, LCAT Booklet.

Abstract: The Logistics Capability Assessment Tool (LCAT) is a voluntary model for States to self assess disaster logistics planning and response capabilities and identify areas of relative strength and weakness. The LCAT is facilitated through two-day collaborative sessions at States and is hosted by the State emergency management agency. FEMA provides State emergency management agencies with a detailed analysis report and roadmap for continuous improvement if the State decides to share the outcome.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 10.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: FEMA Form 008–0–1, LCAT Booklet, 12 hours; LCAT Briefing, 20 minutes.

Estimated Total Annual Burden Hours: 123.3 hours.

Estimated Cost: There are no operation and maintenance, or capital and start-up costs associated with this collection of information.

Dated: January 19, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–1597 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–A9–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0018]

Extension of Agency Information Collection Activity Under OMB Review: Certified Cargo Screening Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0053, abstracted below to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 14, 2010, 75 FR 63191. TSA has received no comments. The collections include: (1) Applications from entities that wish to become Certified Cargo Screening Facilities (CCSF) or operate as a TSA-approved validation firm; (2) personal information to allow TSA to conduct security threat assessments on key individuals employed by the CCSFs and validation firms; (3) implementation of a standard security program or submission of a proposed modified security program; (4) information on the amount of cargo screened; (5) recordkeeping requirements for CCSFs and validation firms; and (6) submission of validation reports to TSA. TSA is seeking the renewal of the ICR for the continuation of the program in order to secure passenger aircraft carrying cargo by the deadlines set out in the Implementing Recommendations of the 9/11 Commission Act of 2007.

DATES: Send your comments by February 25, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, PRA Officer, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20596–6011. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651 or e-mail *joanna.johnson@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Certified Cargo Screening Program.

Type of Request: Renewal of one currently approved Information Collection Request (ICR).

OMB Control Number: 1652–0053.

Form(s): The forms used for this collection of information include the CCSF Facility Profile Application (TSA Form 419B), CCSF Principal Attestation (TSA Form 419D), Security Profile (TSA Form 419E), Security Threat Assessment Application (TSA Form 419F), TSA Approved Validation Firms Application (TSA Form 419G), Aviation Security Known Shipper Verification (TSA Form 419H), CCSF Indirect Air Carrier Reporting Template, CCSF Shipper Reporting Template, and the CCSF Independent Cargo Screening Facility Reporting Template.

Affected Public: The collections of information that make up this ICR

involve entities other than aircraft operators mostly located off-airport and includes facilities upstream in the air cargo supply chain, such as shippers, manufacturers, warehousing entities, distributors, third party logistics companies, and Indirect Air Carriers located in the United States.

Abstract: TSA is seeking continued approval from OMB for the collections of information contained in the ICR. Congress identified specific requirements for TSA in the area of air cargo security in the Aviation and Transportation Security Act (ATSA), Public Law 107–71: (1) To provide for screening of all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft; and (2) to establish a system to screen, inspect, report, or otherwise ensure the security of all cargo that is to be transported on passenger aircraft as soon as practicable. In the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, Congress requires that 50 percent of cargo transported on passenger aircraft is screened by February 2009, and 100 percent of such cargo be screened by August 2010. TSA issued an interim final rule (IFR) on September 16, 2009, 74 FR 47672, amending title 49 of the Code of Federal Regulations (CFR) to implement this statutory requirement.

TSA must proceed with the ICR for this program in order to continue to meet the Congressional mandates, and current and new regulations (49 CFR 1522, 1542.209, 1544.205, 1546.205, 1548, and 1549) that enable aircraft operators and other entities upstream in the air cargo supply chain to accept, screen, and transport air cargo. The uninterrupted collection of this information will allow TSA to continue to ensure implementation of these vital security measures for the protection of the traveling public.

TSA certifies qualified facilities as CCSFs. Companies seeking to become CCSFs are required to submit an application to TSA at least 90 days before the intended date of operation. TSA allows the regulated entity to operate as a CCSF in accordance with a TSA-approved security program. Prior to certification, the CCSF must also submit to an assessment by a TSA-approved validator. The regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct security threat assessments (STA) for individuals with unescorted access to cargo, and who have responsibility for screening cargo under 49 CFR parts 1544, 1546, or 1548. CCSF facilities must provide information on the amount of cargo screened and other cargo screening metrics at an approved facility. CCSFs must also maintain screening, training, and other security-related records of compliance. A firm interested in operating as a TSA-approved validation firm must also apply for TSA approval. Validation firms will need to provide the following information: (1) Applications from entities seeking to become TSA-approved validation firms; (2) personal information so individuals performing, assisting or supervising validation assessments, and security coordinators can undergo STAs; (3) implementation of a standard security program provided by TSA or submission of a proposed modified security program; (4) recordkeeping requirements, including that validation firms maintain assessment reports; and (5) submission of validation reports conducted by validators.

Number of Respondents: 5,663.

Estimated Annual Burden Hours: An estimated 718,481 hours.

Issued in Arlington, Virginia, on January 20, 2011.

Joanna Johnson,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–1552 Filed 1–25–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Laboratory Service, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Laboratory Service, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Laboratory Service, Inc., 85 Lafayette St., Carteret, NJ 07008, has been approved to gauge and accredited to test petroleum and petroleum products 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, inquiries 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/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Laboratory Service, Inc., as commercial gauger and laboratory became effective on October 12, 2010. The next triennial inspection date will be scheduled for October 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–1562 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 312 Carolan Street, Savannah, GA 31415, has been approved to gauge and accredited to test petroleum and petroleum products 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/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on September 23, 2010. The next triennial inspection date will be scheduled for September 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–1561 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 725 Oakridge Dr., Romeoville, IL 60446, has been approved to gauge and accredited to test petroleum and petroleum products 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, inquiries 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/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on September 8, 2010. The next triennial inspection date will be scheduled for September 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–1560 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 1404 Joliet Road, Suite G, Romeoville, IL 60446, has been approved to gauge and accredited to test petroleum and petroleum products 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, inquiries 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/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Inspectorate America Corporation as commercial gauger and laboratory became effective on August 26, 2010. The next triennial inspection date will be scheduled for August 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–1558 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 22934 Lockness Ave., Torrance, CA 90501, has been approved to gauge and accredited to test petroleum and petroleum products 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, inquiries 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/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on July 28, 2010. The next triennial inspection date will be scheduled for July 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–1557 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Bennett Testing Service, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Bennett Testing Service, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Bennett Testing Service, Inc., 1045 E. Hazelwood Avenue, Rahway, NJ 07065, has been approved to gauge and accredited to test petroleum and petroleum products 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/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Bennett Testing Service, Inc., as commercial gauger and laboratory became effective on September 20, 2010. The next triennial inspection date will be scheduled for September 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–1555 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Columbia Inspection, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Columbia Inspection, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Columbia Inspection, Inc., 5013 Pacific Highway East, Suite #2, Fife, WA 98424, has been approved to gauge and accredited to test petroleum and petroleum products 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/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Columbia Inspection, Inc., as commercial gauger and laboratory became effective on August 23, 2010. The next triennial inspection date will be scheduled for August 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–1554 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Freeboard International, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Freeboard International, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Freeboard International, 2500 Brunswick Ave., Linden, NJ 07036, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is 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/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The approval of Freeboard International, as commercial gauger became effective on September 29, 2010. The next triennial inspection date will be scheduled for September 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–1556 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning the Engenio 7900 Storage System

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of the Engenio 7900 Storage System (the 7900 System). Based upon the facts presented, CBP has concluded in the final determination that Mexico is the country of origin of the 7900 System for purposes of U.S. Government procurement.

DATES: The final determination was issued on January 19, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before February 25, 2011.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 19, 2011, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the 7900 System which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H125975, was issued at the request of LSI Corporation, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the 7900 System, assembled to completion in Mexico from components made in non-TAA countries and TAA countries and programmed with U.S.-origin software in Mexico, is substantially transformed in the Mexico, such that Mexico is the country of origin of the finished system for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: January 21, 2011.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

HQ H125975

January 19, 2011

VAL–2 OT:RR:CTF:VS H125975 HkP

CATEGORY: Marking

Lisa A. Crosby, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

RE: Government Procurement; Country of Origin of the LSI Engenio 7900 Storage System: Substantial Transformation

Dear Ms. Crosby:

This is in response to your letter dated September 24, 2010, requesting a final determination on behalf of LSI Corporation ("LSI"), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Engenio 7900 Storage System (7900 System). We note that as a U.S. importer and manufacturer, LSI is a party-at-interest within the meaning of 19 C.F.R. § 177.22 (d)(1) and is entitled to request this final determination.

FACTS:

According to the information submitted, the 7900 System is an electronic data storage system that ensures data integrity and availability. The system offers drive-level encryption, multiple replication options, proactive drive health monitoring, RAID [1] 6 technology and persistent cache backup to ensure that data is fully protected. Together these features help LSI customers optimize storage performance, reduce operational costs and more efficiently manage both physical and virtual environments. The 7900 System can support transactional applications, such as database and online transaction processing, as well as throughput-intensive applications, such as high performance computing and rich media. To support these varied applications, the 7900 System is designed to be highly configurable, although certain system features are standard.

For purposes of this request, the Wembley configuration has been put forward as representative of the 7900 System and is described as having the following components:

- An Engenio Operating System (EOS). It features a complex and sophisticated code base including a RAID data protection layer, with stored data protected from loss due to power failure, component failure and other such events. The EOS also includes a graphical user interface that allows users to manage the storage array in the system, adjust system settings, and perform management tasks while the system is online. The EOS is unique to LSI products and the 7900 System could not function without the EOS, which represents approximately 45 percent of the overall development cost for the 7900 System. The country of origin of the EOS is the United States.
- A controller assembly, which transmits commands to hard drives and relays data to and from hard drives. The controller is programmed by the supplier with basic firmware that provides generic functionality to ensure that the controller works. The country of origin is Thailand.
- A mounting assembly, which secures the controller assembly. The country of origin is Mexico or China.
- A set of Hard Drives, which provides high-capacity data storage. The country of origin is Thailand.
- A Slot Drive Module Assembly, which secures and organizes the hard drives. The country of origin is Mexico or Malaysia.

[1] Redundant Array of Independent Disks.

• A Cabinet assembly, to enclose all of the other components. The country of origin is Mexico.

LSI subcontracts the production of the 7900 System to Flextronics Corp., which assembles the components at its technology center in Guadalajara, Mexico. Production of the 7900 System begins with the receipt and inspection of hardware components that are chosen based on the work order and their suitability for the selected configuration. Unit-specific labels, the wiring diagram and traveler sheets are printed at this time. Next, the mounting assembly, which is supplied knocked-down or loosely connected, is installed in the cabinet using mounting rails and screws in accordance with the wiring diagram. Clips used to secure cabling are also positioned in the rails in accordance with the diagram. The slot drive module assembly is then installed in the cabinet with screws after a gasket has been used to determine that each module is evenly placed. The modules are then covered with protective cardboard wrap and fillers. The controller and hard drives are then placed in the slot drive module assembly in accordance with the wiring diagram. Each unit is attached to rails in the cabinet using screws, and accessories for each unit are placed in an accessory bag. The cabling is then installed and power cords are attached in two positions, with cable bobbins placed at precise intervals. Once cabling has been completed, filler panels are installed in the empty spaces in the cabinet.

Once the hardware has been assembled, the U.S.-origin EOS software is downloaded to the 7900 System, resulting in the reprogramming of the generic firmware pre-loaded onto the controller assembly. The final configured version of the EOS flashed onto the 7900 System in Mexico, incorporates customer-specific settings and features LSI's latest proprietary base code. According to your submission, this software imparts the functionality, storage management, performance monitoring, access control and other features that enable the 7900 System to operate as a high-performance storage solution.

After the EOS is flashed onto the system, the system is tested pursuant to detailed testing procedures. There are seven separate test sequences and two optional customer dependent sequences. The first two test sequences (Canister level testing) check the individual RAID Controller functions and features while the latter test sequences (Module level testing) test the dual RAID module system functions. Canister level testing involves a review of board configuration and the Enterprise Storage Subsystem. Module level testing involves a chassis function test, chassis stress test, input/output test, extended manufacturing stability test, connectivity test, final configuration test, and cabinet test. A quality inspector also reviews the system for conformance with LSI requirements.

Next, finishing touches are made to the system and it is made ready for transport. The cabinet assembly containing the fully assembled and finished system is packed onto a pallet, along with boxes housing accessories, and staged for shipment to the United States. When the 7900 System is installed at the U.S.-customer's site, the software is further customized in accordance with the customer's requirements.

You have asked us to determine the country of origin of the 7900 system when:

(1) The mounting assembly and the slot drive mounting assembly are of Mexican origin;

(2) The mounting assembly is of Mexican origin and the slot drive module assembly is of Malaysian origin;

(3) The mounting assembly is of Chinese origin and the slot drive module assembly is of Mexican origin; and

(4) The mounting assembly is of Chinese origin and the slot drive module assembly is of Malaysian origin.

In each of these scenarios, all other production specifications would be as previously described, including the origin of the other components.

ISSUE:

What is the country of origin of the 7900 System for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In *Data General v. United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a project engineer with many years of experience in "designing and building hardware." While replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly

operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

You argue that the country of origin of the 7900 System is Mexico because the components imported into Mexico are substantially transformed there as a result of the Mexican assembly operations, particularly the downloading of the EOS software. In support of your argument, you note that CBP has applied the principle in *Data General* in several rulings, such as in HQ 563012 (May 4, 2004), concerning the country of origin of a fabric switch, and in HQ H034843 (May 5, 2009), concerning the country of origin of a portable flash drive. However, we note the factual difference between these decisions and the instant case. In the cited decisions final assembly took place in one country and programming in another whereas, in the present case, final assembly and programming take place in the same country.

You also cite several rulings in which final assembly and programming of the concerned device took place in the same country, which we find to be more on point with the instant case. In HQ H082476 (May 11, 2010), and in NY N083979 (Dec. 3, 2009), the United States was determined to be the country of origin of ICS clustered storage units, when foreign components were assembled into the units in the U.S. and programmed here. In HQ H025023 (April 1, 2008), CBP determined that the Czech Republic was the country of origin of a fabric switch that was assembled to completion and programmed in that country. *See also* HQ H089762, dated June 2, 2010 (GTX Mobile and Handheld Computer), and HQ H090115, dated August 2, 2010 (Unified Communications Solution).

In regard to the 7900 System, all the components are assembled into the 7900 System in Mexico. Once assembled into the System, the previously programmed controller assembly is reprogrammed with the EOS software, which is stated to impart the functional intelligence to the System to allow for storage management, performance monitoring and access control. According to the information submitted, the 7900 System cannot function in its intended manner without the EOS software downloaded in Mexico.

We find that the other major operating hardware components are the controller assembly and the hard drives set, both of Thai origin. The purpose of the other components, the mounting assembly, slot drive module assembly, and cabinet assembly, is to mainly hold the operating assembly components in place. These may be of Mexican origin or some other country of origin. As they are not as important to the overall working capabilities of the 7900 System, we do not find that their origin affects the outcome of determining the origin of the 7900 System.

In prior decisions, the country where the software was developed and where the programming occurred, was determined to be important. In this case, the software, developed in the U.S., is claimed to be important to the function of the 7900 System. However, the downloading of the software and assembly of the system occurs in Mexico. In addition, considering that the other two operating systems are not of Mexican origin, the assembly involves multiple countries of origin with development and programming also occurring in two different countries. Accordingly, we find that as a result of the assembly and programming operations that take place in Mexico, the imported components of various origins lose their individual identities and are substantially transformed into a new and different article, that is, the 7900 System. Therefore, the country of origin of the 7900 System is Mexico.

HOLDING:

Based on the facts provided, the assembly and programming operations performed in Mexico on the components of the 7900 System give rise to a new and different article, the 7900 System. As such, the 7900 System is to be considered a product of Mexico for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell, Executive Director
Regulations and Rulings
Office of International Trade

[FR Doc. 2011–1674 Filed 1–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5482–N–02]

Notice of Submission of Proposed Information Collection to OMB; Fair Housing Initiatives Program Grant Application Testing Training

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

This is a request for approval to provide technical assistance (training) to promote a greater and more consistent use to Testing and development of consistent Testing Methodologies among FHIP grantees.

DATES: *Comments due on or before:* March 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 60 days from the date of this Notice. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, e-mail *OIRA_Submission@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT: Myron P. Newry, Director, FHIP Support Division, Office of Programs,

Room 5230, 451 Seventh Street, SW., Washington, DC 20410–2000; e-mail *myron.p.newry@hud.gov;* telephone number (202) 708–2215 (this is not a toll-free number). A telecommunications device (TTY) for hearing and speech impaired persons is available at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting this proposed information collection requirement to OMB for processing, as described below.

This notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the proposed collection of information; (3) Enhance the quality, utility and clarity of the information which must be collected; and (4) Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., electronic transmission of data.

Title of Regulation: 24 CFR Part 125, Fair Housing Initiatives Program.

OMB Control Number, if applicable: To be assigned.

Description of information collection: The proposed information collection is intended to provide consistency in testing and testing methodologies. In addition, it will entail the creation of a course to train coordinators at fair housing organizations nationwide on paired testing. Participants will learn consistent methodologies for rental tests, home buying tests, and lending tests for race, familial status, disability, and national origin. The course will cover both in-person and telephone testing. With respect to methodology the course will cover, at minimum, testers training, creating tester profiles, proper and consistent procedures for structuring tests, producing tester reports, and debriefing testers.

Agency form number(s), if applicable: HUD forms have been identified in the Department's General Section.

Members of affected public: Qualified Fair Housing Organizations (QFHOs) Fair Housing Organizations (FHOs); public or private non-profit organizations or institutions and other public or private entities that are working to prevent or eliminate discriminatory housing practices; State and local governments; and Fair Housing Assistance Program Agencies.

Estimation of the total numbers of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 4,793, the likely number of respondents is 50, with a frequency response of 4 per annum.

Status of the proposed information collection: Proposed new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 19, 2011.

Myron P. Newry,

Director, FHIP Support Division, Office of Fair Housing and Equal Opportunity.

[FR Doc. 2011–1670 Filed 1–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM–2010–0075]

Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Off Delaware, Notice of Proposed Lease Area and Request for Competitive Interest

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Request for Competitive Interest (RFCI) in Proposed Lease Area off Delaware.

SUMMARY: BOEMRE provides public notice of a proposed lease area for commercial wind development on the OCS off Delaware and requests submission of indications of competitive interest. The proposed lease area was identified through the issuance of a Request for Interest (RFI) published in the **Federal Register** on April 26, 2010 (75 FR 21653). In response to that notice, BOEMRE received two nominations of proposed lease areas: One from Bluewater Wind Delaware LLC (Bluewater) and another from Occidental Development & Equities, LLC (Occidental). Subsequently, BOEMRE determined that Bluewater is qualified to hold an OCS commercial wind lease in accordance with the regulatory requirements at 30 CFR 285.106 and .107, and that Occidental did not provide the necessary documentation demonstrating that it was qualified to hold an OCS commercial lease at the time. As a result, Occidental's lease nomination was nullified and Bluewater's nomination remained as the only eligible expression of interest upon which to base the proposed lease area. In accordance with 30 CFR 285.232, by letter dated November 8, 2010, BOEMRE informed Bluewater that there appeared to be no competitive interest in the proposed lease area and requested that Bluewater inform BOEMRE if it wished to proceed with acquiring a lease. By correspondence dated December 3 and December 9, 2010, Bluewater Wind stated its intention to acquire a lease for the proposed lease area and provided documentation that it had submitted the required acquisition fee.

This RFCI is published pursuant to subsection 8(p)(3) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)), and the implementing regulations at 30 CFR Part 285. Subsection 8(p)(3) of the OCS Lands Act requires that OCS renewable energy leases, easements, and rights-of-way be issued "on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest." This RFCI provides such public notice for the proposed lease area. Also, with this announcement BOEMRE invites all interested and affected parties to comment and provide information—including information on existing uses and environmental issues and concerns—that will be useful in the environmental analysis of potential wind development activities in the proposed lease area. A detailed description of the proposed lease area is presented below.

DATES: BOEMRE must receive your indication of competitive interest for this entire proposed lease area no later than February 10, 2011 for your submission to be considered. BOEMRE requests comments or other submissions of information by this same date. We will consider only valid submissions that meet the criteria set forth in 30 CFR Part 285 received by the due date above.

SUBMISSION PROCEDURES: You may submit your indication of competitive interest by one of two methods:

1. Electronically: *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM–2010–0075, and then click "search". Follow the instructions to submit public comments and view supporting and related materials available for this notice. BOEMRE will post all comments.

2. By mail, sending your indication of interest, comments, and information to the following address: Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore

Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Erin C. Trager, Projects and Coordination Branch, BOEMRE, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170–4817; telephone (703) 787–1713.

SUPPLEMENTARY INFORMATION:

Purpose of This RFCI

This RFCI gives parties the opportunity to express interest in competing for the acquisition of an OCS commercial wind lease for the proposed lease area. If BOEMRE receives valid indications of competitive interest in response to this notice, it may implement the competitive lease process outlined at 30 CFR 285.210–.225. If BOEMRE receives no valid indications of competitive interest and determines that there is no competitive interest, it may implement the noncompetitive lease process outlined at 30 CFR 285.232. Both the competitive and noncompetitive processes and related environmental review processes were described in the RFI dated April 26, 2010.

Parties other than those interested in obtaining a commercial lease are welcome to submit comments in response to this RFCI. Additionally, BOEMRE has formed a Delaware OCS Renewable Energy Task Force for coordination with affected Federal agencies and state, local, and tribal governments throughout the leasing process. Task Force members and meeting materials are available on the BOEMRE Web site at: *http://www.boemre.gov/offshore/RenewableEnergy/stateactivities.3htm#Delaware.*

Description of the Proposed Lease Area

The proposed lease area consists of 10 OCS lease full blocks, 116 OCS lease sub-blocks, and 18 OCS lease partial sub-blocks. A sub-block for the purposes of this RFCI is 1/16 of an OCS lease full block. Following are the OCS lease full blocks: Salisbury NJ18–05 Blocks 6325, 6326, 6327, 6375, 6376, 6377, 6426, 6427, 6477, and 6527. In addition, the table below describes the OCS lease sub-blocks included within the area of interest. Note that the most western areas within the western column of sub-blocks in Salisbury NJ18–05 Blocks 6274 and 6324 will be stipulated to prohibit any development activities where the sub-block overlaps with the charted "Danger Area," an explosives dumping ground. The sub-blocks that will be stipulated based on this known Explosives Dumping Ground are noted below with an asterisk (*).

Protraction name	Protraction No.	Block No.	Sub-block
Salisbury	NJ18–05	6274	M*,N,O,P.
Salisbury	NJ18–05	6275	M,N,O,P.
Salisbury	NJ18–05	6276	M,N,O,P.
Salisbury	NJ18–05	6277	M,N,O,P.
Salisbury	NJ18–05	6278	M,N.
Salisbury	NJ18–05	6324	A*,B,C,D,E*,F,G,H,I*,J,K,L,M*,N,O,P.
Salisbury	NJ18–05	6328	A,B,E,F,I,J,M,N.
Salisbury	NJ18–05	6374	A,B,C,D,E,F,G,H,J,K,L,O,P.
Salisbury	NJ18–05	6378	A,B,E,F,I,J,M,N.
Salisbury	NJ18–05	6424	D.
Salisbury	NJ18–05	6425	A,B,C,D,E,F,G,H,I,J,K,L,N,O,P.
Salisbury	NJ18–05	6428	A,B,E,F,I,J,M.
Salisbury	NJ18–05	6475	C,D,H.
Salisbury	NJ18–05	6476	A,B,C,D,E,F,G,H,I,J,K,L,N,O,P.
Salisbury	NJ18–05	6478	A,E,I,M.
Salisbury	NJ18–05	6526	B,C,D,G,H,L.
Salisbury	NJ18–05	6577	B,C.

In addition, the table below describes the partial sub-blocks included in the area of interest: The partial sub-blocks are bounded by the coordinates provided below the table as referenced in the column Boundary edge. Coordinates are provided in X, Y (eastings, northings) UTM Zone 18N, NAD 83 and geographic (longitude, latitude), NAD83.

Protraction name	Protraction No.	Block No.	Partial sub-block	Boundary edge
Salisbury	NJ18–05	6274	J,K,L	Northern**.
Salisbury	NJ18–05	6275	I,J,K,L	Northern**.
Salisbury	NJ18–05	6276	I,J	Northern**.
Salisbury	NJ18–05	6374	I,N	Southwestern***.
Salisbury	NJ18–05	6424	C,H,L	Southwestern***.
Salisbury	NJ18–05	6425	M	Southwestern***.
Salisbury	NJ18–05	6475	B,G,L	Southwestern***.

** Northern boundary:

Point No.	X (easting)	Y (northing)	Longitude	Latitude
1	505537.918949	4289342.054910	−74.936267	38.752755
2	537257.896672	4287622.083370	−74.571316	38.736486

*** Southwestern boundary:

Point No.	X (easting)	Y (northing)	Longitude	Latitude
1	505537.918949	4289342.054910	−74.936267	38.752755
2	530399.822669	4259687.322270	−74.651442	38.485007

Map of Proposed Lease Area

A map of the proposed lease area is available at the following URL: *http://www.boemre.gov/offshore/RenewableEnergy/stateactivities.htm#Delaware.*

A large-scale map of the proposed lease area showing its boundaries and numbered blocks is available from BOEMRE at the following address: Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170–4817, Phone: (703) 787–1300, Fax: (703) 787–1708.

Highlighted Portions of the Proposed Lease Area

The proposed lease area includes portions that BOEMRE wishes to highlight as areas of special interest or concern based on available information. These include the obstruction area consisting of a fish haven/artificial reef site identified on National Oceanic and Atmospheric Administration (NOAA) nautical charts, which was described in the April 26, 2010 notice (coordinates listed below):

Point No.	X (easting)	Y (northing)	Longitude	Latitude
1	523043.216256	4281282.246340	−74.735077	38.679839
2	525024.306894	4281183.549880	−74.712304	38.678896
3	524708.429395	4279986.367770	−74.715978	38.668116
4	524599.514352	4279572.346900	−74.717245	38.664388
5	524255.539477	4279604.189130	−74.721198	38.664684
6	522091.708618	4279798.266490	−74.746063	38.666490
7	522393.836728	4281025.207860	−74.742551	38.677539
8	522464.137335	4281311.495710	−74.741733	38.680118
1	523043.216256	4281282.246340	−74.735077	38.679839

Additional highlighted areas include those identified by comments submitted in response to the April 26, 2010 notice or through deliberations of the BOEMRE—Delaware OCS Renewable Energy Task Force as described below:

Potential U.S. Coast Guard (USCG) Anchorage Area—The USCG anticipates establishing through rulemaking an anchorage ground within the proposed lease area, east of the Delaware to Cape Henlopen Traffic Lane, defined by the area enclosed by the following points: 38–40.9N 74–52.0W, 38–40.9N 74–48.8W, 38–37.6N 74–48.5W. Authority to create such an anchorage ground beyond 3 NM is included in The Coast Guard Authorization Act of 2010 [Pub. L. 111–281].

Recreational Fishing Grounds—NOAA, National Marine Fisheries Service (NMFS), identified five recreational fishing areas that reside partially or wholly within the proposed lease area in consultation with the Mid-Atlantic Fishery Management Council, including Old Grounds, Mussel Bed, Inside Mud Hole, Middle Mud Hole, and Outer Mud Hole.

Summary of Comments Received in Response to the April 26, 2010, RFI

On June 25, 2010, the comment period closed for the Delaware RFI (75 FR 21653). BOEMRE received eight responses during the public comment period, including two commercial expressions of interest and comments from three government agencies, one marine waterway operator, one trade association, and a non-governmental organization. Comments received in response to the RFI are available at the following URL: *http://www.boemre.gov/offshore/RenewableEnergy/stateactivities.htm#Delaware.*

BOEMRE convened a task force meeting on July 15, 2010, to inform the task force members of the RFI responses and discuss next steps. The task force meeting also gave representatives from the Federal agencies that submitted comments an opportunity to present and discuss those comments with the rest of the task force.

Some of the comments requested a change to the RFI area considered for leasing and included suggestions such as identifying areas for exclusion, mitigation, or further study. Specific areas identified for exclusion or mitigation include the area charted as Explosives Dumping Ground in the westernmost part of the area of interest, an area that could potentially be designated as a vessel anchorage ground, and five recreational fishing areas, as depicted on the map of the proposed lease area. In addition, the USCG suggested—pending further study of traffic patterns—that a 0.5 NM (925 meters) buffer may be needed between the Traffic Separation Scheme (TSS) and the area identified for leasing, instead of the 500 meter buffer proposed in the RFI. Other comments expressed concern with navigational safety in the RFI area as a result of development in that area of interest.

Given existing defense activities in the area of interest, the Department of Defense (DoD) informed BOEMRE of its assessment that wind energy infrastructure may be feasible in this area if the infrastructure is subject to DoD site specific conditions and stipulations. Stipulations could include: A hold and save harmless agreement between the developer and DoD; mandatory coordination with DoD on specified activities; restrictions on electromagnetic emissions; and a requirement for wind energy industry personnel to evacuate the area for safety reasons when notified by DoD. In addition, other comments suggested areas where further environmental data may be warranted, and provided environmental data that may further inform future environmental review.

Given concerns about the safety of development in the charted Explosives Dumping Ground, BOEMRE has decided to exclude this area from potential development, which is reflected in the

map of the proposed lease area. The easternmost edge of the Explosives Dumping Ground will be stipulated as a "no build" area where it overlaps with the proposed lease area in OCS lease blocks NJ18–05 6274 and 6324.

BOEMRE has decided to retain within its proposed lease area the area designated as a potential USCG vessel anchorage area, given that this potential anchorage ground is subject to a yet-to-be-made rulemaking decision. In the event that the designated area becomes a USCG vessel anchorage area, BOEMRE may consider applying mitigation measures such as designating the area as a "no build" zone.

Further, BOEMRE will examine vessel traffic data for vessels equipped with automatic identification system (AIS) transponders before requiring a larger buffer between the edge of the TSS and the proposed lease area or applying other mitigation measures within the proposed lease area. BOEMRE, in consultation with the USCG, will conduct further study on traffic patterns and traffic density in the area of interest before modifying the proposed TSS buffer, which is currently set at 500 meters. If data suggests that heavy traffic transits within 0.5 NM of the edge of the TSS, BOEMRE has the discretion to require a larger buffer.

For the purposes of the RFCI, the recreational fishing areas identified by NOAA NMFS and the Mid-Atlantic Fishery Management Council, including Old Grounds, Mussel Bed, Inside Mud Hole, Middle Mud Hole, and Outer Mud Hole, will be retained in the proposed lease area rather than excluded at this time. Because little information is known about the potential impact of development on these sites, BOEMRE will consider available information during the NEPA process that will be undertaken in advance of commercial development.

Required Indication of Interest Information

If you intend to express competitive interest in acquiring an OCS commercial wind lease for the proposed lease area, you must submit the following (note: Bluewater is not required to re-submit its expression of interest):

(1) A statement that you wish to acquire a commercial wind lease for the proposed lease area (i.e., the entire area as described above). BOEMRE will not consider nominations valid if they cover less than the entire proposed lease area or describe any areas outside of the proposed lease area in this process. Any request for a commercial wind lease located outside of the proposed lease area should be submitted separately pursuant to 30 CFR 285.230;

(2) A description of your objectives and the facilities that you would use to achieve those objectives;

(3) A schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest;

(5) Documentation demonstrating that you are qualified to hold a lease as set forth in 30 CFR 285.107, including documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining, and decommissioning the facilities described in (2) above.

It is critical that your submission of an indication of competitive interest is complete so that BOEMRE may proceed in a timely manner with the commercial wind leasing process for the lease area on the OCS off Delaware. If BOEMRE reviews your indication of competitive interest and determines that it is incomplete, BOEMRE will inform you of this determination in writing. This letter will describe the information BOEMRE determined to be missing and that you must submit in order for BOEMRE to deem your submission complete. You will be given 15 business days from the date of the letter to submit the information that BOEMRE has determined to be missing from your original submission. If you do not meet this deadline, or if BOEMRE determines that the additional information that you provided in response to its initial determination fails to complete your submission, then BOEMRE may deem your indication of competitive interest incomplete and may not consider it a valid submission.

Privileged or Confidential Information

BOEMRE will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEMRE treat it as confidential. BOEMRE will not disclose such information, qualifying for withholding under the terms of FOIA. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

However, BOEMRE will not treat as confidential any aggregate summaries of such information or comments not containing such information. Also, BOEMRE will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating.

Dated: January 14, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–1594 Filed 1–24–11; 11:15 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2011–N003; 70133–1265–0000–S3]

Draft Comprehensive Conservation Plan and Environmental Assessment, Selawik National Wildlife Refuge, Kotzebue, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice to reopen the public comment period for the Revised Comprehensive Conservation Plan and Environmental Assessment for Selawik National Wildlife Refuge.

SUMMARY: The U.S. Fish and Wildlife Service published FR Doc. 2010–26655 in the **Federal Register** on October 21, 2010, announcing availability of the draft revised Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for Selawik National Wildlife Refuge. The document identified a review period ending on January 15, 2011. Due to the holiday rush and delayed postal delivery of some materials for public involvement, we are concerned that many people will not be able to meet our deadline; therefore we are reopening the comment period until March 15, 2011.

DATES: To ensure consideration, please send your written comments by the new deadline of March 15, 2011.

ADDRESSES: You may submit comments or requests for copies of the draft CCP and the EA or more information by any of the following methods. You may request hard copies or a CD–ROM of the document.

Agency Web Site: Download a copy of the document at *http://alaska.fws.gov/nwr/planning/plans.htm.*

E-mail: selawik_planning@fws.gov; please include "Selawik National

Wildlife Refuge draft CCP and EA" in the subject line of the message.

Fax: Attn: Jeffrey Brooks, (907) 786–3965, or Lee Anne Ayres, (907) 442–3124.

U.S. Mail: Jeffrey Brooks, U.S. Fish and Wildlife Service Regional Office, 1011 E. Tudor Road Mailstop 231, Anchorage, AK 99503.

In-Person Viewing or Pickup: Call (907) 786–3357 to make an appointment during regular business hours at the above address; or call (907) 442–3799 to make an appointment during regular business hours at the Selawik Refuge Headquarters in Kotzebue, AK.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brooks, Planning Team Leader, at the above address.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, and the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371; ANILCA) require us to develop a CCP for each 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. The U.S. Fish and Wildlife Service published FR Doc. 2010–26655 in the **Federal Register** on October 21, 2010, announcing availability of the draft revised Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for Selawik National Wildlife Refuge (75 FR 65026). The document identified a review period ending on January 15, 2011. Due to the holiday rush and delayed postal delivery of some materials for public involvement, we are concerned that many people will not be able to meet our original deadline; therefore we announce a reopening of the public comment period with a new deadline of March 15, 2011.

Public Events

We will involve the public through open houses, meetings, written comments, and personal interviews with community members. We will mail documents to our national and local Refuge mailing lists. Public meetings will be held in communities in the Refuge area, including Kotzebue, Noorvik, and Selawik. Dates, times, and locations of each meeting or open house will be announced in advance in local media.

Submitting Comments/Issues for Comment

We particularly seek comments on the following issues:

- Management of use by commercial guides and transporters to maintain big game hunting opportunities while reducing social conflict in the region;
- How to best conduct a traditional access study of use for subsistence purposes on Refuge lands;
- Proactively addressing climate change; and
- Providing more outreach and better communication for the public.

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;
- Present reasonable alternatives other than those presented in the draft CCP and 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 decision document.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 19, 2011.

Cynthia Jacobson,

Acting Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2011–1606 Filed 1–25–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Homeliving Programs and School Closure and Consolidation; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (Bureau) is seeking comments on renewal of the Office of Management and Budget (OMB) approval for the collection of information for Homeliving Programs and School Closure and Consolidation. The information collection is currently authorized by OMB Control Number 1076–0164, which expires on March 31, 2011.

DATES: Interested persons are invited to submit comments on or before *March 28, 2011.*

ADDRESSES: You may submit comments on the information collection to Brandi Sweet, Policy Analyst, Bureau of Indian Education, Mail Stop 3609–MIB, 1849 C Street, NW., Washington, DC 20240; *facsimile:* (202) 208–3312; *e-mail: Brandi.Sweet@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Brandi Sweet, Policy Analyst, at (202) 208–5504.

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 107–110, the No Child Left Behind (NCLB) Act of January 8, 2001, requires all schools including Bureau-funded boarding/residential schools to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. The NCLB Act, and implementing regulations at 25 CFR 36, requires the Bureau to implement national standards for homeliving situations in all Bureau-funded residential schools. The Bureau must collect information from all Bureau-funded residential schools in order to assess each school's progress in meeting the national standards. The Bureau is seeking renewal of the approval for this information collection to ensure that minimum academic standards for the education of Indian children and criteria for dormitory situations in Bureau-operated schools and Tribally-controlled contract and grant schools are met.

II. Request for Comments

The Bureau of Indian Education Office requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection

of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires on March 31, 2011.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0164.

Title: Homeliving Programs and School Closure and Consolidation.

Brief Description of Collection: Submission of this information allows the Department of the Interior to ensure that minimum academic standards for the education of Indian children and criteria for dormitory situations in Bureau-operated schools and Indian-controlled contract schools are met. Response is mandatory under 25 U.S.C. 2001.

Type of Review: Renewal.

Respondents: Bureau-funded schools with residential programs, tribal governing bodies, and school boards are the respondents, and submission is mandatory.

Number of Respondents: There are 66 schools with residential programs, of which 27 are Bureau-operated and 39 are tribally operated. Thus, the collection of information must be cleared for 39 of the 66 residential schools.

Total Number of Responses: 730 per year, on average.

Frequency of Response: Annually or on occasion, depending on the activity.

Estimated Time per Response: Ranges from 0.02 hours to 40 hours, depending on the activity.

Estimated Total Annual Burden: 1,344 hours.

Dated: December 14, 2010.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–1589 Filed 1–25–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO912000–LL07770900.XX0000]

Notice of the Joint Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (NWRAC), Southwest Resource Advisory Council (SWRAC), and Front Range Resource Advisory Council (FRRAC) will meet as indicated below.

DATES: The Northwest, Southwest and Front Range Colorado RACs have scheduled a joint meeting for February 23, 24, and 25, 2011.

ADDRESSES: The Joint Colorado RAC (JCRAC) meeting will be held February 23 the meeting will begin at 1 p.m. and adjourn at 5:15 p.m.; on February 24 the meeting will begin at 8 a.m. and adjourn at 4:30 p.m.; on February 25 the meeting will begin at 8 a.m. and adjourn at noon. A 45-minute public comment period, from 10:30 a.m. to 11:15 a.m., is scheduled for February 24, at the SteamPlant Event Center, 220 West Sackett Street, Salida, CO.

FOR FURTHER INFORMATION CONTACT: Deanna Masterson, Public Affairs Specialist, BLM Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215, telephone (303) 239–3671.

SUPPLEMENTARY INFORMATION: The Colorado RACs advise the Secretary of the Interior, through the BLM, on a variety of public land issues in Colorado. Topics of discussion during the RAC meeting may include working group reports, underserved populations, the National Landscape Conservation System, recreation, land-use planning, fire, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, and cultural resource management.

These meetings are open to the public. The public may present written comments to the RAC. There will also be time, as identified above, allocated for hearing public comments. Depending on the number of people who wish to comment during the public comment period, individual comments may be limited.

Dated: January 20, 2011.

Helen M. Hankins,

State Director.

[FR Doc. 2011–1605 Filed 1–25–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision of Lava Beds National Monument

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460l–9(c)(1), the boundary of the Petroglyph Point unit of Lava Beds National Monument in Modoc County, California, is modified to include two abutting tracts totaling 132.55 acres of land. Tract 01–116 (114.62 acres) and Tract 01–117 (17.93 acres) are unpatented federal lands presently under the jurisdiction of the Bureau of Land Management and the Bureau of Reclamation. Administrative jurisdiction over the tracts will be transferred to the National Park Service upon completion of the boundary revision. The tracts are depicted on Drawing No. 147/92,000, Sheet 1 of 1, Segment Map 01, revised August 2, 2010.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief, Pacific West Land Resources Program Center, Pacific West Region, 1111 Jackson St., Suite 700, Oakland, CA 94607; (510) 817–1414. This map depicting the revision is on file and available for inspection at this address and at National Park Service, Department of the Interior, Washington, DC 20240.

DATES: The effective date of this boundary revision is January 26, 2011.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460l–9(c)(1) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make this boundary revision. The Committees have been so notified. This boundary adjustment and transfer of administrative jurisdiction will contribute to the protection of the

significant historic and natural resources of the national monument.

Dated: November 3, 2010.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2011–1590 Filed 1–25–11; 8:45 am]

BILLING CODE 4312–GE–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Gemcitabine and Products Containing Same,* DN 2780; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Eli Lilly and Company on January 20, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gemcitabine and products containing same. The complaint names as respondents Jiangsu Hansoh Pharmaceutical Co., Ltd. of Lianyungang, China; Intas Pharmaceuticals Ltd. of Gujarat, India; ChemWerth, Inc. of Woodbridge, CT; and Hospira, Inc. of Lake Forest, IL.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2780") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: January 21, 2011.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–1579 Filed 1–25–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Agreement and Order Regarding Modification of Consent Decree

Notice is hereby given that on January 21, 2011, the United States lodged an Agreement and Order Regarding Modification of the Consent Decree entered in the matter captioned, *United States* v. *The Kansas City Southern Railway Co.,* Civil Action No. 1:07-cv-1793, in the United States District Court for the Western District of Louisiana, Alexandria Division.

The proposed modifications were jointly agreed by the United States and the Kansas City Southern Railway Co. The Consent Decree pertains to the cleanup of the Ruston Foundry Superfund Site located in Alexandria, Rapides Parish, Louisiana and, due to changes in the response action conducted at this Site, the parties agreed to make certain conforming modifications to the Consent Decree. The Consent Decree entered in this matter on January 14, 2008 required the Settling Defendant to clean up the Site to levels suitable for industrial use only, through excavation and offsite disposal. However, while performing the remedial work, the Settling Defendant was able to clean up the Site to levels appropriate for unrestricted use, including recreational and residential use. By this Notice and the attached

Agreement and Order Regarding Modification of the Consent Decree, the parties seek to harmonize the Consent Decree with the response actions conducted at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Modifications. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *The Kansas City Southern Railway Co.,* Civil Action No. 1:07-cv-1793, (D.La.), D.J. Ref. 90–11–2–08002.

During the public comment period, the Agreement and Order Regarding Modification of the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Agreement and Order Regarding Modification of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–1649 Filed 1–25–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Modification Pursuant to The Clean Water Act

Notice is hereby given that a proposed modification to a Consent Decree entered in *United States of America and the Commonwealth of Kentucky* v. *Winchester Municipal Utilities and City of Winchester,* Civ. No. 06–102–KSF, was lodged on January 19, 2011, with the United States District Court for the Eastern District of Kentucky, Central Division.

The Consent Decree was entered by the Court on April 11, 2007, and resolves claims under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1251, *et seq.,* against the City of Winchester ("City") and Winchester Municipal Utilities ("WMU"), through the performance of injunctive measures, the payment of a civil penalty, and the performance of a Supplemental Environmental Project ("SEP"). The United States and the Commonwealth of Kentucky alleged that the City and WMU are liable as persons who discharged a pollutant from a point source to navigable waters of the United States without a permit.

The proposed modification to the Consent Decree would replace the existing obligation to perform a SEP, with an obligation to perform a different SEP. The Decree currently requires the City and WMU to perform a SEP valued at $230,000, which is designed to abate stormwater runoff pollution to an impaired waterway. After spending $27,000 on testing, the City and WMU have determined that the SEP will not achieve the environmental benefits they originally anticipated. The City and WMU considered another stream restoration project as an alternate, but easements could not be obtained and further consideration of that project was abandoned.

The proposed modification to the Consent Decree would obligate the City and WMU to prepare a watershed management plan for the Lower Howards Creek Watershed ("LHCW") instead of the original SEP. The LHCW is the locus of many of the City and WMU's most significant SSOs, and some of the injunctive relief in the Consent Decree is aimed at eliminating SSOs and improving water quality in the LHCW. The plan would outline specific areas of concern and identify potential projects for the LHCW. The City and WMU would make the plan available to the public, and work with public officials, environmental and conservation groups, and citizens who are interested in improving water quality in the LHCW. The City and WMU would be required to spend $203,000 on the watershed management plan, and they would receive a credit for the $27,000 they've already spent on the testing phase of the original SEP.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed modification to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Winchester Municipal Utilities,* DJ No. 90–5–1–1–08806.

The proposed Consent Decree modification may be examined at the office of the United States Attorney for the Eastern District of Kentucky, 110 West Vine Street, Suite 400, Lexington KY 40507–1671, and at the Region 4 Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta GA 30303. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree modification may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States* v. *Winchester Municipal Utilities,* DJ No. 90–5–1–1–08806.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–1570 Filed 1–25–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Correction

In notice document 2011–78 appearing on page 1460 the issue of Monday, January 10, 2011 make the following corrections:

1. The subject of the document should read as set forth above.

2. On page 1460, in the second column, in the fifth and sixth lines, "INS Global Learning Consortium, Inc." should read "IMS Global Learning Consortium, Inc.".

3. On the same page, in the third column, in the 15th and 16th lines, "INS Global Learning Consortium, Inc."

should read "IMS Global Learning Consortium, Inc.".

[FR Doc. C1–2011–78 Filed 1–25–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,525]

Emerson Transportation Division, a Division of Emerson Electric, Including Workers Located Throughout the United States; Bridgeton, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 19, 2010, applicable to workers of Emerson Transportation Division, a division of Emerson Electric, Bridgeton, Missouri. The notice was published in the **Federal Register** on December 16, 2010 (75 FR 75701).

At the request of a State of Arkansas agent, the Department reviewed the certification for workers of Emerson Transportation Division. The workers supply distribution services.

Information shows that some workers separated from employment at Emerson Transportation Division lived throughout the United States, including Arkansas, but report to the Bridgeton, Missouri facility due to the nature of the services supplied (transportation services).

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Emerson Transportation Division who are adversely affected secondary workers.

The amended notice applicable to TA–W–74,525 is hereby issued as follows:

"All workers of Emerson Transportation Division, a division of Emerson Electric, including workers located throughout the United States, Bridgeton, Missouri, who supply transportation services and who became totally or partially separated from employment on or after August 10, 2009 through November 19, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC, January 13, 2011.

Del Min Any Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–1622 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,336]

Polaris Industries, Including On-Site Leased Workers From Westaff and Supply Technologies, Osceola, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 26, 2010, applicable to workers of Polaris Industries, including on-site leased workers from Westaff, Osceola, Wisconsin. The notice was published in the **Federal Register** on September 15, 2010 (75 FR 56143).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of components for recreational vehicles.

The company reports that workers leased from Supply Technologies were employed on-site at the Osceola, Wisconsin location of Polaris Industries. The Department has determined that these workers were sufficiently under the control of Polaris Industries to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Supply Technologies working on-site at the Osceola, Wisconsin location of Polaris Industries.

The amended notice applicable to TA–W–74,336 is hereby issued as follows:

"All workers of Polaris Industries, including on-site leased workers from Westaff and Supply Technologies, Osceola, Wisconsin, who became totally or partially separated from employment on or after June 28, 2009, through August 26, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC, December 6, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–1621 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,916]

Catawba Sox, LLC Formerly Known as Catawba Sox, Inc. Including Workers Whose Unemployment Insurance UI) Wages Are Paid Through Ellis Hosiery Mill, LLC, Newton, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 15, 2010, applicable to workers of Catawba Sox, LLC, formerly known as Catawba Sox, Inc., Newton, North Carolina. The notice was published in the **Federal Register** on August 2, 2010 (75 FR 45162).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce athletic socks.

Information shows that some workers separated from employment at the Newton, North Carolina location of Catawba Sox, LLC, formerly known as Catawba Sox, Inc., had their wages reported under a separated unemployment insurance (UI) tax account under the name Ellis Hosiery Mill, LLC, formerly known as Catawba Sox, LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by company imports of athletic socks.

The amended notice applicable to TA–W–73,916 is hereby issued as follows:

"All workers of Catawba Sox, LLC, formerly known as Catawba Sox, Inc., including workers whose unemployment insurance (UI) wages are paid through Ellis Hosiery Mill, LLC, Newton, North Carolina, who became totally or partially separated

from employment on or after April 13, 2009 through July 15, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC, January 13, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–1620 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,676K]

Apria Healthcare Customer Service Department; Fourteen Locations in Missouri Cameron, Cape Girardeau, Columbia, Farmington, Fenton, Joplin, Lee's Summit, Pleasant Valley, Poplar Bluff, Rolla, Springfield, St. Joseph, St. Peters and Clinton, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 20, 2010, applicable to workers of Apria Healthcare, Customer Service Department, Thirteen Locations in Missouri: Cameron, Cape Girardeau, Columbia, Farmington, Fenton, Joplin, Lee's Summit, Pleasant Valley, Poplar Bluff, Rolla, Springfield, St. Joseph and St. Peters, Missouri. The notice was published in the **Federal Register** on September 3, 2010 (75 FR 54185). The workers provide data entry and administrative services.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New findings show that worker separations occurred during the relevant time period at the Clinton, Missouri location of Apria Healthcare, Customer Service Department. The Clinton, Missouri location provided data entry services in the Customer Service Department.

Accordingly, the Department is amending the certification to include workers of the Clinton, Missouri location of Apria Healthcare, Customer Service Department.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in data entry and administrative services to India.

The amended notice applicable to TA–W–73,676 is hereby issued as follows:

"All workers of Apria Healthcare, Customer Service Department, at the following locations: Birmingham and Mobile, Alabama (TA–W–73,676); Little Rock and Lowell, Arkansas (TA–W–73,676A); Bullhead City, Casa Grande, Gilbert, Prescott, Safford, Sierra Vista, Tucson, and Yuma, Arizona (TA–W–73,676B); Lancaster, Oceanside, Oxnard, Palm Desert, Rancho Cuca, Riverside, San Diego, Temecula, and Victorville, California (TA–W–73,676C); Durango, Colorado (TA–W–73,676D); Cromwell, Connecticut (TA–W–73,676E); Fort Myers, Gainesville, Hudson, Jacksonville, Lake City, Lakeland, Melbourne, Miramar, Ocala, Panama City, Pensacola, Sarasota, St. Augustine, Tallahassee, Tampa, and West Palm Beach, Florida (TA–W–73,676F); Athens, Columbus, Conyers, Duluth, Gainesville, Macon, Marietta, and Rome, Georgia (TA–W–73,676G); Collinsville, Illinois (TA–W–73,676H); Colby, Dodge City, Fort Scott, Independence, Salina, and Wichita, Kansas (TA–W–73,676I); Baton Rouge, New Orleans, and Shreveport, Louisiana (TA–W–73,676J); Cameron, Cape Girardeau, Columbia, Farmington, Fenton, Joplin, Lee's Summit, Pleasant Valley, Poplar Bluff, Rolla, Springfield, St. Joseph, St. Peters, and Clinton, Missouri (TA–W–73,676K); Biloxi, Mississippi (TA–W–73,676L); Arden, Morrisville, Southern Pines, and Wilmington, North Carolina (TA–W–73,676M); Albuquerque, Clovis, Farmington, Hobbs, and Roswell, New Mexico (TA–W–73,676N); Henderson and Sparks, Nevada (TA–W–73,676O); Tulsa, Oklahoma (TA–W–73,676P); Duncan, Florence, North Charles, and West Columbia, South Carolina (TA–W–73,676Q); Chattanooga, Clarksville, Cookeville, Jackson, Jefferson City, Memphis, Murfreesboro, Nashville, and Tullahoma, Tennessee (TA–W–73,676R); Amarillo, Austin, Beaumont, Corpus Christi, El Paso, Harlingen, Houston (two locations), Irving, League City, Lubbock, Midland, Nacodoches, and San Antonio, Texas (TA–W–73,676S); Layton and Salt Lake City, Utah (TA–W–73,676T); and Spokane, Washington (TA–W–73,676U), who became totally or partially separated from employment on or after March 8, 2009, through August 20, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 13th day of January 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–1619 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,588]

Hewlett Packard Company Application Services Division Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Universal Music Group; Fishers, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 22, 2010, applicable to workers of Hewlett Packard Company, Applications Services Division, Fishers, Indiana. The notice was published in the **Federal Register** on November 8, 2010 (75 FR 68622).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers provide consulting and application development services for Hewlett Packard Company and its customers.

New information shows that in early 2010, Hewlett Packard purchased a portion of Universal Music Group and that some workers separated from employment at the Fishers, Indiana location of Hewlett Packard, Applications Services Division had their wages reported under a separate unemployment insurance (UI) tax account under the name Universal Music Group. Accordingly, the Department is amending this certification to properly reflect this matter. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the consulting and application development services to a foreign country.

The amended notice applicable to TA–W–74,588 is hereby issued as follows:

"All workers of Hewlett Packard, Application Services Division, including workers whose unemployment insurance (UI) wages are reported through Universal Music Group, Fishers, Indiana, who became totally or partially separated from employment on or after August 1, 2009, through October 22, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, January 19, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–1623 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,121]

General Motors Company Formerly Known as General Motors Corporation Technical Center Including On-Site Leased Workers From Aerotek, Bartech Group, CDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G-Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., Tek Systems, Modern Engineering/Professional Services and General Physics Corporation Excluding Workers of the Global Purchasing and Supply Chain Division, Warren, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 30, 2010, applicable to workers of General Motors Company, formerly known as General Motors Corporation, Technical Center, including on-site leased workers from Aerotek, Bartech Group, EDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G-Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., and Tek Systems, excluding workers of the Global Purchasing and Supply Chain Division, Warren, Michigan. The notice was published in the **Federal Register** on May 28, 2010 (75 FR 30070). The notice was amended on December 6, 2010 to include on-site leased workers from Modern Engineering/Professional Services. The notice was published in the **Federal Register** on December 13, 2010 (75 FR 77666).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the engineering and other technical support of automotive production at affiliated plants.

The company reports that workers leased from General Physics Corporation were employed on-site at the Warren, Michigan location of General Motors Company, formerly known as General Motors Corporation, Technical Center. The Department has determined that on-site workers from General Physics Corporation were sufficiently under the control of General Motors Company, formerly known as General Motors Corporation, Technical Center to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from General Physics Corporation working on-site at the Warren, Michigan location of General Motors Company, formerly known as General Motors Corporation, Technical Center.

The amended notice applicable to TA–W–72,121 is hereby issued as follows:

All workers General Motors Company, formerly known as General Motors Corporation, Technical Center, including on-site leased workers from Aerotek, Bartech Group, CDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G-Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., Tek Systems, Modern Engineering/Professional Services, and General Physics Corporation, excluding workers of the Global Purchasing and Supply Chain Division, Warren, Michigan, who became totally or partially separated from employment on or after August 14, 2008, through April 30, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, January 13, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–1618 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,411]

Avaya Global Services, AOS Service Delivery, Worldwide Services Group, Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Diamondware, Ltd and Nortel Networks, Inc., Including Workers Working at Virtual Offices in Arizona, California, Florida, Georgia, Maine, New Hampshire, New York, North Carolina, Texas and Wisconsin Reporting to the Network Operations Center (NOC), Research Triangle Park, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 20, 2010, applicable to workers of Avaya Global Services, AOS Service Delivery, including workers whose wages were reported under DiamondWare, Ltd., including workers working at virtual offices in Arizona, California, Florida, Georgia, Maine, New Hampshire, New York, North Carolina, Texas, and Wisconsin reporting to the Network Operations Center (NOC), Research Triangle Park, North Carolina. The notice was published in the **Federal Register** on November 8, 2010 (75 FR 68622).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are related to the supply of service desk/help desk services providing the first level of technical support to Avaya customers and make changes and updates to the systems and tools provided/used by customers in support of their networks.

New information shows that some workers separated from employment at Avaya Global Services, AOS Service Delivery had their wages reported through a separate unemployment insurance (UI) tax account under the name Nortel Networks, Inc. and Avaya Global Services, AOS Service Delivery.

Based on these findings, the Department is amending this certification to include workers whose unemployment (UI) wages are reported through Nortel Networks, Inc. and Avaya Global Services, AOS Service Delivery.

The amended notice applicable to TA–W–74,411 is hereby issued as follows:

"All workers of Avaya Global Services, AOS Service Delivery, including workers whose unemployment insurance (UI) wages were reported through DiamondWare, Ltd. and Nortel Networks, Inc., and workers working at virtual offices in Arizona, California, Florida, Georgia, Maine, New Hampshire, New York, North Carolina, Texas, and Wisconsin reporting to the Network Operations Center (NOC), Research Triangle Park, North Carolina (TA–W–74,411); Avaya Global Services, AOS Service Delivery, including workers whose wages were reported under DiamondWare, Ltd. and Nortel Networks, Inc., Richardson, Texas (TA–W–74,411A); Avaya Global Services, AOS Service Delivery, including workers whose wages were reported under DiamondWare, Ltd. and Nortel Networks, Inc., Billerica, Massachusetts (TA–W–74,411B); Avaya Global Services, AOS Service Delivery, including workers whose wages were reported under DiamondWare, Ltd. And Nortel Networks, Inc., Santa Clara, California (TA–W–74,411C), who became totally or partially separated from employment on or after July 8, 2009, through October 20, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC, January 11, 2011.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–1613 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *January 3, 2011 through January 7, 2011.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,459	PDC Glass and Metal Services, Inc., United Glass Corporation	Cheswick, PA	January 29, 2009.
74,204	SB Acquisition, LLC, d/b/a Saunders Brothers	Greenwood, ME	March 21, 2010.
74,215	Muench-Kreuzer Candle Company	Syracuse, NY	May 12, 2009.
74,983	AAR Manufacturing, Inc., Mobility Systems Division	Cadillac, MI	December 7, 2009.
75,030	Weyerhaeuser Company, ILevel Division, Hot Springs Regional Office	Hot Springs, AR	December 21, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,923	PCCS, Inc., Pemco Mutual Insurance Company, Leased Workers from Agovia, Consciere, etc.	Seattle, WA	April 8, 2009.
74,416	Ainak, Leased Workers from Adecco and MS Inspection	Winchester, KY	July 12, 2009.
74,661	WellPoint, Inc., Financial Operations Recovery Department	Woodland Hills, CA	September 22, 2009.
74,661A	WellPoint, Inc., Financial Operations Recovery Department	Denver, CO	September 22, 2009.
74,661B	WellPoint, Inc., Financial Operations Recovery Department	Indianapolis, IN	September 22, 2009.
74,661C	WellPoint, Inc., Financial Operations Recovery Department	Louisville, KY	September 22, 2009.
74,661D	WellPoint, Inc., Financial Operations Recovery Department	Cape Girardeau, MO	September 22, 2009.
74,661E	WellPoint, Inc., Financial Operations Recovery Department	Springfield, MO	September 22, 2009.
74,661F	WellPoint, Inc., Financial Operations Recovery Department	St. Louis, MO	September 22, 2009.
74,661G	WellPoint, Inc., Financial Operations Recovery Department	Worthington, OH	September 22, 2009.
74,661H	WellPoint, Inc., Financial Operations Recovery Department	Milwaukee, WI	September 22, 2009.
74,776	Springs Window Fashions, LLC, Wisconsin Drapery Supply, Inc	Pewaukee, WI	October 25, 2009.
74,784	Humana Insurance Company, Carenetwork, Inc.; Network Provider Operations Division; etc.	Green Bay, WI	October 22, 2009.
74,893	Precision Camera & Video Repair, Inc., Leased Workers from U.S. Engineering, Staffmark, Premiere Staffing, etc.	Enfield, CT	November 2, 2009.
74,924	Cessna Aircraft Company	Wichita, KS	November 11, 2009.
74,938	BIOMET3i, LLC, BIOMET, Inc. Leased Workers from Personally Yours Staffing, Apple One, etc.	Palm Beach Gardens, FL	November 29, 2009.
74,940	New Process Gear, Magna Powertrain	East Syracuse, NY	December 17, 2010.
74,945	RR Donnelley, Prepress Digital Imaging Unit; Book Group; Leased Workers from Kelly Services.	Harrisonburg, VA	November 30, 2009.
74,945A	RR Donnelley, Prepress Digital Imaging Unit; Book Group; Leased Workers from Kelly Services.	Willard, OH	November 30, 2009.
74,945B	RR Donnelley, Prepress Digital Imaging Unit; Book Group; Leased Workers from Kelly Services.	Crawfordsville, IN	November 30, 2009.
74,963	Nabro Able, LLC, Orban	Scottsdale, AZ	December 6, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,890	Ohio Decorative Products, Inc	Spencerville, OH	November 11, 2009.
74,957	Stet Graphics, Inc	Rolling Meadows, IL	December 2, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
75,050	Strahan Sewing Machine Company	Chino Hills, CA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
74,897	Penske Logistics LLC, General Electric/Penske Corporation; Leased Workers Kelly Temporary, etc.	El Paso, TX.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
73,441	Quad Graphics, Inc	Sussex, WI.	
73,441A	Quad Tech, Inc	Sussex, WI.	
73,441B	Quad Graphics, Inc	West Allis, WI.	
73,441C	Quad Graphics, Inc	Pewaukee, WI.	
73,441D	Quad Graphics, Inc	Lomira, WI.	
73,441E	Quad Graphics, Inc	Hartford, WI.	
73,688	Double AA Parking and Trucking, Inc., Calexico Freight Lines	Calexico, CA.	
73,755	International Paper Company	Cedarburg, WI.	
73,789	Application Development Systems	Warren, MI.	
74,036	Manpower, Inc., Working On-Site at International Business Machines (IBM) Division 53.	Poughkeepsie, NY.	
74,424	Unisource Worldwide, Inc., UWW Holdings, Inc	Wisconsin Rapids, WI.	
74,754	Rag and Bone Industries, LLC	New York, NY.	
74,787	W.B. Doner & Company	Southfield, MI.	
74,854	Behavioral Health Services, Inc., Leased Workers from Agile IT, South Bay Workforce Investment Board, etc.	Gardena, CA.	

The investigation revealed that criteria of Section 222(c)(2) has not been met. The workers' firm (or subdivision) is not a Supplier to or a Downstream Producer for a firm whose workers were certified as eligible to apply for TAA.

TA–W No.	Subject firm	Location	Impact date
73,540	Keiper, LLC	Eldon, MO.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
74,962	RR Donnelley, Prepress Digital Imaging Unit; Book Group; Leased Workers from Spherion, etc.	Willard, OH.	
74,964	RR Donnelley, Prepress Digital Imaging Unit; Book Group; Leased Workers Manpower, etc.	Crawfordsville, IN.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
74,933	StarTek USA	Grand Junction, CO.	
74,987	Foxconn/PCE Technology, Workers On-Site at Dell Products, LP	Winston Salem, NC.	

I hereby certify that the aforementioned determinations were issued during the period of *January 3, 2011 through January 7, 2011.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: January 13, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–1612 Filed 1–25–11; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *January 10, 2011 through January 14, 2011.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,490	Owens-Illinois, Inc., North America Division	Charlotte, MI	February 9, 2009.
73,532	Roto-Die Company, Inc	Meadows of Dan, VA	February 16, 2009.
74,135	Wood Products Northwest	Days Creek, OR	May 19, 2009.
74,146	Furniture Crafters of Virginia, Inc	Collinsville, VA	May 14, 2009.
74,208	SB Acquisitions, LLC, dba Saunders Brothers	Westbrook, ME	June 7, 2009.
74,243	Wardwell Braiding Machine Company	Central Falls, RI	June 8, 2009.
74,264	Lazar Industries LLC, East Division	Siler City, NC	June 15, 2009.
74,341	Hearthstone Enterprises Inc., DBA Charleston Forge	Boone, NC	March 14, 2010.
74,605	Cambridge Tool & Die	Cambridge, OH	September 7, 2009.
74,746	Adrenaline Sporting Goods, LLC	Sherwood, OR	October 4, 2009.
75,018	Owens-Illinois, Inc., North America Division; Bridgeton Warehouse	Bridgeton, NJ	December 19, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,138	Louis Baldinger & Sons, Inc	Astoria, NY	May 24, 2009.
74,183	SunGard Public Sector, Sunguard Data Systems; K–12 Education Division.	Bethlehem, PA	March 5, 2009.
74,604	HCP Packaging Inc., USA, Leased Workers of Masiello Temp Agency	Hinsdale, NH	September 7, 2009.
74,831	CompuCom Systems, Inc., I–4 Division	Menlo Park, CA	November 2, 2009.
74,895	Wellpoint, Inc., Enterprise Provider Data Management Team; Leased Workers Kelly Services, etc.	Indianapolis, IN	November 15, 2009.
74,958	Tenneco, Inc., Naoerc Division, Leased Workers from Elite Staffing, Inc.	Cozad, NE	January 16, 2011.
74,967	Philips Lighting Company, Lighting Division	Danville, KY	March 12, 2010.
74,967A	Adecco Employment Services, Working On-site at Philips Lighting Company; Lighting Division.	Danville, KY	December 5, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,090	Daimler Trucks North America, Detroit Diesel	Detroit, MI	May 13, 2009.
74,259	Lapeer Plating and Plastics, Inc., f/k/a Dott Industries Deco Plate; Dott Acquisitions and IES, Inc.	Lapeer, MI	May 26, 2009.
74,490	Fermer Precision, Inc	Ilion, NY	July 23, 2009.
74,866	Mountain City Lumber Co., Cranberry Hardwoods, Inc	Marion, VA	November 9, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
74,417	Good Harbor Fillet Company, LLC, Leased Workers from Employment on Demand Agency.	Gloucester, MA	
74,669	Greif Brothers Corporation, PPS	Washington, PA	
74,790	CTI and Associates, Inc	Wixom, MI	
74,949	ProDrive Systems, Inc., TTI Turner Technology Instruments, Inc.; Leased Workers Alpha Staffing, etc.	Ogdensburg, NY	
74,991	Norandex Building Materials Distribution, Inc., Saint-Gobain	Gaylord, MI	
75,062	Bucyrus Community Hospital, Inc	Bucyrus, OH	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
75,076	Sheet Metal Workers Local 80	Southfield, MI.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
75,025	Emerson Transportation Services, Emerson Electric, Located Throughout the US.	Bridgeton, MO.	

I hereby certify that the aforementioned determinations were issued during the period of *January 10, 2011 through January 14, 2011.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: January 19, 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–1616 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 7, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 7, 2011.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, January 6, 2011.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

TAA PETITIONS INSTITUTED BETWEEN 12/27/10 AND 12/31/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
75045	CVS Caremark (State/One-Stop)	Northbrook, IL	12/28/10	12/27/10
75046	Macsteel Service Centers USA (Company).	Liverpool, NY	12/28/10	12/28/10
75047	J.P. Morgan Chase (State/One-Stop)	Columbus, OH	12/28/10	12/27/10
75048	Premier Technical Plastics (Company)	Minden, LA	12/29/10	12/23/10
75049	Buckstaff Company (State/One-Stop)	Oshkosh, WI	12/29/10	12/28/10
75050	Strahan Sewing Machine Company (Company).	Chino Hills, CA	12/29/10	12/28/10
75051	American Express (Workers)	Salt Lake City, UT	12/29/10	12/28/10
75052	Siemen's Industry (State/One-Stop)	Columbus, OH	12/29/10	12/28/10
75053	C. Fassinger & Sons Manufacturing Company (Company).	New Castle, PA	12/29/10	12/28/10
75054	Plastic Suppliers Company (Workers)	Columbus, OH	12/29/10	11/23/10
75055	Bright Acquisitions Company LLC (Union)	Summersville, WV	12/30/10	12/29/10
75056	Ericsson, Inc (State/One-Stop)	Overland Park, KS	12/30/10	12/29/10
75057	Allstate Insurance Company (State/One-Stop).	Irving, TX	12/30/10	12/29/10
75058	Electrolux Central Vacuum Systems (Company).	Webster City, IA	12/30/10	12/24/10

[FR Doc. 2011–1614 Filed 1–25–11; 8:45 am]
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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,344]

Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Service Division, Fort Smith, AR; Notice of Negative Determination on Second Remand

On November 4, 2010, the United States Court of International Trade (USCIT) granted the Department of Labor's second request for voluntary remand to conduct further investigation in *Former Employees of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Service Division* v. *United States Secretary of Labor* (Court No. 09–00522).

On September 28, 2009, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Division, Fort Smith, Arkansas (subject firm). AR 35. Workers at the subject firm (subject worker group) provided airline customer services. AR 4,8,14,37. The Department's Notice of determination was published in the **Federal Register** on November 17, 2009 (74 FR 59251). AR 48.

For the Department to issue a certification for workers under Section 222(a) of the Trade Act of 1974, as amended (the Act), 19 U.S.C. 2272(a), the following criteria must be met:

I. The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2282(a)(1)) requires that a significant number or proportion of the workers in the workers' firm must have become totally or partially separated or be threatened with total or partial separation.

II. The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied in one of two ways:

(A) Increased Imports Path:

(i) sales or production, or both, at the workers' firm must have decreased absolutely, and

(ii)(I) imports of articles or services like or directly competitive with articles or services produced or supplied by the workers' firm have increased, OR

(II)(aa) imports of articles like or directly competitive with articles into which the component part produced by the workers' firm was directly incorporated have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by the workers' firm have increased; OR

(III) imports of articles directly incorporating component parts not produced in the U.S. that are like or directly competitive with the article into which the component part produced by the workers' firm was directly incorporated have increased.

(B) Shift in Production or Supply Path:

(i)(I) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm; or

(i)(II) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm.

III. The third criterion requires that the increase in imports or shift/acquisition must have contributed importantly to the workers' separation or threat of separation. *See* Sections 222(a)(2)(A)(iii) and 222(a)(2)(B)(ii) of the Act, 19 U.S.C. 2272(a)(2)(A)(iii), 2272(a)(2)(B)(ii).

For the Department to issue a certification for adversely-affected secondary workers under Section 222(c) of the Act, 19 U.S.C. 2272(c), the following criteria must be met:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a), and such supply or production is related to the article or service that was the basis for such certification; and

(3) either:

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in

paragraph (2) contributed importantly to the workers' separation or threat of separation.

Section 222(d)(3)(A) of the Act, 19 U.S.C. 2272(d)(3)(A), states that a "downstream producer means a firm that performs additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a)." Section 222(d)(3)(B) of the Act, 19 U.S.C. 2272(d)(3)(B), states that "value-added production processes or services include final assembly, finishing, testing, packaging, or maintenance or transportation services."

The negative determination states that, although there was a significant proportion or number of workers of the subject firm that were separated, the remaining criteria of Section 222(a) and Section 222(c) of the Act were not met. AR 37. The negative determination stated that the subject firm did not import like or directly competitive services during the relevant period or shift these services abroad. AR 38.

In the request for reconsideration, the petitioner alleged that because the workers at the subject firm provided services to individuals that are part of worker groups eligible to apply for TAA, the workers at the subject firm should also be eligible for TAA as "downstream producers." AR 42,43.

The Department issued a Notice of Negative Determination Regarding Application for Reconsideration applicable to workers of the subject firm on November 5, 2009, based on the finding that the petitioner did not provide new information. AR 44. The Department's Notice was published in the **Federal Register** on December 8, 2009 (74 FR 64736). AR 54.

In the complaint to the USCIT, the Plaintiff asserted that workers at the subject firm are eligible to apply for TAA as secondarily affected workers, that the decline in travel in the Fort Smith, Arkansas area is attributable to a reduction in the operations of firms in the local area due to trade impact, and that this decline in travel contributed to subject worker group separations.

First Remand Investigation

During the first remand investigation, the Department carefully reviewed previously submitted information, obtained additional information from the subject firm, and solicited input from the Plaintiff.

In the course of the first remand investigation, the Plaintiff provided information alleging that trade impact caused the layoffs in the subject worker group. SAR 9.

The Department's findings on remand revealed that the subject worker group provided airline customer services such as airline ground handling, baggage, and ticketing, under contract exclusively for Delta Air Lines (Delta). These services were provided to individual passengers and the ticket purchases were made by individuals, travel agencies, corporate accounts, and the United States military. SAR 3,19,21,27,29.

The information obtained by the Department to address the allegation that the domestic merger between Delta and Northwest Airlines demonstrates trade impact confirmed the Department's findings. Subject worker group separations are attributable to Delta ceasing operations with the subject firm at the Fort Smith, Arkansas location, but the newly-merged airline maintained operations out of the Fort Smith, Arkansas location using a different airline customer service provider. Further, the services provided by the worker group cannot be imported or shifted abroad as they are used directly by domestic passengers. AR 17,24,25, SAR 3,19,21,27,29.

Based on careful consideration of all previously submitted information and new facts obtained during the first remand investigation, the Department determined that the subject worker group did not meet the eligibility criteria of the Act and issued a Negative Determination on Remand on September 3, 2010. SAR 34. The Notice of determination was published in the **Federal Register** on September 21, 2010 (75 FR 57517). SAR(II) 1.

Second Remand Investigation

The Department requested, and was granted, a second voluntary remand to obtain additional information to clarify the reason Delta ceased using services supplied by the subject firm, to clarify "directly" for purposes related to Section 222(d)(3)(A), and to determine whether the petitioning workers are eligible to apply for TAA.

During the second remand investigation, the Department obtained additional information from the subject firm, SAR(II) 6,8,44–48, solicited input from the Plaintiff, SAR(II) 6,10–15, and obtained new information from Delta regarding the reason that it ceased using services supplied by the subject firm in its operations at the Fort Smith airport. SAR(II) 7–9,29–42,50–52.

Information provided by Delta and the subject firm confirmed that the subject firm failed to win a bid to continue to supply services at the Fort Smith airport. When Delta and Northwest Airlines merged, regional vendors were invited to submit bids to acquire ground handling operations at the Fort Smith location. The subject firm had the same opportunity to bid to win the contract to supply services at the Fort Smith, Arkansas airport as other firms, but did not win the contract. SAR(II) 46–48,51.

Section 222(d)(3)(A) of the Act requires that a "downstream producer" perform "additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a) [of Section 222 of the Act]." Section 222(d)(3)(B) includes "transportation services" among those services.

The Department's interpretation of "directly" in Section 222(d)(3)(A) is that there may not be an intervening customer or supplier. The subject firm provided services exclusively for Delta, so Delta is the only direct recipient of the services provided by the subject worker group. SAR(II) 46. The services supplied by the subject firm must be to a firm that employs workers eligible to apply for TAA on a primary certification. Delta does not have a worker group certified as eligible to apply for TAA, SAR(II) 53, so subject firm workers may not be certified under the secondary worker provisions of the statute.

Further, Section 222(c)(2) of the Act does not permit secondary worker certification unless the service provided by the subject firm "is related to the article or service that was the basis for such certification [under Section 222(a) of the Act]." This clause confirms Department's finding that it is not necessary to survey Delta's customers because the articles or services those customers produce or provide are not related to the supply of airline customer services that the subject firm provides.

Based on a careful review of both previously-submitted information and new information obtained during the second remand investigation, the Department reaffirms that the petitioning workers have not met the eligibility criteria of Section 222(c) of the Trade Act of 1974, as amended.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Division, Fort Smith, Arkansas.

Signed at Washington, DC, January 18, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–1617 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0009]

Standard on Fire Brigades; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Fire Brigades (29 CFR 1910.156).

DATES: Comments must be submitted (postmarked, sent, or received) by March 28, 2011.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0009, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection request (ICR) (OSHA–2011–0009). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled "**SUPPLEMENTARY INFORMATION**."

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraphs (b)(1), (b)(2), (c)(1), (c)(2), and (c)(4) contain the paperwork requirements of the Standard.

Under paragraph (b)(1) of the Standard, employers must develop and maintain an organizational statement that establishes: the existence of a fire brigade; the basic organizational structure of the brigade; the type, amount, and frequency of training provided to brigade members; the expected number of members in the brigade; and the functions that the brigade is to perform. This paragraph also specifies that the organizational statement must be available for review by workers, their designated representatives, and OSHA compliance officers. The organizational statement delineates the functions performed by the brigade members and, therefore, determines the level of training and type of personal protective equipment (PPE) necessary for these members to perform their assigned functions safely. Making the statement available to workers, their designated representatives, and OSHA compliance officers ensures that the elements of the statement are consistent with the functions performed by the brigade members and the occupational hazards they experience, and that employers are providing training and PPE appropriate to these functions and hazards.

To permit a worker with known heart disease, epilepsy, or emphysema to participate in fire brigade emergency activities, paragraph (b)(2) of the Standard requires employers to obtain a physician's certificate of the worker's fitness to do so. This provision provides employers with a direct and efficient means of ascertaining whether or not they can safely expose workers with these medical conditions to the hazards of firefighting operations.

Paragraph (c)(1) of the Standard requires employers to provide training and education for fire brigade members commensurate with the duties and functions they perform, with brigade leaders and training instructors receiving more comprehensive training and education than employers provide to the general membership. Under paragraph (c)(2) of the Standard, employers must conduct training and education frequently enough, but at least annually, to assure that brigade members are able to perform their assigned duties and functions satisfactorily and safely; employers must provide brigade members who perform interior structural firefighting with educational and training sessions at least quarterly. In addition, paragraph (c)(4) specifies that employers must: Inform brigade members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water-reactive substances that may be present during fires and other

emergencies; advise brigade members of changes in the special hazards; and develop written procedures that describe the actions brigade members must take when special hazards are present, and make these procedures available in the education and training program and for review by the brigade members.

Providing appropriate training to brigade members at the specified frequencies, informing them about special hazards, developing written procedures on how to respond to special hazards, and making these procedures available for training purposes and review by the members enables them to use operational procedures and equipment in a safe manner to avoid or control dangerous exposures to fire-related hazards. Therefore, the training and information requirements specified by paragraphs (c)(1), (c)(2), and (c)(4) of the Standard prevent serious injuries and death among members of fire brigades.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Fire Brigades (29 CFR 1910.156). The Agency is requesting an adjustment increase of 1,244 burden hours from 5,048 hours to 6,292 hours. The increase is a result of updated data estimating that the total number of establishments requiring new or revised organizational statements has increased from 2,337 to 2,797, and that the number of fire brigade members has increased from 467,330 to 582,500.

Type of Review: Extension of a currently approved collection.

Title: Standard on Fire Brigades (29 CFR 1910.156).

OMB Number: 1218–0075.

Affected Public: Business or other for-profits.

Number of Respondents: 8,738.

Frequency: On occasion.

Average Time Per Response: Varies from 5 minutes (.05 hour) to obtain a physician's certificate to 2 hours to develop or revise an organizational plan.

Estimated Total Burden Hours: 6,292.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0009). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled "**ADDRESSES**"). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on January 21, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–1665 Filed 1–25–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–009)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The information submitted by recipients is to provide a tracking mechanism for property on an annual basis, at the end of the grant, or on the occurrence of certain event. This

information is used by NASA to effectively maintain an appropriate internal control system for equipment and property provided or acquired under grants and copperative agreements with institutions of higher education and other non-profit organizations, and to comply with statutory requirements.

II. Method of Collection

NASA is participating in Federal efforts to extend the use of information technology to more Government processes via Internet.

III. Data

Title: NASA Inventory Report: Property Management & Control, Grants.

OMB Number: 2700–0047.

Type of review: Revision of currently approved collection.

Affected Public: Not-for-profit institutions and State, Local or Tribal Government.

Estimated Number of Respondents: 141.

Estimated Time per Response: 12.28 hours.

Estimated Total Annual Burden Hours: 1,732 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2011–1536 Filed 1–25–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: (11–010)

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

To ensure accurate reporting of Government-owned, contractor-held property on the financial statements and to provide information necessary for effective property management, NASA obtains summary data annually from the official Government property records maintained by its contractors, on the NASA Form 1018, as of the end of the fiscal year.

II. Method of Collection

Contractors are only required to transcribe summary information from the records they maintain on the NASA Form 1018. Beginning with reporting for FY 1999, NASA implemented the NF 1018 Electronic Submission System (NESS), a Web-based system, for NF 1018 reporting.

III. Data

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of review: Revision of currently approved collection.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1092.

Estimated Time per Response: Variable.

Estimated Total Annual Burden Hours: 9,805 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. 2011–1539 Filed 1–25–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before February 25, 2011 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm

at telephone number 301–713–1694 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. NARA published a notice of proposed collection for these information collections on November 12, 2010 (75 FR 69474). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, 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. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.

Estimated number of respondents: 1.

Estimated time per response: 7 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 and that the proper safeguards will be made to protect the information.

2. *Title*: Request to use personal paper-to-paper copiers at the National Archives at the College Park facility.

OMB number: 3095–0035.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 5.

Estimated time per response: 3 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.86. Respondents are organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.86 and to schedule the limited space available.

Dated: January 20, 2011.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2011–1765 Filed 1–25–11; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 9, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 9, 2011—12 p.m. Until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or E-mail: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: January 20, 2011.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–1607 Filed 1–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on February 9, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 9, 2011—1:30 p.m. Until 5 p.m.

The Subcommittee will review the license renewal application for the Diablo Canyon Power Plant, Units 1 and 2 and the associated Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear presentations by and hold discussions with the NRC staff, Pacific Gas and Electric (PG&E), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant

issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Benson (Telephone 301–415–6396 or E-mail: *Michael.Benson@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: January 20, 2011.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–1609 Filed 1–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR); Notice of Meeting

The ACRS Subcommittee on U.S. EPR will hold a meeting on February 7–8, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, except for portions of the meeting on February 8, 2011 which may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(4).

The agenda for the subject meeting shall be as follows:

Monday, February 7, 2011—8:30 a.m. until 5 p.m. and Tuesday, February 8, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will review topical reports which support Chapter 6 and Chapter 15 of the U.S. EPR Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear presentations by and hold discussions with representatives of AREVA Inc., the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: January 20, 2011.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–1610 Filed 1–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0022]

Notice of Public Meeting and Request for Comments on the Potential Revision of the Branch Technical Position on Concentration Averaging and Encapsulation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Public Meeting and Request for Comments on Issues Related to the Revision of the Branch Technical Position on Concentration Averaging and Encapsulation.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) plans to conduct a public meeting on February 24, 2011, in Rockville, Maryland, to solicit input on issues associated with revising the Branch Technical Position (BTP) on Concentration Averaging and Encapsulation (CA BTP). Revising the BTP was ranked as a high priority in NRC's strategic assessment of its low-level radioactive waste regulatory program (SECY–07–0180). Since then, NRC has focused on blending of low-level radioactive waste (LLRW), one of eight major areas in the CA BTP. In SECY–10–0043, the staff provided the Commission with an analysis of issues related to LLRW blending. In the Staff Requirements Memorandum (SRM) for SECY–10–0043, the Commission directed the staff to revise the blending position in the CA BTP to be risk-informed and performance-based. With this decision, the staff is in a position to update the entire CA BTP, not only addressing blending, but also the remainder of the CA BTP topics that address mathematical averaging of radioactivity concentrations. The staff is holding a public meeting to obtain comments from stakeholders on how the CA BTP could be revised to be more aligned with the NRC's position of risk-informed performance-based regulations.

DATES: Members of the public may provide feedback at the transcribed public meeting or may submit written

comments on the issues discussed in this notice. Comments on the issues and questions presented in this notice and discussed at the meeting should be postmarked no later than April 15, 2011. Comments received after this date will be considered if it is practical to do so. NRC plans to consider these stakeholder views in the development of a revised draft CA BTP. The staff expects to issue a draft for public comment later this year.

Written comments may be sent to the address listed in the **ADDRESSES** section. Questions about participation in the public workshops should be directed to the facilitator at the address listed in the **ADDRESSES** section. Replies should be directed to the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

The public meeting will be held on February 24, 2011, from 8:00 a.m. to 5:00 p.m. at the Legacy Hotel, 1775 Rockville Pike, Rockville, Maryland 20852.

The agenda for the public meeting will be noticed no fewer than ten (10) days prior to the meeting on the NRC's electronic public workshop schedule at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* Please refer to the **SUPPLEMENTARY INFORMATION** section of this notice for questions that will be discussed at the meeting. The supplemental information below also contains a copy of a preliminary draft of a revised CA BTP. The official CA BTP is available in the Agencywide Documents Access and Management System (ADAMS) under ML033630732. Please refer to this version as NRC's official CA BTP document.

As a first step in revising the CA BTP, the staff has prepared a preliminary draft for review by stakeholders. This draft is meant to serve as a starting point for NRC's efforts to revise the document. This version does not revise the basic positions in the CA BTP to make them more risk-informed. Rather, it clarifies language, defines terms, and is reorganized so that stakeholders can more efficiently review the document (ADAMS ML103430088).

In 2009, the Electric Power Research Institute (EPRI) sent a report to the NRC entitled, "Proposed Modification to the NRC Branch Technical Position on Concentration Averaging and Encapsulation." The EPRI report provided comments on the CA BTP. The staff has no position at this time on the EPRI report, and will consider it along with all other comments received from stakeholders in developing a revised draft of the CA BTP. The revisions suggested in this report are likely to be discussed in the upcoming workshop.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0022 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0022. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668, *e-mail: Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The EPRI report is available electronically under ADAMS Accession Number ML090230211 and ML090230195.

Federal rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0022.

FOR FURTHER INFORMATION CONTACT: Maurice Heath, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* 301–415–3137; *e-mail: Maurice.Heath@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

To provide protection of individuals from inadvertent intrusion into a waste disposal facility (a requirement in 10 CFR 61.42), radioactive waste proposed for near-surface disposal must be classified, based on its hazard to the intruder, to ensure its suitability for such disposal. "Licensing Requirements for Land Disposal of Radioactive Waste," 10 CFR Part 61, establishes a waste classification system based on the concentration of specific radionuclides contained in the waste. The regulation also states, in 10 CFR 61.55(a)(8), that "The concentration of a radionuclide [in waste] may be averaged over the volume of the waste, or weight of the waste if the units [on the values tabulated in the concentration tables] are expressed as nanocuries per gram".

The NRC initially developed a technical position on radioactive waste classification in May 1983 (ADAMS ML033630755). That technical position paper described overall procedures acceptable to NRC staff that could be used by licensees to determine the presence and concentrations of the radionuclides listed in 10 CFR 61.55, and thereby classify waste for near-surface disposal.

In 1995 the NRC staff published the CA BTP. The 1995 version expanded and further defined Section C.3 of the 1983 BTP dealing with concentration averaging. In 2007 the NRC staff performed a Strategic Assessment of the NRC Low-Level Waste Regulatory Program. The staff informed the Commission, in SECY–07–0180, that it would update the CA BTP and that it was a high priority task. The staff stated the CA BTP would be revised to use risk-informed approaches.

In 2010 the NRC staff responded to the Commission's request to provide options for the NRC's policy on the blending of low-level waste (SECY–10–0043). LLRW blending is one of eight topic areas in the CA BTP. The Commission, in the SRM for SECY–10–0043, adopted the staff's recommendation to revise the blending

position contained in the CA BTP. The Commission agreed with the staff's approach to revise the blending guidance to be risk-informed and performance-based, which supports the agency's regulatory goals. With this direction from the Commission, the staff is initiating revisions to the entire CA BTP to include the Commission's new position on blending, as well as to consider risk-informed, performance-based approaches for the remainder of the CA BTP.

II. Questions Related to Branch Technical Position

This section identifies questions associated with revising the CA BTP. These questions are not meant to be a complete or final list, but are intended to initiate discussion. These questions will help to focus the discussion at the public meeting. All public feedback will be considered in developing a draft for later public review and comment.

1. NUREG–1854, "NRC Staff Guidance for Activities Related to U.S. Department of Energy Waste Determinations—Draft Final Report for Interim Use," issued August 2007," contains extensive guidance for site-specific evaluations of intruder protection. The approach in the NUREG was endorsed by NRC's Advisory Committee on Nuclear Waste and Materials, which also recommended that the staff evaluate a broader application of the new concentration averaging methodology to wastes other than "waste incidental to reprocessing." How could approaches in that guidance be used in revising the CA BTP?

2. Part 61 limits the disposal of Cs-137 to 4,600 Ci/m^3, yet the CA BTP guidance for disposal of discrete Cs-137 sources recommends a limit of 30 Ci in 0.2 m^3 (150 Ci/m^3). Given the large disparity between the CA BTP guidance and Part 61, and given the need to dispose of large Cs-137 sources, should NRC consider revising the 30 Ci in 0.2 m^3 recommendation found in the CA BTP?

3. The rulemaking for unique waste streams (see SECY–08–0147 and the SRM–SECY–08–0147) will protect the inadvertent human intruder by requiring a site- and waste-specific assessment. The current CA BTP defines acceptable practices for applying the 61.55 tables, to insure that inadvertent human intruder is protected (as intended in the draft and final Environmental Impact Statement for Part 61). Given the NRC's move towards site- and waste-specific analyses to demonstrate protection of the intruder—is the CA BTP necessary, or could it be eliminated?

4. The volume over which waste concentrations are averaged has a significant effect on waste classification. The current CA BTP addresses averaging over a waste package. Others have suggested that averaging occur over the volume of waste that an inadvertent intruder would be exposed to, or the volume of a disposal trench. What are the pros and cons of these approaches?

5. For blending homogeneous waste types, the NRC will be requiring a site- and waste-specific intruder analysis, so as to be risk-informed and performance-based. In requiring a site- and waste-specific analysis for homogeneous waste types, the NRC is moving away from the CA BTP's "factor of 10 rule" for individual contributors to a mixture of homogeneous waste types. Should NRC also move away from the "factor of 10 rule" for non-primary gamma emitters and away from the "factor of 1.5 rule" for primary gamma emitters?

6. What limits on the types of LLW that can be blended should be specified in the CA BTP? Specifically, should blending of cartridge filters and sealed sources to form homogeneous mixtures be addressed in the CA BTP?

7. In the Commission's October 13, 2010, decision on LLRW blending, it stated that "* * * [Greater than Class C] GTCC waste is a Federal responsibility and * * * should not be made into a State responsibility, even if the waste has been blended into a lower classification." What unique guidance will GTCC waste require in the BTP, given this direction? For example, when should waste be classified? (Waste is currently not required to be classified until it is shipped for disposal).

8. How should NRC consider heterogeneity in waste concentrations in the site-specific intruder analysis? Does there need to be guidance on how to interpret intruder analysis results with respect to waste heterogeneity?

9. 10 CFR 61.55(a)(8), allows for averaging of waste concentrations in determining the classification of waste. Such averaging should continue to protect an inadvertent intruder in a waste disposal facility, one of the four performance objectives in 10 CFR Part 61.

• How do other programs for managing and disposing of waste treat protection of an inadvertent intruder?

• Do they allow for averaging, and if so, what are the constraints?

• Could or should NRC harmonize its approach with these other programs? If so, would changes need to be made to NRC regulations, or could they be made in guidance?

Dated at Rockville, Maryland this 20th day of January 2011.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Acting Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–1611 Filed 1–25–11; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Liability for Termination of Single-Employer Plans, 29 CFR Part 4062 (OMB control number 1212–0017; expires March 31, 2011). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 25, 2011.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) PBGC's regulation on Liability for Termination of Single-employer Plans may be accessed on PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and

Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group ("the employer") incur liability ("employer liability") if the plan terminates with assets insufficient to pay benefit liabilities under the plan. PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify PBGC and to submit net worth information. PBGC needs this information to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

OMB approved this collection of information under the regulation (OMB control number 1212–0017, expires March 31, 2011). PBGC is requesting that OMB extend its approval for three years. 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.

PBGC estimates that (1) an average of five contributing sponsors or controlled group members per year will respond to this collection of information; and (2) the average annual burden of this collection of information will be 12 hours and $3,996 per respondent, with an average total annual burden of 60 hours and $19,980.

Issued in Washington, DC, this 20th day of January 2011.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–1596 Filed 1–25–11; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Establishment of advisory committee.

SUMMARY: The Hispanic Council on Federal Employment will hold its initial meeting on February 11, 2011, at the time and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Assistant Secretary for Human Resources and Administration at the Department of Veterans Affairs.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: February 11, 2011 at 2 p.m.

LOCATION: U.S. Office of Personnel Management, Theodore Roosevelt Executive Conference Room, 5th Floor, Theodore Roosevelt Building, 1900 E St. NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St., NW., Suite 5305, Washington, DC 20415. Phone (202) 606–1611 FAX (202) 606–2183 or e-mail at *Michael.LaRosa@opm.gov*.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–1581 Filed 1–25–11; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, February 2, 2011, at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open part of the meeting will be audiocast. The audiocast can be accessed via the Commission's Web site at *http://www.prc.gov.*

MATTERS TO BE CONSIDERED: The agenda for the Commission's February 2011 meeting includes the items identified below.

Portions Open to the Public

1. Report on Legislative Review and review of postal-related congressional activity.
2. Review of active cases.
3. Report on recent activities of the Joint Periodicals Task Force and status of the report to the Congress pursuant to Section 708 of the PAEA.
4. Status report on contracts to study the social benefit of the mail.
5. Report on international activities.

Portions Closed to the Public

6. Discussion of pending litigation.
7. Discussion of confidential personnel issues.
8. Discussion of contracts involving confidential commercial information.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, at *stephen.sharfman@prc.gov* or 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters).

Dated: January 21, 2011.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–1698 Filed 1–24–11; 11:15 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF STATE

[Public Notice: 7243]

U.S. National Commission for UNESCO Notice of Closed Teleconference Meeting

The U.S. National Commission for UNESCO will hold a conference call on Tuesday, February 15, 2011, beginning at 1 p.m. Eastern Time. The teleconference meeting will be closed to

the public to allow the Commission to discuss applications for the UNESCO Young Professionals Program. This call will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(6) because it will involve discussions of information of a personal and financial nature regarding the relative merits of individual applicants where disclosure would constitute a clearly unwarranted invasion of privacy.

For more information contact Elizabeth Kanick, Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. Telephone: (202) 663–0026; Fax: (202) 663–0035; E-mail: *DCUNESCO@state.gov.*

Dated: January 14, 2011.

Elizabeth Kanick,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. 2011–1653 Filed 1–25–11; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection(s): NAS Data Release Request

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 22, 2010, vol. 75, no. 183, page 57828. The information enables the FAA to evaluate the validity of the user's request for National Airspace (NAS) data from FAA systems and equipment.

DATES: Written comments should be submitted by February 25, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0668.

Title: NAS Data Release Request.

Form Numbers: FAA Form 1200–5.

Type of Review: Renewal of an information collection.

Background: This data collection is the genesis for granting approval to release filtered NAS data. The information provided sets the criteria for the FAA Data Release Request Committee (DRRC) to approve or disapprove individual requests for NAS data. The information submitted by the requestor determines the requestor's eligibility to use FAA NAS data. The agency currently uses the collected information to determine suitability for procuring NAS data for use in various evaluations.

Respondents: Approximately 15 data requestors.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3 hours.

Estimated Total Annual Burden: 45 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202)395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 19, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–1546 Filed 1–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Space Transportation Operations Working Group (STOWG) of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Thursday, February 17, 2011, starting at 11 a.m. Eastern Standard Time. Individuals who plan to participate should contact Susan Lender, DFO, (the Contact Person listed below) by phone or e-mail for the teleconference call in number.

The proposed agenda for this teleconference is to continue the discussion started during the October 6, 2010, working group meeting, and continued during the December 8, 2010, teleconference. This discussion will center on the orbital debris questions asked by the FAA; it will also include a look at responses to the Concept of Operation for Global Space Vehicle Debris Threat Management report.

Interested members of the public may submit relevant written statements for the COMSTAC working group members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or e-mail) by February 11, 2011, so that the information can be made available to COMSTAC members for their review and consideration before the February 17, 2011, teleconference. Written statements should be supplied in the following formats: One hard copy with original signature or one electronic copy via e-mail.

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; E-mail *susan.lender@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC, January 20, 2011.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–1549 Filed 1–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0114; Notice 2]

Bentley Motors, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Bentley Motors, Inc. (Bentley) has determined that certain headlamps in 2005–2008 Bentley Arnage and Azure passenger cars do not fully comply with paragraph S7.8.2.1(b) of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108 *Lamps, Reflective Devices and Associated Equipment.* Bentley has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR part 556), Bentley has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Bentley's petition was published, with a 30-day public comment period, on 7/30/2009, in the **Federal Register** (74 FR 38082). No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number "NHTSA–2009–0114."

For further information on this decision, contact Mr. Mike Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2334, facsimile (202) 366–7002.

Bentley estimated that 1,115 model year 2005–2008 Bentley Arnage and Azure passenger cars manufactured between January 13, 2004 and November 9, 2007 are involved. Bentley also stated that based on its preliminary investigation it believes that only 50% of those vehicles have the subject noncompliance.

Paragraph S7.8.5.3(b) of FMVSS No. 108 requires in pertinent part:

> S7.8.5.3 Visual/optical aiming. Each visually/optically aimable headlamp shall be designed to conform to the following requirements: * * *
>
> (b) Horizontal aim, lower beam. There shall be no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it shall be set to zero.

Bentley explained that the noncompliance with FMVSS No. 108 is that horizontal aim adjustment of the subject lower beams is possible due to the absence of a blanking cap over the lower beam horizontal adjustment screw.

Bentley also stated that they discovered this noncompliance as a result of a special production line quality audit investigation.

Bentley further stated that it believes that this noncompliance is inconsequential to motor vehicle safety for three reasons. First, the adjustment screw is always hidden by an engine cover when the vehicle's hood is open. Second, when the engine cover is removed the screw is still hidden down a small dark guide hole, so the screw is not immediately visible and it is not immediately obvious that a disabling cap is not present. Last, the workshop manual clearly identifies that this screw is not functional on North American specification vehicles so no vehicle repairer would ever need to try to search for and adjust the screw in question.

Bentley also has informed NHTSA that it has corrected the problem that caused this noncompliance.

In summation, Bentley states that it believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted.

NHTSA Decision

NHTSA agrees with Bentley that the noncompliance is inconsequential to motor vehicle safety. The only possible safety risk is that someone could locate and improperly adjust the lower beam horizontal adjustment mechanism. That risk is extremely small. The location of the horizontal adjuster makes it difficult to access and there is no information in the owner's manual or given to the dealer which indicates the location. Further, the lamps as originally installed in the subject vehicles are properly aimed and the need for re-aiming is unlikely. In addition, it is unlikely that owners will try to adjust the headlamp aim since the owner's manual instructs drivers to take the vehicle to the dealer if the lamps need to be re-aimed. Because dealers are generally not aware that the horizontal aim can be adjusted, they are likely to replace the lamps that may need adjustment. Moreover, to the extent this notice increases awareness on the part of owners or dealers that the horizontal adjustment mechanism is present on these vehicles, the notice will also inform them that any horizontal adjustment issue should be addressed by replacing the lamps and/or contacting Bentley.

In consideration of the foregoing, NHTSA has decided that Bentley has met its burden of persuasion that the subject FMVSS No. 108 headlamps noncompliance is inconsequential to motor vehicle safety. Accordingly, Bentley's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 19, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–1582 Filed 1–25–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–K

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form

1099–K, Merchant Card and Third Party Payments.

DATES: Written comments should be received on or before March 28, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph Terry, (202) 622–8144, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Merchant Card and Third Party Payments.

OMB Number: 1545–XXXX.

Form Number: Form 1099–K.

Abstract: This is a new form is in response to section 102 of Public Law 111–147, the Hiring Incentives to Restore Employment (HIRE) Act. The form reflects a new non-Code general business credit for the retention of certain qualified individuals hired in 2010. The credit is first available for an employer's income tax return with a tax year ending after 3/18/10 where new hired employees hired after after 2/3/10 and before 1/1/11 worked not less 52 consecutive weeks where wages paid in last 26 weeks of employment were at least 80% of wages paid in first 26 weeks. These requirements are to be met before employer is legibile for the lesser $1,000 or 6.2% of wages paid by the employer to the employee during the 52 consecutive week period of each qualified retained worker.

Current Actions: This is a new form.

Type of Review: New collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 18, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–1547 Filed 1–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Bank Secrecy Act Designation of Exempt Person Report Proposed Data Fields

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN is continuing the design of a new Bank Secrecy Act (BSA) database (the Database) and invites comment on the list of proposed data fields within the Database that will support the filing of a Designation of Exempt Person (DOEP) Report by financial institutions required to file such reports under the BSA. This notice does not propose any new regulatory requirements or changes to the requirements related to designation of exempt person reporting, but rather seeks input on technical matters as we transition from a system originally designed for collecting paper forms to a modernized IT environment for electronic reporting. The list of proposed data fields for the "Designation of Exempt Person (DOEP)" appears at the end of this notice. The proposed data fields reflect the filing requirement for all filers of DOEPs under the BSA. The DOEP will be an e-filed dynamic and interactive report used by all BSA filing institutions to report exemptions to the Department of the Treasury. This request for comments covers 31 CFR 103.22(d). This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before March 28, 2011.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—BSA–DOEP Database. DOEP comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* again with a caption, in the body of the text, "Attention: BSA–DOEP Database."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 7.

SUPPLEMENTARY INFORMATION:

Title: BSA Designation of Exempt Persons Report by Depository Financial Institutions, (*See* 31 CFR 103.22(d).

OMB Number: 1506–0012.

Form Number: FinCEN Form 110.

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1]

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate

Continued

Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5313, to permit financial institutions to exempt certain persons from the requirement to file currency transaction reports.

The information collected on the "report" is required to be provided pursuant to 31 U.S.C. 5313, as implemented by FinCEN regulations found at 31 CFR 103.22(d). The information collected under this requirement is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice relating to BSA Reports.[2]

Current Action: FinCEN is in the process of designing the Database to accept modernized electronic BSA reporting. The Database will accept XML based dynamic, state-of-the-Art, reports. Batch and computer-to-computer filing processes will remain unchanged although the file format will change to match the Database. Discrete filings will be based on Adobe *LiveCycle Designer ES* dynamic forms. All filings (discrete, batch, and computed-to-computer) will be accessed through the BSA E-Filing system [3] using current registration and log in procedures. During log-in to the discrete filing option, filers will be prompted through a series of questions [4] (*See* BSA–DOEP Comprehensive Summary of Proposed Data Fields, Part I and Part III, at the end of this notice) thereby providing the discrete filer with a dynamic report tailored for the filer's specific institution. Batch and computer-to-computer filers will file reports based on an electronic file specification that will be finalized after reviewing public comments received in response to this notice.

Dynamic forms are documents with a hierarchical structure that can be converted into XML. This structure can include structure from *XML Schema* and example XML files. Dynamic forms can be saved as PDF files or XDP files. XDP files are used by the *Adobe LiveCycle Form Server* to render files to PDF or HTML as needed. The report for the Database will be designed to be both dynamic (changing layout in response to data propagated from other sources), and interactive (capable of accepting user input). Currently, e-filed discrete forms are based on Designer 8.2.1. The dynamic features of these PDF forms can be manipulated by the Adobe Form Server during the rendering process, or by the Adobe Acrobat/Acrobat Reader [5] client during viewing. Dynamic forms allow *JavaScript* to be embedded thereby enabling programmatic changes to the form layout as well as communication with various data sources (*SOAP, OLEDB*). Besides JavaScript, Adobe dynamic forms includes a proprietary scripting language called *FormCalc,* designed to be a simple language for users familiar with spreadsheet calculations.

The filing of the dynamic report will begin with the filer identifying the type of filing [6] followed by answering several questions about the filer's institution, the institution's RSSD/EIN, and address.[7] Responses to these questions will enable or "auto populate" certain data elements of the report with information obtained from third party data sources, completing most of the filing institution's identifying information. The institution will then complete specific information on the exempt person.

General Review of the BSA–DOEP Comprehensive Summary of Proposed Data Fields [8]

Note: The following general comments apply to all filings: Discrete, batch, and computer-to-computer. Critical fields are marked with an asterisk (*) and must be completed.

- All filing institutions will complete Part I "Filing Information" for each report.
- All filing institutions will complete Part II, "Exempt Person Information" for *each* exemption.
- All filing institutions must complete a Part III. Note that Part III items cover the filer and may include, if appropriate, any affiliated institutions. Filers are only required to complete those items that pertain to the report being made that apply to their institution.
- A Part IV "Signature" is required for all reports.

Type of Review: Initial review of the proposed data elements of the Database in support of the electronic filing of a dynamic BSA–DOEP.

Affected public: Business or other for-profit and not-for-profit financial institutions.

Frequency: As required.

Estimated Reporting Burden: Average of 60 minutes per report and 15 minutes recordkeeping per filing. (The reporting burden of the regulations 31 CFR 103.22(d) is reflected in the burden for the form.).

Estimated Recordkeeping and Reporting Burden for 31 CFR 103.22(d): 75 minutes.

Estimated Number of Respondents = 27,262.

Estimated Total Annual Responses = 31,000.[9]

Estimated Total Annual Reporting and Recordkeeping Burden: 38,750 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107–56.

[2] Treasury Department bureaus such as FinCEN renew their System of Records Notices every three years unless there is cause to amend them more frequently. FinCEN's System of Records Notice for the BSA Report System was most recently published at 73 FR 42405, 42410 (July 21, 2008).

[3] BSA E-Filing is a free service provided by FinCEN. More information on the filing methods may be accessed at *http://bsaefiling.fincen.treas.gov/main.html.*

[4] A series of predetermined questions will be used to establish the type of institution and filing in much the same manner as used in widely accepted income tax filing software.

[5] Adobe Acrobat Reader is free and can be download from the Adobe Web site *http://www.adobe.com/reader.*

[6] *See* item 1 of the BSA–DOEP Comprehensive Summary of Proposed Data Fields at the end of this notice.

[7] *See* Part III of the BSA–DOEP Comprehensive Summary of Proposed Data Fields at the end of this notice.

[8] The complete list of proposed data fields appears at the end of this notice.

[9] Numbers are based on actual 2009 filings as reported to the IRS Enterprise Computing Center-Detroit (EEC–D) as of 12/31 2009.

Dated: January 18, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

DOEP—Comprehensive Summary of Proposed Data Fields—11–05–10

Part I Filing Information

* 1. Indicate the type of filing by checking a, b, c (check only one):
  a. Initial designation
  b. Exemption amended
  c. Exemption revoked
  d. Prior report DCN (*electronic view only*)
* 2. Effective date of the exemption

Part II Exempt Person Information

* 3. Individual's last name or entity's Legal name of the exempt person
  a. (*check*) if entity
4. First name
5. Middle initial (*middle name for electronic filers*)

Suffix (*electronic view only*)

6. Alternate name, *e.g.* AKA—individual or Doing business as (DBA)—entity
7. Occupation or type of business
  a. NAICS Code
* 8. Address
* 9. City
* 10. State

State should be derived through third party data as enhanced data if not provided and ZIP/Postal Code is provided. (Country must be United States for DEP)

* 11. ZIP Code

ZIP + 4 should be derived through third party data as enhanced data if not provided or verified through third party data if provided.

New Data Elements for GEO Coding—Derived through third party data as enhanced data will be identified for the financial institution and any branches provided.

New Data Element of County—Derived through third party data as enhanced data.

Derive data element of Country = USA.

New Data Element of HIFCA code—Derived through third party data as enhanced data will be identified for the financial institution and any branches provided.

New Data Element of HIDTA code—Derived through third party data as enhanced data will be identified for the financial institution and any branches provided.

* 12. TIN (*enter number in space provided and check appropriate type below*)
* 13. TIN type
  a. SSN
  b. EIN
14. E-mail address (if available)
15. Phone number (if available)
  15a. Extension (if any)
16. Type of exempt person, check box a, b, c, or d (check only one)
  a. Listed company
  b. Listed company subsidiary
  c. Eligible non-listed business
  d. Payroll customer

Part III Filer Information

* 17. Name of bank
* 18. EIN
19. RSSD
* 20. Address
* 21. City
* 22. State

State should be derived through third party data as enhanced data if not provided and Country is U.S., Mexico or Canada and ZIP/Postal Code is provided.

* 23. ZIP Code

ZIP + 4 should be derived through third party data as enhanced data if not provided or verified through third party data if provided.

New Data Elements for GEO Coding—Derived through third party data as enhanced data will be identified for the financial institution and any branches provided.

New Data Element of County—Derived through third party data as enhanced data.

Derive data element of Country = USA.

New Data Element of HIFCA code—Derived through third party data as enhanced data will be identified for the financial institution and any branches provided.

New Data Element of HIDTA code—Derived through third party data as enhanced data will be identified for the financial institution and any branches provided.

24. Designated office e-mail address
* 25. Indicate the bank's primary federal regulator by checking a, b, c, d, e, or f (check only one)
  a. OCC
  b. FDIC
  c. FRB
  d. OTS
  e. NCUA
  f. FinCEN (including where IRS or another FinCEN delegate examines for compliance)
26. (*Check*) If this designation is also being made for one or more affiliated banks

Part IV Signature

27. Print name
28. Title
29. Signature
30. Phone number—(include area code)
  30a. Extension
31. Date of signature

[FR Doc. 2011–1586 Filed 1–25–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Bank Secrecy Act Unified Currency Transaction Report Proposed Data Fields

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN is continuing the design of a new Bank Secrecy Act (BSA) database (the Database) and invites comment on the list of proposed data fields within the Database that will be required to support unified Currency Transaction Report (CTR) filings by financial institutions required to file such reports under the BSA. This notice does not propose any new regulatory requirements or changes to the requirements related to currency transaction reporting, but rather seeks input on technical matters as FinCEN transitions from a system originally designed for collecting paper forms to a modernized IT environment for electronic reporting. The list of proposed data fields for the unified "Currency Transaction Report (CTR)" appears at the end of this notice. The proposed data fields reflect the filing requirement for all filers of CTRs under the BSA. The CTR will be an e-filed dynamic and interactive report used by all BSA filing institutions to report designated currency transactions to the Department of the Treasury. This request for comments covers 31 CFR 103.22(b)(1) and (2). This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before March 28, 2011.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, "Attention: PRA Comments—CTR Database." Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* with the caption, "Attention: CTR Database" in the body of the text.

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 7.

SUPPLEMENTARY INFORMATION:

Title: BSA Unified Currency Transaction Report by Financial Institutions (See 31 CFR 103.22(b)(1)(2).

OMB Number: 1506–XXXX.[1]

Form Number: FinCEN Form 112.

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b,

[1] The CTR reporting requirements are currently covered under the following OMB Control numbers: 1506–0004 (Financial Institutions other than Casinos), and 1506–0005 (Casinos and Card Clubs).

12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[2] Regulations implementing Title II of the BSA appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1970, with the enactment of 31 U.S.C. 5313, to require financial institutions to report currency transactions exceeding $10,000.

The information collected on the "report" is required to be provided pursuant to 31 U.S.C. 5313 as implemented by FinCEN regulations found at 31 CFR 103.22(b)(1) and (2). The information collected under this requirement is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice relating to BSA Reports.[3]

Current Action: FinCEN is in the process of designing the Database to accept modernized electronic BSA reporting. The Database will accept XML based dynamic, state-of-the-art, reports. Batch and computer-to-computer filing processes will remain unchanged although the file format will change to match the Database. Discrete filings will be based on Adobe *LiveCycle Designer ES* dynamic forms. All filings (discrete, batch, and computer-to-computer) will be accessed through the BSA E-Filing system[4] using current registration and log-in procedures. During log-in to the discrete filing option, filers will be prompted through a series of questions[5] (See CTR Comprehensive Summary of Proposed Data Fields, item 1 and Part III, at the end of this notice) to provide information that will identify the type of financial institution filing the CTR (depository institution, MSB, broker/dealer, casino, etc.). After log-in, the financial institution filing a U–CTR through the discrete function will answer another set of questions consisting of a subset of the data field appropriate to the filer's specific type of filing institution. Batch and computer-to-computer filers will file reports based on an electronic file specification that will be finalized after reviewing public comments received in response to this notice.

Dynamic forms are documents with a hierarchical structure that can be converted into XML. This hierarchical structure can include structure from *XML Schema* and example XML files. Dynamic forms can be saved as PDF files or XDP files. XDP files are used by the *Adobe LiveCycle Form Server* to render files to PDF or HTML format as needed. The report for the Database will be designed to be both dynamic (changing layout in response to data propagated from other sources) and interactive (capable of accepting user input). Currently, e-filed discrete forms are based on Designer 8.2.1. The dynamic features of these PDF forms can be manipulated by the Adobe Form Server during the rendering process or by the Adobe Acrobat/Acrobat Reader[6] client during viewing. Dynamic forms allow *JavaScript* to be embedded, thereby enabling programmatic changes to the form layout as well as communication with various data sources (*SOAP, OLEDB*). Besides JavaScript, Adobe dynamic forms include a proprietary scripting language called *FormCalc,* designed to be a simple language for users familiar with spreadsheet calculations.

The filing of the dynamic report will begin with the filer identifying the type of filing[7] followed by answering several questions about the filer's institution such as type (depository institution, broker-dealer, MSB, etc.) and name of the institution, the institution's assigned identification number, i.e., RSSD/EIN/CRD/IARD/NFA/SEC, and address.[8] Responses to these questions will enable or "auto populate" certain data elements of the report with information obtained from third-party data sources, completing most of the filing institution's identifying information. The institution will then complete specific information on the person involved in the transaction and the nature of the transaction. A breakdown of the transaction(s) is provided in Part II.[9]

General Review of the CTR Comprehensive Summary of Proposed Data Fields.[10]

Note: The following general comments apply to all filings: Discrete, batch, and computer-to-computer. Critical fields are marked with an asterisk (*) and must be completed or the "unknown (unk)" box must be checked.

- All filing institutions will complete item 1 "Type of Filing" for each report.
- All filing institutions will complete Part I "Person Involved in Transaction" for each beneficiary and/or transactor. Part I may be repeated as many times as necessary to cover all transactions.
- All filing institutions must complete Part II. Note that Part II items cover all filers. Filers are only required to complete those items that pertain to the report being made that apply to their institution. If a filer has additional information that would add value to the report, a "select all" feature will be available. Generally there will be one Part II per report.
- A Part III "Financial Institution Information Where Transaction(s) Takes Place" is required for all reports. Part III may be repeated as many times as necessary to report an unlimited number of financial institutions and/or branches if necessary.

Type of Review: Initial review of the proposed data elements of the Database in support of the electronic filing of a dynamic CTR.

Affected public: Business or other for-profit and not-for-profit financial institutions.

Frequency: As required.

Estimated Reporting Burden: Average of 20 minutes per report and 20 minutes recordkeeping per filing. (The reporting burden of the regulations 31 CFR 103.22(b)(1) and (2) is reflected in the burden for the form.)

Estimated Recordkeeping and Reporting Burden: 40 minutes.

Estimated number of respondents: 82,255 (Includes depository institutions, broker-dealers, future commission

[2] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107–56.

[3] Department of the Treasury bureaus such as FinCEN renew their System of Records Notices every three years unless there is cause to amend them more frequently. FinCEN's System of Records Notice for BSA Reports System was most recently published at 73 FR 42405, 42410 (July 21, 2008).

[4] BSA E-Filing is a free service provided by FinCEN. More information on the filing methods may be accessed at *http://bsaefiling.fincen.treas.gov/main.html.*

[5] A series of predetermined questions will be used to establish the type of institution and filing in much the same manner as used in widely accepted income tax filing software.

[6] Adobe Acrobat Reader is free and can be downloaded from the Adobe Web site *http://www.adobe.com/reader.*

[7] See item 1 of the BSA–U–CTR Comprehensive Summary of Proposed Data Fields at the end of this notice.

[8] See Part III of the BSA–U–CTR Comprehensive Summary of Proposed Data Fields at the end of this notice.

[9] See Part II of the BSA–U–CTR Comprehensive Summary of Proposed Data Fields at the end of this notice.

[10] The complete list of proposed data fields appears at the end of this notice.

merchants, introducing brokers in commodities, money services businesses, and mutual funds).

Estimated Total Annual Responses: 14,111,600.[11]

Estimated Total Annual Reporting and Recordkeeping Burden: 9,407,733 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 19, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

CTR Comprehensive Summary of Proposed Data Fields 11/23/10

Note: Critical fields are identified with the * symbol in front of the data element number.

1. Type of filing (check box that applies):
   a. Initial report
   b. Correct/amend prior report
   c. FinCEN directed Backfiling
   d. Prior report DCN (electronic view only if item 1b is checked)

Part I Person Involved in Transaction

2. a. Beneficiary and Transactor
   b. Beneficiary
   c. Transactor
   d. Courier service (private)
3. Multiple Transactions
* 4. Individual's last name or entity's legal name
   a. (Check if) if entity
   b. (Check if) Unknown
* 5. First name
   a. (Check if) Unknown
6. Middle initial (middle name for electronic filers)

Suffix (Electronic View Only)

7. Gender
   a. (Check if) Male
   b. (Check if) Female
   c. (Check if) Unknown
8. Alternate name, e.g., AKA—Individual or DBA—entity
9. Occupation or type of business
   a. NAICS Code
* 10. Address (number, street, and apt. or suite no.)
   a. (Check if) Unknown
* 11. City
   a. (Check if) Unknown
* 12. State
   a. (Check if) Unknown

State should be derived through third party data as enhanced data if not provided and Country is US, Mexico or Canada and ZIP/Postal Code is provided.

* 13. ZIP/Postal Code
   a. (Check if) Unknown

ZIP + 4 should be derived through third party data as enhanced data if not provided or verified through third party data if provided.

New Data Element of County—Derived through third party data as enhanced data.

New Data Elements for GEO Coding—Derived through third party data as enhanced data.

New Data Element of HIFCA code—Derived through third party data as enhanced data.

New Data Element of HIDTA code—Derived through third party data as enhanced data.

* 14. Country Code
   a. (Check if) Unknown
* 15. TIN (enter number in space provided and check appropriate type below)
   a. (Check if) Unknown
16. TIN type *(if 15 is completed)
   a. EIN
   b. SSN–ITIN
   c. Foreign
* 17. Date of birth
   a. (Check if) Unknown
18. Contact phone number (if available)
18a. Ext. (if any)
19. E-mail address (if available)
*20. Form of identification used to verify identity:
   a. (Check if) Unknown
   b. (Check if) Driver's license/State I.D.
   c. (Check if) Passport
   d. (Check if) Alien registration
   e. Issuing State
   f. Country
   g. Number
   z. (Check if) Other (and specify type in space provided)
21. Cash in amount for individual or entity listed in item 4
   a. Acct. number(s) included in item 21 (paper filers have space to enter 2 account numbers—items 21a and 21b; electronic filers can enter multiple account numbers)
22. Cash out amount for individual or entity listed in item 4
   a. Acct. number(s) included in item 22 (paper filers have space to enter 2 account numbers—items 22a and 22b; electronic filers can enter multiple account numbers)

Part II Amount and Type of Transaction(s)

* 23. Date of transaction
24a. (Check if) Armored car (Fl contract)
   b. (Check if) ATM
   c. (Check if) Mail Deposit or Shipment
   d. (Check if) Night Deposit
   e. (Check if) Aggregated transactions
* 25. Total cash in
   a. Deposit(s)
   b. Payment(s)
   c. Currency received for funds transfer(s) out
   d. Purchase of negotiable instrument(s)
   e. Currency exchange(s)
   f. Currency to prepaid access
   g. Purchase(s) of casino chips, tokens, and other gaming instruments
   h. Currency wager(s) including money plays
   i. Bills inserted into gaming devices
   z. Other (specify)
26. Foreign cash in
   a. Foreign country (two letter code) (paper filers have space to enter one foreign cash in amount and country code—items 26 and 26a; electronic filers can enter multiple foreign cash in amount and country code sets)
* 27. Total cash out
   a. Withdrawal(s)
   b. Advance(s) on credit (including markers)
   c. Currency paid from funds transfer(s) in
   d. Negotiable instrument(s) cashed
   e. Currency exchange(s)
   f. Currency from prepaid access
   g. Redemption(s) of casino chips, tokens, TITO tickets, and other gaming instruments
   h. Payment(s) on wager(s) (including race book and OTB or sports pool
   i. Travel and complimentary expenses and gaming incentives
   j. Payment for tournament, contest or other promotions
   z. Other (specify)
28. Foreign cash out
   a. Foreign country (two letter code) (paper filers have space to enter one foreign cash out amount and country code—items 28 and 28a; electronic filers can enter multiple foreign cash out amount and country code sets)

Part III Financial Institution Where Transaction(s) Takes Place

* 29. Primary Federal regulator (this is a dropdown box with the following selections):
   CFTC
   Federal Reserve
   FDIC
   FinCEN (Including where IRS or another FinCEN delegate examines for compliance)
   NCUA
   OCC
   OTS
   SEC
   Not Applicable
* 30. Legal name of financial institution

[11] Numbers are based on actual 2009 filings as reported to the IRS Enterprise Computing Center-Detroit (EEC–D) as of 12/31/2009. This number reflects the total number of filings for both the CTR and CTRC.

31. Alternate name, e.g., trade name, DBA
* 32. EIN
* 33. Address (number, street, and apt. or suite no.)
* 34. City
* 35. State

State should be derived through third party data as enhanced data if not provided and Country is US, Mexico or Canada and ZIP/Postal Code is provided.

* 36. ZIP/Postal code

ZIP + 4 should be derived through third party data as enhanced data if not provided or verified through third party data if provided.

New Data Element of County—Derived through third party data as enhanced data.

New Data Elements for GEO Coding—Derived through third party data as enhanced data.

New Data Element of HIFCA code—Derived through third party data as enhanced data.

New Data Element of HIDTA code—Derived through third party data as enhanced data.

Derive Data Element of Country code = "US".

* 37. Type of financial Institution (Check only one)
  a. (Check if) Casino/Card club
  b. (Check if) Depository institution
  c. (Check if) MSB
  d. (Check if) Securities/Futures
  z. (Check if) Other (and specify type in space provided)
38. If 37a is checked, indicate type of gaming Institution (Check only one)
  a. (Check if) State licensed casino
  b. (Check if) Tribal authorized casino
  c. (Check if) Card club
  z. (Check if) Other (and specify type in space provided)
39. Filing institution identification number (Check one box to indicate type)
  a. CRD number
  b. IARD number
  c. NFA number
  d. SEC ID number
  e. RSSD number
  f. Identification number
40. Designated office e-mail address
* 41. Contact office
* 42. Phone number
  a. Ext.
43. Date filed

[FR Doc. 2011–1587 Filed 1–25–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Survey of Information Sharing Practices With Affiliates

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before February 25, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain*.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov,* or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Survey of Information Sharing Practices with Affiliates.

OMB Number: 1550–0121.

Form Numbers: N/A.

Description: The OTS is required to submit a report to the Congress with any recommendations for legislative or regulatory action, pursuant to Section 214(e) of the Fair and Accurate Transactions Act of 2003 ("FACT Act" or the "Act") Public Law 108–159, 117 Stat. 1952. The OTS will gather information by means of a Survey to be completed by financial institutions and other persons that are creditors or users of consumer reports. The OTS will use the Survey responses to prepare a report to Congress on the information sharing practices by financial institutions, creditors, or users of consumer reports with their affiliates.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 22.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 220 hours.

Dated: January 20, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–1676 Filed 1–25–11; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 17 January 26, 2011

Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 150 and 151
Position Limits for Derivatives; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 150 and 151

RIN 3038–AD15 and 3038–AD16

Position Limits for Derivatives

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") requires the Commodity Futures Trading Commission ("Commission" or "CFTC") to establish position limits for certain physical commodity derivatives. The Commission is proposing to simultaneously establish position limits and limit formulas for certain physical commodity futures and option contracts executed pursuant to the rules of designated contract markets ("DCM") and physical commodity swaps that are economically equivalent to such DCM contracts. In compliance with the requirements of the Dodd-Frank Act, the CFTC is also proposing aggregate position limits that would apply across different trading venues to contracts based on the same underlying commodity. The Commission is proposing to establish position limits in two phases: The first phase would involve adopting current DCM spot-month limits, while the second phase would involve establishing non-spot-month limits based on open interest levels as well as establishing Commission-determined spot-month limits. The proposal includes exemptions for *bona fide* hedging transactions and for positions that are established in good faith prior to the effective date of specific limits that could be adopted pursuant to final regulations. This notice of rulemaking also proposes new account aggregation standards, visibility regulations that are similar to current reporting obligations for large *bona fide* hedgers, and new regulations establishing requirements and standards for position limits and accountability rules that are implemented by registered entities. The Commission solicits comment on any aspect of the proposal. The Commission also solicits comment on particular issues throughout the preamble.

DATES: Comments must be received on or before March 28, 2011.

ADDRESSES: You may submit comments, identified by RIN numbers 3038–AD15 and 3038–AD16, by any of the following methods:

- Agency Web site, via its Comments Online process: *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 instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to 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 procedure established in § 145.9 of the Commission's regulations (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://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: Stephen Sherrod, Acting Deputy Director, Market Surveillance, (202) 418–5452, *ssherrod@cftc.gov,* or Bruce Fekrat, Senior Special Counsel, Office of the Director, (202) 418–5578, *bfekrat@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Position Limits for Physical Commodity Futures and Swaps

A. Background

The Commodity Exchange Act ("CEA" or "Act") of 1936,[1] as amended by Title VII of the Dodd-Frank Act,[2] includes provisions imposing clearing and trade execution requirements on standardized derivatives as well as comprehensive recordkeeping and reporting requirements that extend to all swaps, as defined in CEA section 1a(47). Newly amended section 4a(a)(1) of the Act authorizes the Commission to extend position limits beyond futures and option contracts to swaps traded on a DCM or swap execution facility ("SEF"), swaps that are economically equivalent to DCM futures and option contracts with position limits, and swaps not traded on a DCM or SEF that perform or affect a significant price discovery function ("SPDF") with respect to regulated entities. Further, new section 4a(a)(5) of the Act requires aggregate position limits for swaps that are economically equivalent to DCM futures and option contracts with CFTC-set position limits. Similarly, new section 4a(a)(6) of the Act requires the Commission to apply position limits on an aggregate basis to contracts based on the same underlying commodity across: (1) DCMs; (2) with respect to foreign boards of trade ("FBOTs"), contracts that are price-linked to a DCM or SEF contract and made available from within the United States via direct access; and (3) SPDF swaps.

Sections 4a(a)(2)(B) and 4a(a)(3) of the Act charge the Commission with setting spot-month, single-month and all-months-combined limits for DCM futures and option contracts on exempt and agricultural commodities [3] within 180 and 270 days, respectively, of the Dodd-Frank Act's enactment.[4] In this notice of rulemaking, the Commission is proposing to establish limits required by Congress in amended CEA section 4a in two phases, which could involve multiple final regulations or different implementation dates.[5] In the first

[1] 7 U.S.C. 1 *et seq.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Section 1a(20) of the Act defines the term "exempt commodity" to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(19) defines the term "excluded commodity" to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt or equity instrument, measure of inflation, or other macroeconomic index or measure. Although the term "agricultural commodity" is not defined in the Act, CEA section 1a(9) enumerates a non-exclusive list of agricultural commodities. The Commission issued a notice of rulemaking proposing a definition for the term "agricultural commodity" on October 26, 2010. 75 FR 65586. Although broadly defined, exempt commodity futures contracts are often viewed as energy and metals products.

[4] Section 737 of the Dodd-Frank Act, which amended section 4a of the Act, became effective on July 21, 2010.

[5] The Commission may implement the two phases in various ways. It may, for example, pursuant to this notice of proposed rulemaking, adopt a single final regulation with two implementation provisions, or it may adopt two separate final regulations.

transitional phase the Commission proposes to establish spot-month position limits at the levels currently imposed by DCMs. This first phase would include related provisions, such as proposed regulation 151.5, pertaining to *bona fide* hedging, and proposed § 151.7, pertaining to account aggregation standards. During the second phase the Commission proposes to establish single-month and all-months-combined position limits and to set Commission-determined spot-month position limits.

As discussed in further detail below, phased implementation is possible because spot-month position limits are based on available information: DCMs currently set spot-month position limits based on their own estimates of deliverable supply. Spot-month limits can, therefore, be implemented by the Commission relatively expeditiously. In contrast, most non-spot-month position limits, as set by the Commission previously and as proposed herein, are based on open interest levels. Because the Commission was barred under the Commodity Futures Modernization Act of 2000 from collecting regular data or regulating most swaps markets, the Commission does not currently have the open interest and market structure data necessary to establish non-spot-month position limits. The Commission has proposed regulations that would permit it to gather positional data on physical commodity swaps on a regular basis.[6]

Because the Commission will not be able to implement a comprehensive system for gathering swap positional data for some time, this notice of proposed rulemaking does not propose to determine the numerical non-spot-month position limits for exempt and agricultural commodity derivatives resulting from the application of the open interest formulas in proposed § 151.4. Rather, this notice of rulemaking provides for the determination of such limits when the Commission receives data regarding the levels of open interest in the swap markets to which these limits will apply.

The Commission anticipates fixing initial position limits pursuant to the formulas proposed herein through the issuance of a Commission order. As proposed, CFTC-set position limits after the transitional period would be re-calculated every year based on the formulas set forth in proposed § 151.4, subject to any changes to the formulas that may be proposed and adopted based on the Commission's surveillance of the markets for referenced contracts. In this regard, as discussed in further detail below, the proposed position visibility regulations, which would effectuate reporting requirements that are similar to current reporting requirements for large *bona fide* hedgers, may facilitate evaluating the efficacy and appropriateness of the proposed position limit framework if adopted.

B. Statutory Authority

1. Section 4a of the Act

The Dodd-Frank Act preserves the Commission's broad authority to set position limits. Thus, for example, section 4a(a)(1) of the Act expressly permits the Commission to set "different limits for, among other things, different commodities, markets, futures, or delivery months * * *" Under new CEA section 4a(a)(7), the Commission also has authority to exempt persons or transactions from any position limits it establishes.

New section 4a(a)(3) of the Act expressly directs the Commission to set such limits at levels that would serve, to the maximum extent practicable, in its discretion:

(i) To diminish, eliminate, or prevent excessive speculation as described under this section;

(ii) To deter and prevent market manipulation, squeezes, and corners;

(iii) To ensure sufficient market liquidity for *bona fide* hedgers; and

(iv) To ensure that the price discovery function of the underlying market is not disrupted.[7]

This provision incorporates the Commission's historical approach to setting limits, and is harmonious with the congressional directive in section 4a(a)(1) of the Act that the Commission set position limits to prevent or minimize price disruptions that could be caused by excessive speculative trading.

Section 4a(a)(5) of the Act requires the Commission to develop, concurrently with position limits for DCM futures and option contracts, position limits for swaps that are economically equivalent to such contracts. Section 4a(a)(5) of the Act requires such position limits, when developed, to be adopted simultaneously.[8] The defined term "referenced contract" in proposed § 151.1, through its reference to the core futures contracts listed in proposed § 151.2 ("core referenced futures contracts" or "151.2-listed contract"), identifies the "economically equivalent" derivatives that would be subject to the concurrent development, simultaneous establishment and aggregate implementation requirements of CEA section 4a. Referenced contracts are defined as derivatives (1) that are directly or indirectly linked to the price of a 151.2-listed contract, or (2) that are based on the price of the same commodity for delivery at the same location(s) as that of a 151.2-listed contract, or another delivery location with substantially the same supply and demand fundamentals as the delivery location of a 151.2-listed contract.[9] The second part of the definition of referenced contract therefore proposes to include derivatives that are settled to a price series that is not based on, but is nonetheless highly correlated to, the price of a 151.2-listed contract. Proposed § 151.2, in turn, enumerates 28 core physical delivery DCM futures contracts that would be subject to the Commission's proposed position limit framework. Generally, the 151.2-listed contracts were selected either because such contracts have high levels of open interest and significant notional value or because they otherwise may provide a reference price for a significant number of cash market transactions.[10]

A primary mission of the CFTC is to foster fair, open and efficient functioning of the commodity derivatives markets.[11] Critical to fulfilling this statutory mandate is protecting market users and the public from undue burdens that may result from "excessive speculation." Specifically, section 4a of the Act, as amended by the Dodd-Frank Act, provides that:

"Excessive speculation in any commodity under contracts of sale of such commodity for future delivery [(or swaps traded on or subject to the rules of a designated contract market or swap execution facility, or swaps that perform a significant price discovery function with respect to a registered entity)] * * * causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such

[6] *See Position Reports for Physical Commodity Swaps,* 75 FR 67258, November 2, 2010 (proposing position reports on economically equivalent swaps from clearing organizations, their members and swap dealers).

[7] 7 U.S.C. 6a(a)(3).

[8] Unlike swaps that are economically equivalent to DCM futures and option contracts with position limits, the Commission is not required to develop or establish position limits for SPDF swaps at the same time that it develops or establishes position limits for DCM futures and option contracts. The Commission intends to propose in a subsequent notice of rulemaking a process by which swaps that perform or affect a significant price discovery function with respect to regulated entities can be identified.

[9] 75 FR 67258, at 67260 (discussing the scope of directly and indirectly linked swaps).

[10] *See* 75 FR 67258, at 62758.

[11] *See* section 3 of the Act, 7 U.S.C. 5.

burden, the Commission shall * * * proclaim and fix such limits on the amount of trading which may be done or positions which may be held by any person * * * as the Commission finds are necessary to diminish, eliminate or prevent such burden. * * *"[12]

Congress has declared that sudden or unreasonable price fluctuations attributable to "excessive speculation" create an "undue and unnecessary burden" on interstate commerce and directed that the Commission shall establish limits on the amounts of positions which may be held as it finds necessary to "diminish, eliminate, or prevent" such burden. As the plain reading of the statutory text indicates, the prevention of sudden or unreasonable changes in price attributable to large speculative positions, even without manipulative intent, is a congressionally-endorsed regulatory objective of the Commission.

The Commission is not required to find that an undue burden on interstate commerce resulting from excessive speculation exists or is likely to occur in the future in order to impose position limits. Nor is the Commission required to make an affirmative finding that position limits are necessary to prevent sudden or unreasonable fluctuations or unwarranted changes in prices or otherwise necessary for market protection. Rather, the Commission may impose position limits prophylactically, based on its reasonable judgment that such limits are necessary for the purpose of "diminishing, eliminating, or preventing" such burdens on interstate commerce that the Congress has found result from excessive speculation. A more restrictive reading would be contrary to the congressional findings and objectives as embodied in section 4a of the Act.[13]

[12] Section 4a(a)(1) of the Act, 7 U.S.C. 6a(a)(1).

[13] Consistent with the congressional findings and objectives, the Commission has previously set position limits without finding that an undue burden of interstate commerce has occurred or is likely to occur, and in so doing has expressly stated that such additional determinations by the Commission were not necessary in light of the congressional findings in section 4a of the Act. In its 1981 rulemaking to require all exchanges to adopt position limits for commodities for which the Commission itself had not established limits, the Commission stated:

"As stated in the proposal, the prevention of large and/or abrupt price movements which are attributable to the extraordinarily large speculative positions is a congressionally endorsed regulatory objective of the Commission. Further, it is the Commission's view that this objective is enhanced by the speculative position limits since it appears that the capacity of any contract to absorb the establishment and liquidation of large speculative positions in an orderly manner is related to the relative size of such positions, *i.e.,* the capacity of the market is not unlimited."

Establishment of Speculative Position Limits, 46 FR 50938, Oct. 16, 1981 (adopting then regulation 1.61 (now part of regulation 150.5)).

2. Legislative History and Discussion

The relevant legislative history, including the congressional debates and studies preceding the enactment of the CEA, gives further evidence to the broad mandate conferred on the Commission pursuant to CEA section 4a. Throughout the 1920s and into the 1930s, a series of studies and reports found that large speculative positions in the futures markets for grain, even without manipulative intent, can cause "disturbances" and "wild and erratic" price fluctuations. To address such market disturbances, Congress was urged to adopt position limits to restrict speculative trading notwithstanding the absence of "the deliberative purpose of manipulating the market."[14] In 1936, based upon such reports and testimony, Congress provided the Commodity Exchange Authority (the predecessor of the Commission) with the authority to impose Federal speculative position limits. In doing so, Congress expressly acknowledged the potential for market disruptions resulting from excessive speculative trading and the need for measures to prevent or minimize such occurrence.[15]

The basic statutory mandate in section 4a of the Act to establish position limits to prevent "undue burdens" associated with "excessive speculation" has remained unchanged—and has been reaffirmed by Congress several times—over the past seven decades. In 1974, when Congress created the Commission as an independent regulatory agency, it reiterated the purpose of the Act to prevent fraud and manipulation and to control speculation.[16] In connection with another major overhaul of the Act, the Commodity Futures Modernization Act of 2000, Congress expressly authorized exchanges to use position accountability as an alternative means to limit speculative positions. However, Congress did not alter the Commission's mandate in CEA section 4a to establish position limits to prevent such undue burdens on interstate commerce. Then, in the CFTC Reauthorization Act of

[14] *See* 7, U.S. Fed. Trade Commission, Report of the Federal Trade Commission on the Grain Trade: Effects of Future Trading 293–94 (1926). For example, the Federal Trade Commission concluded:

The very large trader by himself may cause important fluctuations in the market. If he has the necessary resources, operations influenced by the idea that he has such power are bound to cause abnormal fluctuations in prices. Whether he is more often right than wrong and more often successful than unsuccessful, and whether influenced by a desire to manipulate or not, if he is large enough he can cause disturbances in the market which impair its proper functioning and are harmful to producers and consumers.

The FTC recommended that limits be placed on trading, particularly on the amount of open interest that could be held by any one trader. Similarly, based on its study of price fluctuations in the wheat market, the Department of Agriculture urged Congress to provide the Grain Futures Administration (GFA), which had been created by the Grain Futures Act, with the authority to impose position limits. *See* Fluctuations in Wheat Futures, S. Doc. No. 69–135 (1st Sess. 1926); *see also Speculative Position Limits in Energy Futures Markets: Hearing Before the U.S. Commodity Futures Trading Commission* (July 28, 2009) (statement of Dan M. Berkovitz, General Counsel, U.S. Commodity Futures Trading Commission), *available at http://www.cftc.gov/PressRoom/SpeechesTestimony/2009/berkovitzstatement072809.html.*

[15] The report accompanying the 1935 bill that became the Act stated "the fundamental purposes of the measure is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves. H.R. Rep. No. 74–421, at 1 (1935), accompanying H.R. 6772.

[16] S. Rep. No. 93–1131, 93rd Cong., 2d Sess. (1974).

2008,[17] Congress, among other things, expanded the Commission's authority to set position limits to significant price discovery contracts on exempt commercial markets.

Finally, as outlined above, pursuant to the Dodd-Frank Act, Congress significantly expanded the Commission's authority and mandate to establish position limits beyond futures and option contracts to include, for example, economically equivalent derivatives.[18] Congress expressly directed the Commission to set limits in accordance with the standards set forth in sections 4a(a)(1) and 4a(a)(3) of the Act,[19] thereby reaffirming the Commission's authority to establish position limits as it finds necessary in its discretion to address excessive speculation.[20] As noted earlier, section 4a(a)(3) of the Act expressly sets forth the Commission's broad discretion in setting position limits under section 4a(a)(1), and the necessary considerations in setting such limits. Section 4a(a)(3) effectively incorporates the Commission's historical approach to setting limits,[21] and is harmonious with the congressional directive in section 4a(a)(1) of the Act that the Commission set position limits in its discretion to prevent or minimize burdens that could be caused by excessive speculative trading.

Large concentrated positions in the physical commodity markets can potentially facilitate price distortions given that the capacity of any market to absorb the establishment and liquidation of large positions in an orderly manner is related to the size of such positions relative to the market and the market's structure and is, therefore, not unlimited.[22] Concentration of large positions in one or a few traders' accounts can also create the unwarranted appearance of appreciable liquidity and market depth which, in fact, may not exist. Trading under such conditions can result in sudden changes to commodity prices that would otherwise not prevail if traders' positions were more evenly distributed among market participants.[23] Position limits address these risks through ensuring the participation of a minimum number of traders that are independent of each other and have different trading objectives and strategies.

The Commission currently sets and enforces position limits with respect to certain agricultural products. For metals and energy commodities, in 1981 the Commission began to require exchange-set limits, with a Commission approval process, for any active futures markets without existing Commission or exchange limits.[24] This framework was significantly scaled back in 1991, after which the Commission began to approve exchange accountability provisions in place of position limits.[25] Such accountability provisions took effect with respect to certain metals derivatives in 1992, and with respect to energy and soft agricultural derivatives in 2001. Currently, the Commission authorizes DCMs to set position limits and accountability rules to protect against manipulation and congestion and price distortions. The proliferation of economically-equivalent instruments trading in multiple trading venues, however, warrants extension of the Commission-set position limits beyond agricultural products to metals and energy commodities. The Commission anticipates that this market trend will continue as, consistent with the regulatory structure established by the Dodd-Frank Act, economically equivalent derivatives based on exempt and agricultural commodities are executed pursuant to the rules of multiple DCMs and SEFs and other Commission registrants. Under these circumstances, uniform position limits should be established across such venues to prevent regulatory arbitrage and ensure a level playing field for all trading venues. Because it has the authority to gather data and impose regulations across trading venues, the Commission is uniquely situated to establish uniform position limits and related requirements for all economically equivalent derivatives.[26] A uniform approach would also encourage better risk management and could reduce systemic risk. Despite centralized clearing arrangements employed by DCMs to reduce systemic risk, a levered market participant can still take a very large speculative position across multiple venues. The proposed position limit framework would reduce the ability of such levered entities to take such positions and to cause systemic risk.

As noted above, in setting position limits to guard against excessive speculation, the Commission, pursuant to the factors enumerated in section 4a(a)(3) of the Act, has endeavored to maximize the objectives of preventing excessive speculation, deterring and preventing market manipulation, and ensuring that markets remain sufficiently liquid so as to afford end users and producers of commodities the ability to hedge commercial risks and to promote efficient price discovery.

C. Public Comments in Advance of Commission Action

As with other forthcoming notices of rulemaking proposing regulations to implement the Dodd-Frank Act, the Commission accepted public comments in advance of issuing this release. The Commission has received approximately 350 public comments as of December 16, 2010.[27] The Commission has reviewed these comments and considered them in drafting the

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[17] Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[18] Dodd-Frank Act, Public Law 111–203, 737, 124 Stat. 1376 (2010). The Dodd-Frank Act amendments to section 4a of the Act became effective upon the date of enactment of the Dodd-Frank Act.

[19] Section 4a(a)(2) of the Act provides that the Commission, in setting position limits, must do so in accordance with the standards set forth in CEA section 4a(a)(1). 7 U.S.C. 6a(a)(2).

[20] Senator Lincoln (then the Chair to the Senate Agriculture Committee) stated that amended section 4a "will grant broad authority to the [Commission] to once and for all set aggregate position limits across all markets on non-commercial market participants * * * I believe the adoption of aggregate position limits will help bring some normalcy back to our markets and reduce some of the volatility we have witnessed over the last few years." 156 Cong. Rec. S5919 (daily ed. July 15, 2010) (statement of Sen. Lincoln).

[21] *See* 46 FR 50938.

[22] *See Fluctuations in Wheat Futures,* S. Doc. No. 69–135 (1st Sess. 1926); and 7 U.S. Fed. Trade Commission, *Report of the Federal Trade Commission on the Grain Trade: Effects of Future Trading* 293–94 (1926); *see also* Thomas A. Hieronymus, *Economics of Futures Trading* 313 (1971) ("Limits on speculative positions have met with a high degree of trade acceptance and only recently has the size of some of the limits began to be called into question. The general notion is that no one man should be allowed to have such a position or trade in such volume that he could push the price around with his sheer bulk").

[23] By way of illustration, after the silver futures market crisis during late 1979 to early 1980, commonly referred to as "the Hunt Brothers silver manipulation," the Commission concluded that "[t]he recent events in silver suggest that the capacity of any futures market to absorb large positions in an orderly manner is not unlimited." Subsequently, the Commission adopted regulation 1.61, which required all exchanges to adopt and submit for Commission approval position limits in active futures markets for which no exchange or Commission limits were then in effect. More recently, Congress, in response to high prices and volatility in commodity prices generally, and energy prices in particular, extended the Commission's authority to set limits to significant price discovery contracts traded on exempt commercial markets. Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[24] 46 FR 50938.

[25] *See Speculative Position Limits—Exemptions from Commission Rule 1.61,* 56 FR 51687, October 15, 1991; and *Speculative Position Limits—Exemptions from Commission Rule 1.61,* 57 FR 29064, June 30, 1992.

[26] Because individual markets have knowledge of positions on their own facilities, it is difficult for them to assess the full impact of a trader's positions on the greater market.

[27] These comments may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_26_PosLimits.html.*

proposed regulations. The majority of commenters submitted letters advocating the view that position limits should be set at one percent of the total annual world production for a given commodity. Several expressed views on a single issue, notably the importance of preventing market manipulation.

The view most commonly expressed by certain other commenters, including the CME Group, Electric Power Supply Association, Futures Industry Association, Morgan Stanley, and National Gas Supply Association, was opposition to a provision that resulted in the "crowding out" of speculative positions. A "crowding out" provision would have limited the ability of a trader that hedges or acts as a swap dealer to take on speculative positions once certain positional thresholds were exceeded.[28] A concern raised by the commenters was related to the unintended consequence of excluding knowledgeable traders, or traders that needed to hold speculative positions, from the commodity derivatives markets. The Commission has determined to not propose a "crowding out" provision at this time.

Several commenters addressed *bona fide* hedging exemptions to position limits. Some of these commenters, for example the CME Group, presented the view that the Commission should adopt a broad definition for *bona fide* positions that would cover "all non-speculative" positions. Morgan Stanley recommended that the Commission "exercise its discretion to interpret [s]ection 4(a)(c)(2), including the term 'economically appropriate', broadly to permit products and services similar to [risk management products offered by swap dealers] to qualify as bona fide hedging transactions or positions." The National Grain and Feed Association ("NGFA") presented the view that the Commission "should use its authority to grant hedge exemptions to financial institutions, index funds, hedge funds or other nontraditional participants in agricultural futures markets extremely sparingly and only if it can be demonstrated clearly that such exemptions will not harm contract performance for traditional hedgers." The NGFA further recommended that the Commission "'look through' swap transactions and allow hedge exemptions to be granted only for that portion of swap dealers' business where the swap dealers' counterparties are entities that otherwise would have qualified for a hedge exemption." The Commission has seriously considered these views on the *bona fide* hedging exemption in light of the express language of the Act. The Commission has accordingly determined to propose a definition of *bona fide* hedging in proposed § 151.5(a)(1)(iv) that provides for an exemption for a non-*bona fide* swap counterparty only if such swap transaction or position represents cash market transactions and offsets its *bona fide* counterparty's cash market risks.

Several commenters, including the CME Group, Electric Power Supply Association, Futures Industry Association, GDF Suez Energy, Morgan Stanley, and NextEra Energy Power Marketing, expressed concerns relating to the potential for overly strict account aggregation standards. The aggregation standards of the proposed regulations attempt to address some of these concerns by including exemptions for passive investments in independently controlled and managed commercial entities as well as exemptions for certain positions held with futures commission merchants and for traders that are passive pool participants. The law firm Akin Gump Strauss Hauer & Feld LLP, on behalf of a commodity trading advisor, specifically argued for the retention of the independent account controller exemption currently in force in part 150 of the Commission's regulations, echoing the views of numerous commenters to the January 2010 proposed rulemaking for position limits on certain energy contracts. As explained in more detail in the aggregation section of this preamble, the proposed regulations address the concern of not having an independent account controller exemption by establishing the owned non-financial entity exemption. Some commenters, for example the Electric Power Supply Association, Futures Industry Association and Morgan Stanley, argued that aggregation should be based solely on common control, with no consideration given to common ownership. At this time, the Commission does not see sufficient justification to change its longstanding approach of considering both control and ownership in its aggregation policy. The traditional ten percent ownership standard has proven to be a useful measure in conjunction with the control standard. In addition, the proposed owned non-financial entity exemption addresses situations in which the 10 percent ownership standard has been exceeded but a lack of common control over trading decisions and strategies warrants disaggregation.

The CME Group also argued that position limits should not be imposed until the Commission has gathered sufficient data on the physical commodity swap markets. In order to address similar concerns, the Commission proposed regulations in November 2010 that are specifically designed to gather positional data on physical commodity swaps.[29] The Commission anticipates the collection of positional data to begin during the third quarter of 2011. Furthermore, the Commission is proposing to fix specific position limits pursuant to formulas proposed herein (and making other aspects of the proposed regulations effective) only after collecting positional data on physical commodity swaps and through the issuance of a Commission order during the first quarter of 2012, unless the Commission determines that there are certain commodities for which data is sufficient to implement limits sooner.

In addition to review and consideration of public comments, Commission staff has held 32 meetings with a variety of market participants, including *bona fide* hedgers, swap dealers, hedge funds and several industry groups, to discuss position limits and in particular to gather information about the potential impact of limits.[30] The Commission has considered information obtained in these meetings in drafting the proposed regulations.

II. The Proposed Regulations

A. Spot-Month Position Limits

The Commission proposes definitions in § 151.3 that identify the spot month[31] for referenced contracts in the same commodity that would be subject to the proposed position limit framework. These definitions reference the dates on which a spot month commences and terminates. The definitions for the spot period are based on existing spot-month definitions set forth by DCMs for 151.2-listed contracts. These periods, as defined by the Commission, would

[28] *See Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations,* 75 FR 4144, at 4146, January 26, 2010, withdrawn 75 FR 50950, August 18, 2010.

[29] *See* 75 FR 67258.

[30] The Commission has made public all meetings that Commission staff has held with outside organizations in connection with the implementation of the Dodd-Frank Act, including, for each meeting, a list of attendees and a summary of the meeting. This information may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/otc_meetings.html.*

[31] The term "spot month" does not refer to a month of time. Rather, it is the trading period immediately preceding the delivery period for a physically-delivered futures contract and cash-settled swaps and futures contracts that are linked to the physically-delivered contract. The length of this period may thus vary depending on the referenced contract, as described in proposed regulation 151.3.

continue into the delivery period for the core referenced futures contracts, which in turn determine the spot month for all referenced contracts in the same commodity.

With three exceptions, the 151.2-listed contracts with DCM-defined spot months are currently subject to exchange-set spot-month position limits.[32] Proposed § 151.4 would impose and aggregately apply spot-month position limits for the referenced contracts. Consistent with the Commission's longstanding policy regarding the appropriate level of spot-month limits for physical delivery contracts, these position limits would be set at 25 percent of estimated deliverable supply. The spot-month limits would be adjusted annually thereafter.

The proposed deliverable supply formula narrowly targets the trading that may be most susceptible to, or likely to facilitate, price disruptions. The formula seeks to minimize the potential for corners and squeezes by facilitating the orderly liquidation of positions as the market approaches the end of trading and by restricting the swap positions which may be used to influence the price of referenced contracts that are executed centrally. Referenced contracts that are based on the price of the same commodity but where delivery is at a location that is different than the delivery location of a 151.2-listed contract would not be subject to the proposed Federal spot-month position limit. Because the potential incentive and ability to manipulate the spot-month delivery process to benefit a derivatives position providing for delivery at a different delivery location is less, Federal spot-month limits would apply only to futures, options and swaps that are directly price-linked to a 151.2-listed core referenced contract or that settle to a price series that prices the same commodity at the same delivery location. Finally, the proposed spot-month limits would apply on an aggregate basis, thereby subjecting these economically equivalent derivatives to the same spot-month limits, whether or not they are listed for trading on a DCM, cleared, or uncleared.

Proposed § 151.4 would apply spot-month position limits separately for physically-delivered contracts and all cash-settled contracts, including cash-settled futures and swaps. A trader may therefore have up to the spot-month position limit in both the physically-delivered and cash-settled contracts. For example, if the spot-month limit for a referenced contract is 1,000 contracts, then a trader may hold up to 1,000 contracts long in the physically-delivered contract and 1,000 contracts long in the cash-settled contract. A trader's cash-settled contract position would separately be a function of the trader's position in referenced contracts based on the same commodity that are cash-settled futures and swaps.[33]

The proposed spot-month position limit formula is based on the Commission's longstanding approach to setting and overseeing spot-month limits and is consistent with industry practice and the goals of preventing manipulation through corners or squeezes. Core Principles 3 and 5 for DCMs address congressional concerns regarding potential manipulation of the futures market, and the Commission has typically evaluated compliance with these core principles in tandem. Core Principle 3 specifies that a board of trade shall list only contracts that are not readily susceptible to manipulation, while Core Principle 5 obligates a DCM to establish position limits and position accountability provisions where necessary and appropriate "to reduce the threat of market manipulation or congestion, especially during the delivery month."

In determining whether a physical delivery contract complies with Core Principle 3, the Commission considers whether the specified terms and conditions, considered as a whole, result in a deliverable supply that is sufficient to ensure that the contract is not conducive to price manipulation or distortion. In general, the term "deliverable supply" means the quantity of the commodity meeting a derivative contract's delivery specifications that can reasonably be expected to be readily available to short traders and saleable by long traders at its market value in normal cash marketing channels at the derivative contract's delivery points during the specified delivery period, barring abnormal movement in interstate commerce. The establishment of a spot-month limit pursuant to Core Principle 5 is made based on the analysis of deliverable supplies, and the Acceptable Practices for this Core Principle state that, for physically delivered contracts, the spot-month limit should not exceed 25 percent of the estimated deliverable supply. Likewise, the guidance for DCMs in Commission § 150.5(b) provides that for physical delivery contracts, the spot-month limit level must be no greater than 25 percent of the estimated spot-month deliverable supply, calculated separately for each month to be listed.

In § 151.4, the Commission proposes spot-month limits, for not only referenced contracts that are futures but also referenced contracts that are economically equivalent swaps, that would, during the initial implementation period, be set at the spot-month limit levels determined by DCMs to be equal to 25 percent of estimated deliverable supply.[34] In the second phase of implementation, these spot-month limits would be based on 25 percent of estimated deliverable supply as determined by the Commission, which could choose to adopt exchange-provided estimates or, for example, in the case of inconsistent estimates from exchanges, issue its own estimates. Pursuant to current exchange procedures for updating the spot-month limits, exchanges initially establish and periodically update their limits through rule amendments that are filed with the Commission under self-certification or approval procedures. As part of the initial filing, or in response to subsequent inquiries from the Commission, the exchanges provide information showing how the spot-month limits comply with the Commission's regulations and acceptable practices.

With respect to the existing spot-month limits that currently are in effect for referenced contracts, the Commission notes that, irrespective of the manner in which a rule amendment is filed (by self-certification or for approval), Commission staff currently evaluates the limits for compliance with the requirements of Core Principle 5 and the criteria set out in the Commission's Acceptable Practices. For physically delivered contracts, staff evaluates the information supplied by the exchange and other available information regarding the underlying commodity to ensure that the spot-month limit does not exceed 25 percent of the estimated deliverable supplies. For cash-settled

[32] The only contracts based on a physical commodity that currently do not have spot-month limits are the COMEX mini-sized gold, silver, and copper contracts that are cash-settled based on the futures settlement prices of the physical-delivery contracts. The cash-settled contracts have position accountability provisions in the spot month rather than outright spot-month limits. These cash-settled contracts have relatively small levels of open interest.

[33] For purposes of applying the limits, a trader would convert and aggregate positions in swaps on a futures equivalent basis. Guidance on futures equivalency is provided in Appendix A to the Commission's proposed part 20 rulemaking on position reports for physical commodity swaps. 75 FR 67258, at 67269.

[34] For the ICE Futures U.S. Sugar No. 16 (SF) and Chicago Mercantile Exchange Class III Milk (DA), the Commission proposes to adopt the DCM single-month limits for the nearby month or first-to-expire referenced contract as spot-month limits. These contracts currently have single-month limits which are enforced in the spot month.

contracts, staff evaluates the information supplied by the exchanges and independently assesses the nature of the market underlying the cash-settlement calculation, including the depth and breadth of trading in that market, to determine the ability of a trader to exert market power and influence the cash-settlement price, with the aim of having a spot-month limit level that effectively limits a trader's incentive to exercise such market power.

With respect to cash-settled contracts, proposed § 151.4 incorporates a conditional-spot-month limit that permits traders without a hedge exemption to acquire position levels that are five times the spot-month limit if such positions are exclusively in cash-settled contracts and the trader holds physical commodity positions that are less than or equal to 25 percent of the estimated deliverable supply. The proposed limit maximizes the objectives, enumerated in section 4a(a)(3) of the Act, of deterring manipulation and excessive speculation while ensuring market liquidity and efficient price discovery by establishing a higher limit for cash-settled contracts as long as such positions are decoupled from large physical commodity holdings and the positions in physical delivery contracts which set or affect the value of cash-settled positions. The conditional-spot-month position limit generally tracks exchange-set position limits currently implemented for certain cash-settled energy futures and swaps. For example, the NYMEX Henry Hub Natural Gas Last Day Financial Swap, the NYMEX Henry Hub Natural Gas Look-Alike Last Day Financial Futures, and the ICE Henry LD1 swap are all cash-settled contracts subject to a conditional-spot-month limit that, with the exception of the requirement that a trader not hold large cash commodity positions, is identical in structure to the limit proposed herein.

This proposed conditional spot-month position limit formula is consistent with Commission guidance. The Acceptable Practices for Core Principle 5 state that a spot-month position limit may be necessary if the underlying cash market is small or illiquid such that traders can disrupt the cash market or otherwise influence the cash-settlement price to profit on a futures position. In these cases, the limit should be set at a level that minimizes the potential for manipulation or distortion of the futures contract or the underlying commodity's price. With respect to cash-settled contracts where the underlying product is a physical commodity with limited supplies where a trader can exert market power (including agricultural and exempt commodities), the Commission has viewed the specification of a spot-month limit to be an essential term and condition of such contracts in order to ensure that they are not readily susceptible to manipulation, which is the Core Principle 3 requirement, and to satisfy the requirements of Core Principle 5 and the Acceptable Practices thereunder. In practice, for cash-settled contracts on agricultural and exempt commodities where a trader's market power is of concern, the practice has been to set the spot-month limit at some percentage of calculated deliverable supply. Limiting a trader's position at the expiration of cash-settled contracts diminishes the incentive to exert market power to manipulate the cash-settlement price or index to advantage a trader's position in the cash-settlement contract. Accordingly, the Commission has viewed the presence of a spot-month speculative limit as a key feature of such cash-settlement contracts, along with the design of the cash-settlement index, in ensuring that such contracts are not readily susceptible to manipulation and thus satisfy the requirements of Core Principles 3 and 5.

In view of the above, the Commission generally has required that, to comply with Core Principles 3 and 5, all futures contracts based on agricultural or exempt commodities, because they have finite supplies and are subject to price distortion and manipulation, must have a spot-month limits, irrespective of whether the contract specifies physical delivery or cash settlement. In addition, the establishment of position limits on swaps is consistent with congressional guidance in the CFTC Reauthorization Act of 2008.[35] That legislation amended the CEA by, among other things, adding core principles in new section 2(h)(7) governing swaps that were significant price discovery contracts traded on electronic trading facilities operating in reliance on the exemption in section 2(h)(3) of the Act. The 2008 legislation amended the Act to impose certain self-regulatory responsibilities with respect to such swaps through core principles, including a core principle that required the adoption of position limits or position accountability levels where necessary and appropriate. The CFTC Reauthorization Act, thus, recognized the appropriateness of treating certain swaps and futures contracts in the same manner, thereby authorizing the imposition of position limits on such swaps (which are cash-settled contracts).

In order to facilitate the annual calculations of spot-month position limits, the Commission proposes to require each DCM that lists a referenced physical delivery contract to submit, on an annual basis, an estimate of deliverable supply to the Commission. This estimate would include supplies that are available through standard marketing channels at market prices prevailing during the relevant spot months. Deliverable supply would not include supplies that could be procured at unreasonably high prices or diverted from non-standard locations. Deliverable supply would also not include supply that is committed for long-term agreements and would therefore not be available to fulfill the delivery obligations arising from current trading. The Commission would consider the DCM's estimate in conjunction with analyzing its own data and reviewing position limit related DCM filings, and make a final determination as to deliverable supply. In making this determination, the Commission would weigh more heavily the highest monthly values of past deliverable supply, provided it did not occur in particularly unusual market conditions, over a reasonable time period to estimate the largest deliverable supply.

The Commission invites comments on all aspects of its proposed spot-month position limit framework. For example, how broadly or narrowly should the Commission consider what constitutes deliverable supply? Should the Commission adopt the proposed conditional-spot-month limits or adopt a uniform spot-month limit? Alternatively, should the conditional-spot-month limit be set at a higher level relative to the level of deliverable supply? If so, why?

B. Non-Spot-Month Position Limits

1. Open Interest Formula

While the Commission proposes to set spot-month limits in the transitional implementation period, the Commission would impose non-spot-month position limits only in the second phase of implementation. In contrast to spot-month position limits which are set as a function of deliverable supply, the class and aggregate single-month and all-months-combined position limits, as proposed, would be tied to a specific percentage of overall open interest for a particular referenced contract in the aggregate or on a per class basis. Under the proposed regulations, there are two classes of contracts in connection with

[35] Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

non-spot-month limits. One class is comprised of all futures and option contracts executed pursuant to the rules of a DCM. The second class is comprised of all swaps.

In addition to an aggregate single-month and all-months-combined position limit that would apply across classes, the proposed regulations would apply single-month and all-months-combined position limits to each class separately. Class limits would ensure that market power is not concentrated in any one submarket, and that a trader is not flat in the aggregate while holding excessively large offsetting positions in any one submarket. Class and aggregate position limits based on a percentage of open interest may help prevent any single speculative trader from acquiring excessive market power. The formula proposed herein is intended to ensure that no single speculator can constitute more than 10 percent of a market, as measured by open interest, up to 25,000 contracts of open interest, and 2.5 percent thereafter.[36]

Proposed § 151.4 proposes to use the futures position limits formula (the 10, 2.5 percent formula) to determine non-spot-month position limits for referenced contracts. The 10, 2.5 percent formula is identified in current Commission § 150.5(c)(2). Given the level of open interest in the futures markets and the likely level of open swaps based on data available to the Commission, this formula would yield high position limits that nonetheless would prevent a speculative trader from acquiring excessively large positions and thereby would help prevent excessive speculation and deter and prevent market manipulation, squeezes, and corners. The resultant limits are purposely designed to be high in order to ensure sufficient liquidity for bona fide hedgers and avoid disrupting the price discovery process given the limited information the Commission has with respect to the size of the physical commodity swap markets.[37]

As discussed further below, for the agricultural futures contracts enumerated in current § 150.2, the Commission is proposing legacy limits that would retain the all-months-combined limits for such contracts and would make the single-month limits equal to the all-months-combined limits.

The Commission emphasizes that market data can support a range of acceptable speculative position limits. The Commission currently obtains DCM futures and option positional data under parts 15 through 19 and 21 of its regulations, which derive their statutory authority in significant part from sections 4a, 4g and 4i of the CEA. With regard to swaps, the Commission receives limited positional data for cleared swaps that are significant price discovery contracts under part 36 of its regulations and limited positional data on certain swaps that are cleared, but not traded, by registered derivatives clearing organizations. While the Commission requires additional, reliable, and verifiable swaps data to enforce the position limits proposed herein, the Commission believes that it has sufficient data to set the overall concentration-based percentages for the position limits. The Commission intends to finalize regulations that would provide it with comprehensive positional data on physical commodity swaps, and would use such data to fix numerical position limits through the application of the proposed open-interest-based position limit formula.[38]

The trader visibility requirements of § 151.6, as described below, establish levels that trigger reporting requirements similar to reports that certain hedgers currently submit pursuant to '04 reports under part 19 of the Commission's regulations. These reporting requirements aim to make the physical and derivatives portfolios of the largest traders in referenced contracts visible to the Commission. This information would generally allow the Commission to understand large traders' trading activities and to assess the appropriateness of the speculative position limits set forth in the proposed part 151. The Commission would then potentially be able to, among other things, more readily identify instances where a trader's large positions create an ability to manipulate the market and cause sudden price changes or distortions. Moreover, the position visibility-related reports could potentially enable the Commission to perform some econometric analyses of the impact of speculative positions on price formation in referenced contracts. The position visibility levels that trigger reporting obligations are not intended to function as safe harbors from any charge of manipulation or excessive speculation. Visibility levels are in no way intended to imply that positions at or near such levels cannot constitute excessive speculation or be used to manipulate prices or for other wrongful purposes.

The Commission solicits comment as to whether the traditional 10, 2.5 percent formula should be uniformly applied to all referenced contracts as is being proposed. If not, why? In particular, given that single-month and all-months-combined position limits are not currently in place for energy and metals markets, should the Commission consider setting limits initially on these commodities at some higher level, such as a 10, 5 percent formula based on open interest, in order to best ensure that hedging activities or price discovery are not negatively affected? With respect to class limits, the Commission specifically solicits comment on whether additional classes, such as separate class categories for cleared and uncleared swaps, should be adopted to ensure that large positions that result in excessive concentration of positions in a submarket are not acquired?

2. Calculation of Open Interest

Under the proposed position limit framework, there are six possible non-spot-month position limits: *Aggregate* all-months-combined and single-month limits; *futures class* all-months-combined and single-month limits; and *swaps class* all-months-combined and single-month limits. In each case, single-month limits are proposed to equal all-months-combined limit levels. The Commission is proposing this approach in order to lessen the complexity of the limits and hence compliance burdens. The Commission is also proposing this approach, which would result in higher single-month limits, to incorporate a calendar spread exemption within the single-month limits (including an across crop year spread exemption) and remove the calendar spread exemption which would no longer be needed.

As discussed above, the Commission proposes to set non-spot-month position limits as a function of open interest. The general formula would set non-spot-month position limits as the sum of 10 percent of the first 25,000 contracts of open interest base and 2.5 percent of the open interest base beyond 25,000 contracts. All open interest base calculations would be derived from month-end open interest values. The open interest bases would be utilized to determine the average all-months-combined open interest which, in turn, would be the basis for the six non-spot-month position limits. Under proposed § 151.4(e), the average all-months-combined open interest would be the average of the relevant all-months open interest base for a calendar year. The open interest base levels would be

[36] *See Revision of Federal Speculative Position Limits,* 57 FR 12766, April 13, 1992; and *Revision of Federal Speculative Position Limits and Associated Rules,* 64 FR 24038, at 24039, May 5, 1999.

[37] *See* 57 FR 12766, at 12771.

[38] *See* 75 FR 67258.

calculated in the same manner described in the Commission's January 2010 release proposing position limits for certain referenced energy contracts.[39]

Cleared referenced swap contract open interest would be based on month-end open interest figures provided to the Commission by clearing organizations. The Commission proposes to determine the uncleared swap open interest based on the month-end average for the sum of swap dealer positions in all months in uncleared referenced swap contracts. In order to determine a swap dealer's position in all months in uncleared referenced swap contracts, the Commission would undertake a four-step process. First, the Commission would determine a single swap dealer's net exposure by counterparty by referenced contract month. Second, the Commission would add the swap dealer's net counterparty exposures in the same referenced contract month on an absolute basis to determine the swap dealer's open interest for the referenced contract single month. Third, the Commission would combine the swap dealer's positions in the referenced contract month in order to determine its contribution to the uncleared swap single-month open interest. Finally, the Commission would combine the swap dealer's positions in single referenced contract months. At month end, this sum would constitute that swap dealer's contribution to the uncleared referenced swap contract all-months open interest (and the aggregate all-months referenced contract open interest). For example, a swap dealer with the following referenced contract portfolio would contribute 2,000 contracts to the all-months uncleared swap open interest, 1,000 from each counterparty, based on positions of 1,100, 500, and 400 contracts for the January, February, and March referenced single contract months respectively:

	Net position January referenced contract	Net position February referenced contract	Net position March referenced contract
Counterparty 1	−600	−200	−200
Counterparty 2	+500	−300	−200

3. Legacy Position Limits

The proposed regulations would retain the all-months-combined position limits for enumerated agricultural commodities in current § 150.2 as an exception to the general open interest based formula. The single-month limit would be increased to the same level as the legacy all-months-combined limit, with the elimination of the calendar month spread exemption.

The Commission requests comment on whether the legacy position limits should be retained or treated as other derivatives are treated under this proposal, and if so, whether the levels should be increased, to the following amounts requested in an April 6, 2010 petition to the Commission by the Chicago Board of Trade[40]:

Contract	Single month	All months
Corn (and Mini-Corn)	20,500	33,000
Soybeans (and Mini-Soybeans)	10,000	15,000
Wheat (and Mini-Wheat)	9,000	12,000
Soybean Oil	6,500	8,000

If so adopted, should the limits on wheat at the Minneapolis Grain Exchange and the Kansas City Board of Trade also be increased to the level proposed for the wheat contract at the Chicago Board of Trade, consistent with the Commission's historical approach to setting limits for wheat contracts?

C. Exemptions for Referenced Contracts

Proposed § 151.5 establishes exemptions from position limits for *bona fide* hedging transactions or positions as directed by the Dodd-Frank Act specifically for exempt and agricultural commodities. The referenced contracts subject to the proposed position limit framework would be subject to the *bona fide* provisions of proposed § 151.5 and would no longer be subject to § 1.3(z), which would be retained only for excluded commodities. § 1.47 and § 1.48 would be removed by this notice of proposed rulemaking.

Section 4a(c)(1) of the Act authorizes the Commission to define *bona fide* hedging transactions or positions "consistent with the purposes of the Act." By its terms, the section places no restriction on the Commission's ability to define *bona fide* hedging for swaps. Congress also directed the Commission, in amended CEA section 4a(c)(2), to adopt a definition for *bona fide* hedging transactions or positions for purposes of setting position limits pursuant to section 4a(a)(2), which refers only to futures contracts or options.[41] A definition of *bona fide* hedging that would exclude swaps would deny a commercial end-user the option of offsetting price risks with swaps (as opposed to futures) pursuant to a *bona fide* hedge exemption. Accordingly, pursuant to section 4a(c)(1) and (c)(2), the Commission is proposing a definition for *bona fide* hedging transactions and positions that would apply to all referenced contracts, including swaps, as opposed to referenced futures and option contracts only.

The statutory definition of a *bona fide* hedge in section 4a(c)(2) generally follows the existing definition in Commission § 1.3(z)(1), except: (1) The directive requires all *bona fide* hedging transactions and positions to represent a substitute for a physical market transaction; and (2) as discussed above, the directive provides an explicit exemption for a trader to reduce the risks of swap positions, provided the counterparty to the swap transaction would have qualified for a *bona fide* hedging transaction exemption or the risk reducing positions offset a swap that qualifies as a *bona fide* hedging transaction.

The definition of *bona fide* hedging in § 1.3(z) of the Act provides that a *bona fide* hedging transaction or position in a futures contract *normally* represents a substitute for a physical market

[39] *See* 75 FR 4144, at 4153. A list of contracts that illustrate how open interest values would be calculated is available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_26_PosLimits/index.htm.* The list enumerates the types of referenced contracts' open interest that would roll up into a 151.2-listed contract's open interest for the purpose of determining overall open interest levels. Once swap open interest data for swaps that are referenced contracts is collected, the open interest value for such swaps would also be rolled up into the related 151.2-listed futures contract's open interest along with the open interest of other related referenced contracts.

[40] CME Group Petition for Amendment of Commodity Futures Trading Commission Regulation (April 6, 2010), available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_26_PosLimits/index.htm.* The CME petition was premised on the Commission's past reliance on open interest levels for setting position limits and the increase in open interest levels of the contracts listed in the petition.

[41] The scope of contracts subject to position limits under section 4a(a)(2) includes physical commodity futures and options contracts traded on a DCM, other than excluded commodities.

transaction; thus, the current definition is no longer consistent with amended CEA section 4a(c)(2). The plain text of the new statutory definition of *bona fide* hedging recognizes *bona fide* hedging for derivatives that are subject to this rulemaking only if such transactions or positions represent cash market transactions and offset cash market risks, as opposed to the acceptance of *bona fide* hedging transactions and positions as activity that normally, but not necessarily, represents a substitute for cash market transactions or positions.

Proposed § 151.5(a)(2) incorporates the current requirements of Commission § 1.3(z)(2) for enumerated hedging transactions. Proposed § 151.5(a)(2)(iv) also provides an exemption for agents contractually responsible for the merchandising of cash positions with a person who owns the commodity or holds the cash market commitment being offset. This agent provision is consistent with Commission § 1.3(z)(3) and § 1.47.

In this regard, should the Commission grant an exemption to an agent that is not responsible for the merchandising of the cash positions, but is linked to the production of the physical commodity, for example, if the agent is the provider of crop insurance?

Proposed § 151.5(b) establishes reporting requirements for a trader upon exceeding a position limit. The trader is required to submit information not later than 9:00 a.m. on the business day following the day the limits were exceeded. The reports would support hedgers' need for large referenced contract positions and would give the Commission the ability to verify the positions were a *bona fide* hedge.

With respect to the frequency of filing such reports, should the Commission only require reports to be submitted either when a trader's position either first exceeds a limit or when a trader's hedging need increases, with a monthly summary while the trader's position remains in excess of the limit?

Proposed § 151.5(c) specifies application and approval requirements for traders seeking an anticipatory hedge exemption, incorporating the current requirements of Commission § 1.48. As is the case under current § 1.48, a trader's maximum sales and purchases shall not exceed the lesser of the approved exemption amount or the trader's current actual unsold anticipated production or current unfilled anticipated requirements. In addition, the proposed regulations require an anticipatory hedger to file a supplement to an application at least annually or whenever the anticipatory hedging needs increase beyond that in the most recent filing.

Proposed § 151.5(d) establishes additional reporting requirements for a trader that exceeds the position limits to reduce the risks of certain swap transactions, discussed above. Should the Commission only require such reports to be submitted when the trader's position either first exceeds a limit or the hedging need increases, with a monthly summary while the trader's position remains in excess of the limit?

Proposed § 151.5(e) specifies recordkeeping requirements for traders that acquire positions in reliance on *bona fide* hedge exemptions, as well as for swap counterparties for which a counterparty represents that the transaction would qualify as a *bona fide* hedging transaction. Swap dealers availing themselves of a hedge exemption would be required to maintain a list of such counterparties and make that list available to the Commission upon request. Proposed § 151.5(g) and (h) provide procedural documentation requirements for such swap participants.

Proposed § 151.5(f) requires a cross hedger to provide conversion information, as well as an explanation of the methodology used to determine such conversion information, between the commodity exposure and the referenced contracts used in hedging.

Proposed § 151.5(i) requires reports by *bona fide* hedgers to be filed for each business day, up to and including the day after the trader's position level is below the position limit that was exceeded.

Proposed § 151.5(j) provides that a swap counterparty with respect to *bona fide* hedging transactions may establish a position in excess of the position limits, offset that position, and then re-establish a position in excess of the position limits. For example, this provision permits a swap participant who has reduced the risk of swaps using a position in futures contracts (that would otherwise violate a position limit) to offset those futures contracts and subsequently, if necessary, re-establish a position in excess of class position limits in another venue in order to once again reduce the risk of the swap transactions.

D. Position Visibility

Based on its analysis of the proposed limits as applied to futures and option contract positions and cleared swaps for which the Commission has open interest data, the Commission does not anticipate that the number of traders with positions in referenced base and precious metals and referenced energy contracts, as further discussed below in the Cost-Benefit and Paperwork Reduction Act sections of this release, would constitute a significant segment of the affected markets, in contrast to the number of traders with positions in referenced agricultural contracts. Recognizing this, the Commission proposes to establish, in addition to the position limits discussed above, position visibility regulations for referenced contracts other than referenced agricultural contracts, pursuant to the Commission's authority to establish reporting requirements under section 4t of the Act, as added by the Dodd-Frank Act, and reporting requirements necessary for the establishment and enforcement of position limits under sections 4a and 8a(5) of the Act. The proposed visibility regulations would set position visibility reporting levels and establish reporting requirements for all traders exceeding those levels. The reporting regulations aim to make the physical and derivatives portfolios of the largest traders in referenced contracts visible to the Commission.

The position visibility regime would improve the Commission's ability to monitor the positions of the largest traders in the markets for referenced base and precious metals and referenced energy contracts and the effects on the markets of those large positions and their associated physical commodity and derivatives portfolios. The data for referenced contracts and related portfolios that the Commission would receive pursuant to the position visibility regulations would allow the Commission to better analyze the nature of the largest traders' positions in referenced contracts.

The Commission has set the visibility levels and its estimates on the number of traders they would capture based on data it currently receives on the futures and swaps markets. The Commission may revisit these levels as it begins to receive more data on the swaps markets. The Commission proposes to set the visibility reporting levels for referenced base and precious metals and referenced energy contracts where it anticipates approximately 20 unique owners over the course of a year would exceed such levels. Given their importance to the national economy, the Commission proposes to set visibility levels for the NYMEX Light Sweet Crude Oil (CL) and Henry Hub Natural Gas (NG) referenced contracts at a relatively lower level designed to capture approximately 30 unique owners over the course of a year.

Proposed § 151.6 would require traders with positions above visibility

levels in referenced base and precious metals and energy commodities to submit additional information about cash market and derivatives activity, including data relating to substantially the same commodity, such as commodities that are different grades or formulations of the same basic commodity. Proposed § 151.6(c) would require additional information, through a 402S filing, on a trader's uncleared swaps in substantially the same commodity. Proposed § 151.6(d) would require the reportable trader to submit information about cash market positions in substantially the same commodity, as described in proposed § 151.5(b), through 404 and 404A filings.

The Commission solicits comment on whether position visibility requirements should also be imposed on referenced agricultural contracts.

E. Aggregation of Accounts

Proposed § 151.7 would establish account aggregation standards specifically for positions in referenced contracts. Under the proposed standards, the Federal position limits in referenced contracts would apply to all positions in accounts in which any trader, directly or indirectly, has an ownership or equity interest of 10 percent or greater or, by power of attorney or otherwise, controls trading. These standards for aggregation are consistent with the standards delineated in the Acceptable Practice to DCM Core Principle 5 in Appendix B to part 38 of the Commission's regulations. Proposed § 151.7 would also treat positions held by two or more traders acting pursuant to an express or implied agreement or understanding the same as if the positions were held by, or the trading of the positions were done by, a single trader. Proposed § 151.7 would require a trader to aggregate positions in multiple accounts or pools, including passively managed index funds, if those accounts or pools had identical trading strategies.

Proposed § 151.7(c) establishes a limited exemption for positions in pools in which a person that is a limited partner, shareholder or similar person has an ownership or equity interest of between 10 percent and 25 percent, if the person does not have control over or knowledge of the pool's trading. Proposed § 151.7(e) establishes a limited exemption for the positions of futures commission merchants in certain discretionary accounts, if they maintain only minimum control over trading in the relevant account and if the trading decisions of that account are independent from trading decisions in the futures commission merchants' other accounts. Finally, proposed § 151.7(f) establishes a limited exemption for entities to disaggregate the positions of an independently controlled and managed trader that is not a financial entity, defined as an owned non-financial entity, in which it has an ownership or equity interest of 10 percent or greater, and it provides a non-exhaustive description of indicia that demonstrate independent control and management to the Commission. In all three cases, the exemption would only become effective upon the Commission's approval of an application described in proposed § 151.7(g).

In the aggregation standards currently in force in part 150 of the Commission's regulations, eligible entities (a broad group that includes banks, insurance companies, mutual funds, commodity pool operators and commodity trading advisors) are permitted to disaggregate positions pursuant to a self-executing independent account controller framework. Part 150 also provides expansive disaggregation provisions for commodity pool operators, limited partners and other pool participants as well as for futures commission merchants.

These disaggregation exceptions may be incompatible with the proposed Federal position limit framework and used to circumvent its requirements. Given that the proposed framework sets high position levels that are reflective of the largest positions held by market participants, permits for the netting of positions for like referenced contracts within each applicable position limit, and includes a conditional-spot-month limit for cash-settled contracts and exemptions for *bona fide* hedging (either directly or as a result of the look-through provision), allowing traders to establish a series of positions each near a proposed position limit, without aggregation, may not be appropriate. In addition, the self-executing nature of the exemptions creates an insufficient and inefficient verification regime and ultimately diminishes the Commission's ability to properly perform its market surveillance responsibilities.

Thus, the proposed aggregation standards differ in several respects from the current standards in part 150. The proposed regulations would require aggregation for a passive pool participant with a 10 percent or greater ownership or equity interest (unless the pool operator had proper information barriers in place and the pool participant did not have control over the pool's trading decisions). By comparison, under current part 150, a passive pool participant would aggregate its positions only if it was also a principal or affiliate of the pool operator. The proposed regulations would require aggregation for any passive pool participant with a 25 percent or greater ownership or equity interest, with no possibility for disaggregation, whereas current part 150 only follows such an approach for pools with operators that are exempt from registration under § 4.13. The proposed regulations would also require aggregation for positions in accounts or pools with identical trading strategies, which part 150 currently lacks, in order to prevent circumvention of the aggregation requirements by, for example, a trader seeking a large long-only position in a given commodity through specific positions in multiple pools.

In addition, the proposed regulations do not retain the independent account controller exemption of part 150. The regulations proposed in January of 2010 to establish position limits for referenced energy contracts also did not include an independent account controller framework; they included only a very narrow exemption thereto for certain passive pool participants.[42] Many commenters to the January 2010 proposed regulations expressed opposition to such strict standards, arguing that they would force aggregation of positions in situations where meaningful control, management and information barriers demonstrated sufficient independence to warrant disaggregation. The current regulations address some of these concerns by establishing a limited exemption for owned non-financial entities.

The owned non-financial entity exemption would allow an entity to disaggregate (1) the positions of a non-financial entity in which it owns a 10 percent or greater ownership or equity interest from (2) its own directly held or controlled positions and the positions attributed to it (through the general 10 percent ownership standard or other aggregation requirements of the proposed regulations), if it can demonstrate that the owned non-financial entity is independently controlled and managed. This limited exemption aims to allow disaggregation primarily in the case of a conglomerate or holding company that merely has a passive ownership interest in one or more non-financial operating companies. In such cases, the operating companies may have complete trading and management independence and operate at such a distance from the holding company that it would not be

[42] *See* 75 FR 4144, at 4146.

appropriate to aggregate positions. Two of the criteria proposed as indicia of independence are similar to those currently contained in part 150, namely the requirements that the entity have no knowledge of the owned non-financial entity's trading decisions (along with, in the proposed regulations, the reverse requirement that the owned non-financial entity have no knowledge of the entity's trading decisions) and that the owned non-financial entity have written policies and procedures to protect such knowledge. Two other proposed indicia not found in current part 150, requiring separate employees and risk management systems, would provide further evidence of the owned non-financial entity's independence. As mentioned above, the indicia described in proposed § 151.7(f) are not meant to form an exhaustive list; under the proposed application process described in 151.7(g), a departure from the self-executing exemption of part 150, the applying entity could describe for the Commission any other relevant circumstances that would warrant disaggregation.

The Commission solicits comments on all aspects of its account aggregation regulations. In particular, the Commission solicits comments on the appropriateness of the definition of owned non-financial entities and the criteria used to determine the independence of such entities. The Commission also solicits comments on whether and under what circumstances the Commission should grant exemptions from account aggregation under its exemptive authority under section 4a(a)(7) of the Act.

F. Preexisting Positions and Exemptions

Consistent with the good faith exemption in section 4a(b)(2) of the Act, the Commission will provide a limited exemption for positions in DCM contracts for future delivery or option contracts that are in excess of a position limit in proposed § 151.2, provided that they were established in good faith prior to the effective date of a position limit set by rule, regulation or order. Such persons would not be allowed to enter into new, additional contracts in the same direction but could take up offsetting positions and thus reduce their total combined net position.[43] Persons who established a net position below the speculative limit for a contract for future delivery prior to the enactment of a regulation would be permitted to acquire new positions. However, consistent with Commission practice, the Commission would calculate the combined position of a person based on any position established prior to enactment of a position limit rule, regulation or order plus any new position.

In contrast to futures and option contracts, the proposed regulations would not apply position limits to Dodd-Frank Act pre-effective date swaps. The Commission is proposing this broad exemption since swaps generally may be appreciably longer lived than futures contracts thereby giving rise to concerns that position limits affecting pre-effective date swaps may unnecessarily disrupt position hedging through swap positions. The Commission would allow pre-effective date swaps to be netted with post-effective date swaps for the purpose of complying with position limits.

The Commission has previously granted certain swap dealers hedge exemptions under current § 1.47, without regard to the purposes or hedging needs of swap dealer counterparties. The Commission intends to permit such swap dealers to continue to manage the risk of a swap portfolio that exists at the time of implementation of the proposed regulations. No new swaps will be covered by the exemption.

In this regard, the Commission seeks comment on what additional reporting requirements, if any, it should impose on swap dealers that were granted a hedge exemption.

G. Foreign Boards of Trade

Proposed § 151.8 would provide that the aggregate position limits in proposed § 151.4 apply to a trader's positions in referenced contracts executed on, or pursuant to the rules of, a foreign board of trade, subject to the following conditions. First, the FBOT contract, agreement, or transaction must settle against the price of a contract executed or cleared pursuant to the rules of a registered entity. Second, the FBOT must make such linked contracts available to its members or other participants located in the United States by direct access to its electronic trading and order matching system.

H. Registered Entity Position Limits

Proposed § 151.11 requires registered entities[44] to establish position limits for reference contracts that are at a level no higher than the position limits specified in proposed § 151.4. Proposed § 151.11(c) and (d)(1)(i) would require registered entities to follow the same account aggregation and *bona fide* exemption standards set forth by proposed § 151.5 and § 151.7 with respect to exempt and agricultural commodities.

For excluded commodities,[45] consistent with current DCM practice, registered entities would have the discretion to establish position accountability levels in lieu of position limits. Registered entities may impose position accountability rules in lieu of position limits only if either: The open interest in a contract is less than 5,000; or the contract involves a major currency; or involves an excluded commodity that has the following three characteristics: (1) An average daily open interest of 50,000 or more contracts, (2) an average daily trading volume of 100,000 or more contracts, and (3) a highly liquid cash market.

With respect to excluded commodities, consistent with the current DCM practice, registered entities may provide for exemptions from their position limits for "*bona fide* hedging." The term "*bona fide* hedging," as used with respect to excluded commodities, shall be defined in accordance with amended CFTC § 1.3(z).[46] Additionally, consistent with the current DCM practice, registered entities may continue to provide exemptions for "risk-reducing" and "risk-management" transactions or positions consistent with existing Commission guidelines.[47] Finally, though the Commission is removing the procedure to apply to the Commission for *bona fide* hedge exemptions for non-enumerated transactions or positions under § 1.3(z)(3), the Commission will continue to recognize prior Commission determinations under that section, and registered entities may recognize non-enumerated hedge transactions subject to Commission review.

I. Delegation

Proposed § 151.12 delegates certain of the Commission's proposed part 151 authority to the Director of the Division of Market Oversight and to other employee or employees as designated by the Director. The delegated authority

[43] The Commission understands that changes in option deltas could increase the net level of a person's pre-enactment position.

[44] Relevant for these purposes, CEA section 1a(40), as amended by the Dodd-Frank Act, would define registered entity to include DCMs and SEFs.

[45] *See* section 1a(19) of the Act.

[46] *See* Section 151.11(d)(1)(ii) of these proposed regulations. As explained in section C of this release, the definition of *bona fide* hedge transaction or position contained in section 4a(c)(2) of the Act does not, by its terms, apply to excluded commodities.

[47] *See Clarification of Certain Aspects of Hedging Definition,* 52 FR 27195, Jul. 20, 1987; and *Risk Management Exemptions From Speculative Position Limits Approved under Commission Regulation 1.61,* 52 FR 34633, Sept. 14, 1987.

extends to: (1) Determining open interest levels for the purpose of setting non-spot-month position limits; (2) granting an exemption relating to *bona fide* hedging transactions; and (3) providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under proposed part 151. The purpose of this delegation provision is to facilitate the ability of the Commission to respond to changing market and technological conditions and thus ensure timely and accurate data reporting. In this regard, the Commission specifically requests comments on whether determinations of open interest or deliverable supply should be adopted through Commission orders.

III. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, CEA section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, CEA section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

CEA section 15(a) specifies that costs and benefits shall be evaluated in light of the following considerations: (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. Accordingly, the Commission could, in its discretion, give greater weight to any of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed position limits and their concomitant limitation on trading activity could impose certain general but significant costs. Overly restrictive position limits could cause unintended consequences by decreasing speculative activity and therefore liquidity in the markets for the referenced contracts, impairing the price discovery process in these markets, and encouraging the migration of speculative activity and perhaps price discovery to markets outside of the Commission's jurisdiction. The outside spot-month position limits that would likely result from the application of the 10, 2.5 percent open interest formula, as proposed, are intended as high levels that speculators are likely to acquire in order to avoid disrupting or interfering with beneficial speculative trading.

Congress has charged the Commission with establishing position limits on traders in certain physical commodity derivatives. In CEA section 4a(a)(3), Congress directed the Commission to establish such position limits in order to achieve, to the maximum extent practicable, in the Commission's discretion, the following objectives: To diminish, eliminate, or prevent excessive speculation; to deter and prevent market manipulation; while ensuring sufficient market liquidity for *bona fide* hedgers and protecting the price discovery function of commodity derivatives. Insofar as the provisions of the proposed part 151 effectuate these goals, then the market and the public as a whole would benefit.

In section 4a of the Act, Congress determined that excessive speculation in "any commodity under contracts of sale of such commodity for future delivery * * * or swaps that perform a significant price discovery function with respect to regulated entities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce." In section 4a(a)(3) of the Act, Congress charged the Commission with the task of setting position limits designed to diminish, eliminate, or prevent "excessive speculation." Accordingly, the speculative position limit framework established by the Commission would be expected to benefit the public and the markets regulated by the Commission by diminishing, eliminating, or preventing the undue burdens on interstate commerce that result from excessive speculation in markets regulated by the Commission.

In addition, the proposed visibility levels and associated reporting requirements of proposed § 151.6 would enable the Commission to better understand generally the portfolio compositions, including *bona fide* hedging needs, of the largest position holders of referenced contracts. This data would enable the Commission to determine whether to readjust the speculative position limits to continue to ensure the statutory objectives are met. Visibility reports would allow the Commission to have a better sense of the relative distribution of speculative versus non-speculative positions and activity, as well as the nature and effect of the largest speculative traders in referenced contracts.

Section 4a(a)(3) of the Act also charges the Commission with setting position limits designed to "deter and prevent market manipulation." The limitation on a trader's ability to take a very large position, not justified by a *bona fide* hedging need, may reduce a trader's ability to manipulate a market. By reducing a trader's ability to manipulate a market, a position limit regime would prevent manipulation and therefore avoid the resulting price distortions, economic harm, and misallocation of resources. In addition, the visibility levels and associated reporting obligations, as proposed in § 151.6, would provide the Commission greater visibility into the portfolios of large speculative traders, thereby potentially facilitating early regulatory intervention when potential manipulative conduct or price distortions are detected.

In addition to reducing the undue burdens arising from excessive speculation and manipulation, by reducing the ability of a market participant to gain very large speculative exposure in referenced contracts, proposed part 151 would encourage better risk management, reduce the likelihood of default, and may thereby reduce systemic risk. Although futures markets employ centralized clearing arrangements that reduce systemic risk, a very large speculative position taken by a levered participant across futures markets, other trading facilities, and in over-the-counter derivatives can result in a default risk not properly accounted for by any one trading venue or counterparty. The proposed regulations may therefore promote the financial integrity of the markets and protect the public by reducing systemic risk insofar as the provisions of the proposed part 151 would reduce the likelihood of such levered entities to generate systemic risk by either limiting their ability to amass a very large speculative position or by making such entities more visible to the Commission pursuant to proposed § 151.6.

The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of proposed part 151.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of their regulations on small businesses. The requirements related to the proposed amendments fall mainly on registered entities, exchanges, futures commission merchants, swap dealers, clearing members, foreign brokers, and large traders. The Commission has previously determined that exchanges, futures commission merchants and large traders are not "small entities" for the purposes of the RFA.[48] Similarly, swap dealers, clearing members, foreign brokers and traders would be subject to the proposed regulations only if carrying or holding large positions. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C 605(b), that the actions proposed to be taken herein would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act ("PRA")[49] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of the proposed regulations would result in new collection of information requirements within the meaning of 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. The Office of Management and Budget ("OMB") has not yet assigned a control number to the new collections associated with these proposed regulations. Therefore, the Commission is submitting this proposal to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this proposed collection of information is "Part 151—Position Limit Framework for Referenced Contracts" (OMB control number 3038–NEW).

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, headed "Commission Records and Information." In addition, the Commission emphasizes that section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, 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."[50] The Commission also is required to protect certain information contained in a government system of records pursuant to the Privacy Act of 1974.[51]

Under the proposed regulations, market participants with positions in referenced contracts, as defined in proposed § 151.2, would be subject to the position limit framework established by proposed part 151. Proposed part 151 prescribes reporting requirements for traders claiming compliance with the conditional spot-month position limit (proposed § 151.4(a)(2)), reporting requirements for DCMs that list a referenced contract (proposed § 151.4(c)), traders claiming a *bona fide* hedging exemption (proposed § 151.5(b) and (c)), traders claiming a *bona fide* hedge that does not involve the same quantity or commodity as the quantity or commodity associated with positions in referenced contracts that are used to hedge risk (proposed § 151.5(f)), traders claiming a *bona fide* swap counterparty exemption (proposed § 151.5(d)), traders with positions above a visibility level (proposed § 151.6(a)), and entities seeking an exemption to mandatory account aggregation regulations (proposed § 151.7(g)). In addition to these reporting requirements, proposed § 151.5(e) and (g) specify recordkeeping requirements for traders who receive *bona fide* hedge exemptions, as well as for swap counterparties for which the transaction would qualify as a *bona fide* hedging transaction.

2. Information Provided and Recordkeeping Duties

Proposed § 151.4(a)(2) provides for a special conditional spot-month limit for traders under certain conditions, including the submission of a certification that the trader meets the required conditions. These certifications would be filed within a day after the trader exceeds a conditional spot-month limit.

The Commission anticipates that approximately one-hundred traders a year will submit conditional spot-month limit certifications. The Commission estimates that these one-hundred entities would incur a total burden of 2,400 annual labor hours resulting in a total of $189,000 in annual labor costs[52] and $1 million in annualized capital and start-up costs[53] and annual total operating and maintenance costs.

Proposed § 151.4(c) requires that DCMs submit an estimate of deliverable supply by the 31st of December of each calendar year for each referenced contract that is subject to a spot-month position limit and listed or executed pursuant to the rules of the DCM. The Commission estimates that this proposed reporting regulation will affect approximately six entities annually resulting in a total marginal burden, across all of these entities, of 6,000 annual labor hours and $55,000 in annualized capital and start-up costs and annual total operating and maintenance costs.

Proposed § 151.5 sets forth the application procedure for bona fide hedgers and counterparties to bona fide hedging swap transactions that seek an exemption from the proposed Commission-set federal position limits for referenced contracts. If a bona fide hedger seeks to claim an exemption from position limits because of cash market activities, then the hedger would submit a 404 filing pursuant to proposed § 151.5(b). The 404 filing would be submitted when the bona fide hedger claims an exemption or when its hedging needs increase. Parties to bona fide hedging swap transactions would be required to submit a 404S filing to qualify for a hedging exemption, which would also be submitted when the bona fide hedger claims an exemption or when its hedging needs increase. If a bona fide hedger seeks an exemption for anticipated commercial production or anticipatory commercial requirements, then the hedger would submit a 404A filing pursuant to proposed § 151.5(c). The 404A filing would be submitted at least ten days in advance of the date that transactions and positions would be established that would exceed a position limit. Further, on an annual basis or whenever a trader's anticipated hedge requirements exceed the amount of the most recent 404A filing,

[48] 44 U.S.C. 601 *et seq.*

[49] 44 U.S.C. 3501 *et seq.*

[50] 7 U.S.C. 12(a)(1).

[51] 5 U.S.C. 552a.

[52] The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The $78.61 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2010, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): "programmer (senior)" (30% weight); "programmer" (30%); "compliance advisor (intermediate);" (20%), "systems analyst;" (10%); and "assistant/associate general counsel" (10%).

[53] The capital/start-up cost component of "annualized capital/start-up, operating, and maintenance costs" is based on an initial capital/start-up cost that is straight-line depreciated over five years.

whichever is earlier, the trader would be required to file a supplemental report updating the information provided in the most recent 404A filing. Traders hedging commercial activity (or hedging swaps that in turn hedge commercial activity) that does not involve the same quantity or commodity as the quantity or commodity associated with positions in referenced contracts that are used to hedge shall submit the conversion methodology and information along with the appropriate 404, 404A, or 404S filing. The Commission anticipates that the compliance cost associated with all of these filings will be substantial, particularly in the case of the 404S filings, which may require the collection and storage of information on counterparties that firms have hitherto not conducted.

The Commission estimates that these bona fide hedging-related reporting requirements would affect approximately two hundred entities annually and result in a total burden of approximately $37.6 million across all of these entities, of 168,000 annual labor hours resulting in a total of $13.2 million in annual labor costs and $25.4 million in annualized capital and start-up costs and annual total operating and maintenance costs. 404 filings proposed reporting regulations would affect approximately ninety entities annually resulting in a total burden, across all of these entities, of 108,000 total annual labor hours and $11.7 million in annualized capital and start-up costs and annual total operating and maintenance costs. 404A filings proposed reporting regulations would affect approximately sixty entities annually resulting in a total burden, across all of these entities, of 6,000 total annual labor hours and $4.2 million in annualized capital and start-up costs and annual total operating and maintenance costs. 404S filings proposed reporting regulations would affect approximately forty-five entities annually resulting in a total burden, across all of these entities, of 54,000 total annual labor hours and $9.5 million in annualized capital and start-up costs and annual total operating and maintenance costs.

Proposed § 151.5(e) specifies recordkeeping requirements for traders who claim bona fide hedge exemptions. These recordkeeping requirements include "complete books and records concerning all of their related cash, futures, and swap positions and transactions and make such books and records, along with a list of swap counterparties." Proposed § 151.5(g) and (h) provide procedural documentation requirements for those availing themselves of a bona fide hedging transaction exemption. These firms would be required to document a representation and confirmation by at least one party that the swap counterparty is relying on a bona fide hedge exemption, along with a confirmation of receipt by the other party to the swap. Paragraph (h) of Section 151.5 also requires that the written representation and confirmation be retained by the parties and available to the Commission upon request. The marginal impact of this requirement is limited because of its overlap with existing recordkeeping requirements under § 15.03. The Commission estimates that bona fide hedging-related proposed recordkeeping regulations would affect approximately one-hundred and sixty entities resulting in a total burden, across all of these entities, of 40,000 total annual labor hours and $10.4 million in annualized capital and start-up costs and annual total operating and maintenance costs.

Proposed § 151.6 would require those traders with positions exceeding visibility levels in referenced base and precious metals and energy commodities to submit additional information about cash market and derivatives activity in substantially the same commodity. Proposed § 151.6(b) would require the submission of a 401 filing which would provide basic position information on the position exceeding the visibility level. Proposed § 151.6(c) would require additional information, through a 402S filing, on a trader's uncleared swaps in substantially the same commodity. Proposed § 151.6(d) would require the reportable trader to submit information about cash market positions or anticipated commercial requirements or production in substantially the same commodity, as described in proposed § 151.5(b) and (c), through a 404 or 404A filing, respectively. All of the proposed 151.6 reports would be submitted on a monthly basis for as long as a trader exceeds a visibility level.

The Commission estimates that visibility level-related proposed reporting regulations will affect approximately one-hundred and forty entities annually resulting in a total burden, across all of these entities, of 30,400 annual labor hours resulting in a total of $2.4 million in annual labor costs and $27.3 million in annualized capital and start-up costs and annual total operating and maintenance costs. Proposed 401 filing reporting regulations would affect approximately one-hundred and forty entities annually resulting in a total burden, across all of these entities, of 168,000 total annual labor hours and $15.4 million in annualized capital and start-up costs and annual total operating and maintenance costs. Proposed 402S filing reporting regulations would affect approximately seventy entities annually resulting in a total burden, across all of these entities, of 5,600 total annual labor hours and $4.9 million in annualized capital and start-up costs and annual total operating and maintenance costs. Proposed visibility level-related 404 filing reporting regulations [54] would affect approximately sixty entities annually resulting in a total burden, across all of these entities, of 4,800 total annual labor hours and $4.2 million in annualized capital and start-up costs and annual total operating and maintenance costs. Proposed visibility level-related 404A filing reporting regulations would affect approximately forty entities annually resulting in a total burden, across all of these entities, of 3,200 total annual labor hours and $2.8 million in annualized capital and start-up costs and annual total operating and maintenance costs.

Proposed § 151.7 concerns the aggregation of trader accounts. Proposed § 151.7(g) would provide for a disaggregation exemption for: (1) A limited partner, shareholder or similar person with an ownership or equity interest of between 10 percent and 25 percent in a pool, if the trader does not have control over or knowledge of a pool's trading; (2) futures commission merchants that meet certain independent trading requirements; and (3) an independently controlled and managed trader, that is not a financial entity, in which another entity has an ownership or equity interest of 10 percent or greater. In all three cases, the exemption would become effective upon the Commission's approval of an application described in proposed § 151.7(g). These applications for exemptions would be submitted at the time a trader claims an exemption and within thirty calendar days of January 1 of each year following the initial application for exemption. The Commission estimates that these proposed reporting regulations will affect approximately sixty entities resulting in a total burden, across all of these entities, of 300,000 annual labor

[54] For the visibility level-related 404 and 404A filing requirements, the estimated burden is based on reporting duties not already accounted for in the burden estimate for those submitting 404 or 404A filings pursuant to proposed regulation 151.5. For many of these firms, the experience and infrastructure developed submitting or preparing to submit a 404 or 404A filing under proposed regulation 151.5 would reduce the marginal burden imposed by having to submit filings under proposed regulation 151.6.

hours and $9.9 million in annualized capital and start-up costs and annual total operating and maintenance costs.

3. Comments on Information Collection

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections 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, by fax at (202) 395–6566 or by e-mail at *OIRA-submissions@omb.eop.gov.* Please provide the Commission with a copy of comments submitted so that all comments can be summarized and addressed in the final regulation preamble. Refer to the Addresses section of this notice for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully considered if received by OMB (and the Commission) within 30 days after the publication of this notice of proposed rulemaking.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 150

Commodity futures, Cotton, Grains.

17 CFR Part 151

Position limits, Bona fide hedging, Referenced contracts.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Amend § 1.3(z) as follows:

a. Amend the heading in paragraph (z) by adding "*for excluded commodities*" after the phrase "*positions.*"

b. Amend paragraph (z)(1) introductory text by removing the phrase "transactions or positions in a contract for future delivery on any contract market, or in a commodity option" after the phrase "Bona fide hedging transactions or positions shall mean," and by adding, in its place, the phrase "any agreement, contract or transaction in an excluded commodity on a registered entity, as that term is defined in Section 1a(40) of the Act."

c. Amend paragraph (z)(1) concluding text by removing "and §§ 1.47 and 1.48 of the regulations."

d. Amend paragraph (z)(2)(i) by removing the phrase "commodity for future delivery on a contract market" after "*Sales* of any" and by adding, in its place, the phrase "agreement, contract or transaction in a excluded commodity on a registered entity."

e. Amend paragraph (z)(2)(i)(B) by removing the phrase "future during the five last trading days of that future" and by adding, in its place, the phrase "agreement, contract or transaction during the five last trading days."

f. Amend paragraph (z)(2)(ii) by removing the phrase "commodity for future delivery on a contract market" after "*Purchases* of any" and by adding, in its place, the phrase "agreement, contract or transaction in a excluded commodity on a registered entity."

g. Amend paragraph (z)(2)(ii)(C) by removing the phrase "one future" and by adding, in its place, the phrase "agreement, contract or transaction."

h. Amend paragraph (z)(2)(iii) by removing the phrase "for future delivery on a contract market" after "Offsetting sales and purchases" and by adding, in its place, the phrase "in any agreement, contract or transaction in a excluded commodity on a registered entity."

i. Amend paragraph (z)(2)(iii) by removing the phrase "future during the five last trading days of that future" and by adding, in its place, the phrase "agreement, contract or transaction during the five last trading days."

j. Redesignate paragraph (z)(2)(iv) as paragraph (z)(2)(v).

k. Amend newly redesignated paragraph (z)(2)(v) by removing the phrase "for future delivery described in paragraphs (z)(2)(i), (z)(2)(ii) and (z)(2)(iii)" and by adding, in its place, the phrase "described in paragraphs (z)(2)(i), (z)(2)(ii), (z)(2)(iii) and (z)(2)(iv)."

l. Amend newly redesignated paragraph (z)(2)(v) by removing the phrase "for future delivery" after the phrase "fluctuations in value of the position" and by adding, in its place, the phrase "in any agreement, contract or transaction."

m. Amend newly redesignated paragraph (z)(2)(v) by removing the phrase "positions in any one future shall not be maintained during the five last trading days of that future" and by adding, in its place, the phrase "positions in any agreement, contract or transaction shall not be maintained during the five last trading days."

n. Add new paragraph (z)(2)(iv) and revise paragraph (z)(3) to read as follows:

§ 1.3 Definitions.

* * * * *

(z) * * *

(2) * * *

(iv) Purchases or sales by an agent who does not own or has not contracted to sell or purchase the offsetting cash commodity at a fixed price, provided that the person is responsible for the merchandising of the cash positions which is being offset and the agent has a contractual arrangement with the person who owns the commodity or holds the cash market commitment being offset.

* * * * *

(z)(3) *Non-Enumerated cases.* A registered entity may recognize, consistent with the purposes of this section, transactions and positions other than those enumerated in paragraph (2) of this section as bona fide hedging. Prior to recognizing such non-enumerated transactions and positions, the registered entity shall submit such rules for Commission review under section 5c of the Act and § 40 of this chapter.

* * * * *

§ 1.47 [Removed and Reserved]

3. Remove and reserve § 1.47.

§ 1.48 [Removed and Reserved]

4. Remove and reserve § 1.48.

PART 150—[REMOVED AND RESERVED]

5. Remove and reserve part 150.

6. Add part 151 to read as follows:

PART 151—LIMITS ON POSITIONS

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 151.1 Definitions.

As used in this part—

Basis contract means an agreement, contract or transaction that is cash settled based on the difference in price of the same commodity (or substantially the same commodity) at different delivery points;

Calendar spread contract means a cash settled agreement, contract or transaction that represents the difference between the settlement price in one or a series of contract months of an agreement, contract or transaction and another contract month's or another series of contract months' settlement price for the same agreement, contract or transaction.

Contracts of the same class mean referenced contracts based on the same commodity that are:

(1) Futures or option contracts executed pursuant to the rules of a designated contract market; or

(2) Cleared or uncleared swaps.

Commodity index contract means an agreement, contract or transaction that is not a basis or spread contract, based on an index comprised of prices of commodities that are not the same nor substantially the same, *provided that,* a commodity index contract that incorporates the price of a commodity underlying a referenced contract's commodity which is used to circumvent speculative position limits shall be considered to be a referenced contract for the purpose of applying the position limits of § 151.4.

Core referenced futures contract means a futures contract that is listed in § 151.2.

Entity means a "person" as defined in section 1a of the Act.

Excluded commodity means an "excluded commodity" as defined in section 1a of the Act.

Financial entity means any entity that, regardless of any asset or capital threshold or any other condition in section 1a(18) of the Act, is an entity identified in section 1a(18)(A)(i) through (iv), (vi), (viii) through (x) and (B)(ii) of the Act.

Futures contract class means referenced contracts that are based on the same commodity and are futures and option contracts executed pursuant to the rules of a designated contract market.

Intercommodity spread contract means a cash-settled agreement, contract or transaction that represents the difference between the settlement price of a referenced contract and the settlement price of another contract, agreement, or transaction that is based on a different commodity.

Owned non-financial entity means any entity that is not a financial entity and in which another entity directly or indirectly has a 10 percent or greater ownership or equity interest.

Referenced contract means, on a futures equivalent basis with respect to a particular core referenced futures contract, a futures listed in § 151.2, or a referenced paired futures contract, option contract, swap or swaption, other than a basis contract or contract on a commodity index.

Referenced paired futures contract, option contract, swap or swaption means, respectively, an open futures contract, option contract, swap or swaption that is:

(1) Directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of any core referenced futures contract; or

(2) Directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of the same commodity for delivery at the same location, or at locations with substantially the same supply and demand fundamentals, as that of any core referenced futures contract.

Spot month means, for referenced contracts based on a commodity identified in § 151.3, the spot month corresponding to the spot month of the core futures contract that overlies the same commodity.

Spot-month, single-month, and all-months-combined position limits mean, for referenced contracts based on a commodity identified in § 151.3, the position limit corresponding to the position limit of the core futures contract that overlies the same commodity.

Spread contract means either a calendar spread contract or an intercommodity spread contract.

Swap means "swap" as defined in section 1a of the Act and as further defined by the Commission.

Swap contract class means referenced contracts that are based on the same commodity and are swaps.

Swaption means an option to enter into a swap or a physical commodity option.

Swap dealer means "swap dealer" as that term is defined in section 1a of the Act and as further defined by the Commission.

Trader means a person that, for its own account or for an account that it controls, makes transactions in referenced contracts or has such transactions made.

§ 151.2 Core referenced futures contracts.

(a) *Agricultural commodities.* The core referenced futures contracts include:

(1) *ICE Futures U.S. Cocoa* (CC) contract based on a trading unit of 10 metric tons delivered at licensed warehouses in the Port of New York District, Delaware River Port District, Port of Hampton Roads, Port of Albany, or Port of Baltimore;

(2) *ICE Futures U.S. Coffee C* (KC) contract based on a trading unit of 37,500 pounds delivered at the Port of New York District, the Port of New Orleans, the Port of Houston, the Port of Bremen/Hamburg, the Port of Antwerp, the Port of Miami, or the Port of Barcelona;

(3) *Chicago Board of Trade Corn* (C) contract based on a trading unit of 5,000 bushels delivered at Chicago and Burns Harbor, Indiana Switching District, Lockport-Seneca Shipping District, Ottawa-Chillicothe Shipping District, or Peoria-Pekin Shipping District;

(4) *ICE Futures U.S. Cotton No. 2* (CT) contract based on a trading unit of 50,000 pounds net weight delivered at Galveston, Texas; Houston, Texas; New Orleans, Louisiana; Memphis, Tennessee, or Greenville/Spartanburg, South Carolina;

(5) *Chicago Mercantile Exchange Feeder Cattle* (FC) contract based on a trading unit of 50,000 pounds priced based on the CME Feeder Cattle Index or any other contract based on a sample of feeder cattle sales transactions in Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, New Mexico, North

Dakota, Oklahoma, South Dakota, Texas, and Wyoming;

(6) *ICE Futures U.S. FCOJ–A* (OJ) contract based on a trading unit of 15,000 pounds delivered at licensed warehouses in Florida, New Jersey, and Delaware;

(7) *Chicago Mercantile Exchange Lean Hog* (LH) contract based on a trading unit of 40,000 pounds priced based on the CME Lean Hog Index;

(8) *Chicago Mercantile Exchange Live Cattle* (LC) contract based on a trading unit of 40,000 pounds delivered at livestock yards in Wray, Colorado, Worthing, South Dakota; Syracuse, Kansas; Tulia, Texas; Columbus, Nebraska; Dodge City, Kansas; Amarillo, Texas; Norfolk, Nebraska; North Platte, Nebraska; Ogallala, Nebraska; Pratt, Kansas; Texhoma, Oklahoma; or Clovis, New Mexico;

(9) *Chicago Mercantile Exchange Class III Milk* (DA) contract based on a trading unit of 200,000 pounds priced based on the USDA Class III price for milk;

(10) *Chicago Board of Trade Oats* (O) contract based on a trading unit of 5,000 bushels delivered at Chicago Switching District, the Burns Harbor, Indiana Switching District, Minneapolis, St. Paul, Minnesota Switching Districts, Duluth Minnesota, or Superior, Wisconsin;

(11) *Chicago Board of Trade Rough Rice* (RR) contract based on a trading unit of 200,000 pounds delivered at warehouses in the Arkansas counties of Craighead, Jackson, Poinsett, Woodruff, Cross, St. Francis, Lonoke, Prairie, Monroe, Jefferson, Arkansas, or DeSha;

(12) *Chicago Board of Trade Soybeans* (S) contract based on a trading unit of 5,000 bushels delivered at Chicago and Burns Harbor, Indiana Switching District, Lockport-Seneca Shipping District, Ottawa-Chillicothe Shipping District, Peoria-Pekin Shipping District, Havana-Grafton Shipping District, or St. Louis-East St. Louis and Alton Switching Districts;

(13) *Chicago Board of Trade Soybean Meal* (SM) contract based on a trading unit of 100 short tons shipped from plants located in the Central Territory, Northeast Territory, Mid South Territory, Missouri Territory, Eastern Iowa Territory, or Northern Territory;

(14) *Chicago Board of Trade Soybean Oil* (BO) contract based on a trading unit of 60,000 pounds delivered at warehouses located in the Illinois Territory, Eastern Territory, Eastern Iowa Territory, Southwest Territory, Western Territory or Northern Territory;

(15) *ICE Futures U.S. Sugar No. 11* (SB) contract based on a trading unit of 112,000 pounds delivered at a port in the country of origin or in the case of landlocked countries, at a berth or anchorage in the customary port of export for the countries of Argentina, Australia, Barbados, Belize, Brazil, Colombia, Costa Rica, Dominican Republic, El Salvador, Ecuador, Fiji Islands, French Antilles, Guatemala, Honduras, India, Jamaica, Malawi, Mauritius, Mexico, Mozambique, Nicaragua, Peru, Republic of the Philippines, South Africa, Swaziland, Taiwan, Thailand, Trinidad, United States, and Zimbabwe;

(16) *ICE Futures U.S. Sugar No. 16* (SF) contract based on a trading unit of 112,000 pounds delivered at New York, Baltimore, Galveston, New Orleans, or Savannah;

(17) *Chicago Board of Trade Wheat* (W) contract based on a trading unit of 5,000 bushels delivered at Chicago Switching District, the Burns Harbor, Indiana Switching District, the Northwest Ohio Territory, on Ohio River, on Mississippi River or the Toledo, Ohio Switching District, or the St. Louis-East St. Louis and Alton Switching Districts;

(18) *Minneapolis Grain Exchange Hard Red Spring Wheat* (MWE) contract based on a trading unit of 5,000 bushels delivered at elevators located in Minneapolis/St. Paul, Red Wing, Duluth/Superior, Minnesota;

(19) *Kansas City Board of Trade Hard Winter Wheat* (KW) contract based on a trading unit of 5,000 bushels delivered at elevators in Kansas City, Missouri/Kansas; Hutchinson, Kansas; Salina/Abilene, Kansas; or Wichita, Kansas.

(b) *Metals.* The core referenced futures contracts include:

(1) *Commodity Exchange, Inc. Gold* (GC) contract based on a trading unit of 100 troy ounces delivered at Exchange-licensed warehouses;

(2) *Commodity Exchange, Inc. Silver* (SI) contract based on a trading unit of 5,000 troy ounces delivered at Exchange-licensed warehouses;

(3) *Commodity Exchange, Inc. Copper* (HG) contract based on a trading unit of 25,000 pounds delivered at licensed warehouses;

(4) *New York Mercantile Exchange Palladium* (PA) contract based on a trading unit of 100 troy ounces delivered at licensed warehouses; and

(5) *New York Mercantile Exchange Platinum* (PL) contract based on a trading unit of 50 troy ounces pounds delivered at licensed warehouses.

(c) *Energy commodities.* The core referenced futures contracts include:

(1) *New York Mercantile Exchange Light Sweet Crude Oil* (CL) contract based on a trading unit of 1,000 U.S. barrels (42,000 gallons) delivered at the Cushing crude oil storage complex in Cushing, Oklahoma;

(2) *New York Mercantile Exchange New York Harbor No. 2 Heating Oil* (HO) contract based on a trading unit of 1,000 U.S. barrels (42,000 gallons) delivered at an ex-shore facility in New York Harbor;

(3) *New York Mercantile Exchange New York Harbor Gasoline Blendstock* (RB) contract based on a trading unit of 1,000 U.S. barrels (42,000 gallons) delivered at an ex-shore facility in New York Harbor; and

(4) *New York Mercantile Exchange Henry Hub Natural Gas* (NG) contract based on a trading unit of 10,000 million British thermal units (mmBtu) delivered at the Henry Hub pipeline interchange in Erath, Louisiana.

§ 151.3 Referenced contract spot months.

(a) *Agricultural commodities.* For referenced contracts based on agricultural commodities, the spot month shall be the period of time commencing:

(1) At the close of business on the business day prior to the first notice day for any delivery month and terminating at the end of the delivery month for the following contracts:

(i) *ICE Futures U.S. Cocoa* (CC) contract;

(ii) *ICE Futures U.S. Coffee C* (KC) contract;

(iii) *ICE Futures U.S. Cotton No. 2* (CT) contract;

(iv) *ICE Futures U.S. FCOJ–A* (OJ) contract;

(2) At the close of business three business days prior to the first trading day in the delivery month and terminating at the end of the delivery month for the following contracts:

(i) *Chicago Board of Trade Corn* (C) contract;

(ii) *Chicago Board of Trade Oats* (O) contract;

(iii) *Chicago Board of Trade Rough Rice* (RR) contract;

(iv) *Chicago Board of Trade Soybeans* (S) contract;

(v) *Chicago Board of Trade Soybean Meal* (SM) contract;

(vi) *Chicago Board of Trade Soybean Oil* (BO) contract;

(vii) *Chicago Board of Trade Wheat* (W) contract;

(viii) *Minneapolis Grain Exchange Hard Red Spring Wheat* (MW) contract;

(ix) *Kansas City Board of Trade Hard Winter Wheat* (KW) contract;

(3) At the close of business two business days after the fifteenth calendar day of the contract month or the first business day after the fifteenth should the fifteenth day be a non-business day and terminating at the end

of the delivery month for the following contracts:

(i) *ICE Futures U.S. Sugar No. 11* (SB) contract;

(ii) *ICE Futures U.S. Sugar No. 16* (SF) contract;

(4) At the close of business on the business day immediately preceding the last five business days of the contract month and terminating at the end of the delivery month for the *Chicago Mercantile Exchange Live Cattle* (LC) contract;

(5) At the close of business on the eleventh day prior to the last trading day and terminating on the last day of trading for the contract month for the following contracts:

(i) Chicago Mercantile Exchange Feeder Cattle (FC) contract;

(ii) *Chicago Mercantile Exchange Class III Milk* (DA) contract;

(6) At the period commencing at the close of business on the fifth day prior to the last trading day and terminating at the end of the delivery month for the *Chicago Mercantile Exchange Lean Hog* (LH) contract.

(b) *Metals.* The spot month shall be the period of time commencing at the close of business on the business day prior to the first notice day for any delivery month and terminating at the end of the delivery month for the following contracts:

(1) *Commodity Exchange, Inc. Gold* (GC) contract; and

(2) *Commodity Exchange, Inc. Silver* (SI) contract.

(3) *Commodity Exchange, Inc. Copper* (HG) contract;

(4) *New York Mercantile Exchange Palladium* (PA) contract; and

(5) *New York Mercantile Exchange Platinum* (PL) contract.

(c) *Energy commodities.* The spot month shall be the period of time commencing at the close of business three business days prior to the last day of trading in the underlying referenced futures contract and terminating at the end of the delivery period for the following contracts:

(1) *New York Mercantile Exchange Light Sweet Crude Oil* (CL) contract;

(2) *New York Mercantile Exchange New York Harbor No. 2 Heating Oil* (HO) contract;

(3) *New York Mercantile Exchange New York Harbor Gasoline Blendstock* (RB) contract; and

(4) *New York Mercantile Exchange Henry Hub Natural Gas* (NG) contract.

§ 151.4 Position limits for referenced contracts.

(a) *Spot-month position limits.* Except as provided in paragraph (h) of this section for initial spot-month position limits, or as otherwise authorized by § 151.5, no trader may hold or control positions, separately or in combination, net long or net short, in referenced contracts in the same commodity when such positions are in excess of:

(1) For physical delivery referenced contracts, a *spot-month position limit* that shall be one-quarter of the estimated spot-month deliverable supply for a core referenced futures contract in the same commodity as fixed by the Commission pursuant to paragraph (c) of this section; or

(2) For cash-settled referenced contracts, a *spot-month position limit,* equal to the level fixed by paragraph (a)(1) of this section, or a *conditional-spot-month position limit,* that is five times the spot-month position limit fixed by paragraph (a)(1) of this section, *provided that* the trader:

(i) For cash-settled contracts in the spot month, shall not hold or control positions exceeding the level of any single month position limit;

(ii) Does not hold or control positions in the physical delivery referenced contract based on the same commodity that is in such contract's spot month;

(iii) Does not hold or control cash or forward positions in the referenced contract's spot month in an amount that is greater than one-quarter of the deliverable supply in the referenced contract's underlying commodity deliverable at the location or locations specified in the core referenced futures contract in the same commodity; and

(iv) Has submitted a certification to the Commission, in the form and manner provided for in § 151.10, that the trader meets the conditions of paragraphs (a)(2)(ii) and (iii) of this section.

(b) *Limited application of spot-month position limits.* Spot-month position limits shall only apply to positions in physical delivery or cash settled referenced contracts with delivery locations that match the delivery locations of a core referenced futures contracts in the same commodity.

(c) *Deliverable supply.*

(1) For the purpose of applying the spot-month position limit or conditional spot-month-position limit in paragraph (a) of this section, the Commission shall set the levels of deliverable supply in accordance with the procedure in paragraph (h) of this section.

(2) Each designated contract market shall submit to the Commission an estimate of deliverable supply by the 31st of December of each calendar year for each physical delivery referenced contract that is subject to a spot-month position limit and listed or executed pursuant to the rules of the designated contract market.

(3) The estimate submitted under paragraph (c)(2) of this section shall be accompanied by a description of the methodology used to derive the estimate along with any statistical data supporting the designated contract market's estimate of deliverable supply.

(4) In fixing spot-month position limits under paragraph (a)(1) of this section, the Commission shall rely on the estimate provided under paragraph (c)(2) of this section unless the Commission determines to rely on its own estimate of deliverable supply.

(d) *Non-spot position limits.* Except as otherwise authorized in § 151.5, no person may hold or control positions, separately or in combination, net long or net short, in referenced contracts in the same commodity when such positions, in all months combined (including the spot month) or in a single month, are in excess of:

(1) *An all-months-combined aggregate and single-month position limits,* fixed by the Commission at 10 percent of the first 25,000 contracts of average all-months-combined aggregated open interest, as calculated by the Commission pursuant to paragraph (e) of this section, with a marginal increase of 2.5 percent thereafter;

(2) *A class all-months-combined and single-month position limit,* fixed by the Commission, for referenced contracts that are contracts of the same class, at a level equal to the all-months-combined aggregate position limit.

(3) *Legacy position limits.* Except as otherwise authorized by § 151.5, no trader may hold or control positions, separately or in combination, net long or net short, in referenced contracts in the same commodity for the commodities enumerated below, when such positions, in all-months-combined or in a single-month, are in excess of the following position limits:

Referenced contract	Position limits
Chicago Board of Trade Corn (C) contract	22,000
Chicago Board of Trade Oats (O) contract	2,000
Chicago Board of Trade Soybeans (S) contract	10,000
Chicago Board of Trade Wheat (W) contract	6,500
Chicago Board of Trade Soybean Oil (BO) contract	6,500
Chicago Board of Trade Soybean Meal (SM) contract	6,500
Minneapolis Grain Exchange Hard Red Spring Wheat (MW) contract	6,500
ICE Futures U.S. Cotton No. 2 (CT) contract	5,000

Referenced contract	Position limits
Kansas City Board of Trade Hard Winter Wheat (KW) contract	6,500

(e) *Aggregated open interest calculations.* For the purpose of determining the speculative position limits in paragraph (d) of this section and in accordance with the procedure in paragraph (h) the Commission shall determine:

(1) For determining aggregate and class all-month-combined and single-month position limits under paragraph (d) of this section, the average all-months-combined aggregate open interest, is the sum for a calendar year of values obtained under paragraphs (e)(2) and (e)(3) of this section, then divided by 12, for the twelve months prior to the effective date.

(2) *The all-months futures open interest* is, at month end, the sum of all of a referenced contract's all-months-combined open futures and option contract (on a delta adjusted basis) open interests across all designated contract markets;

(3) *The all-months swaps open interest,* at month end, the sum of all of a referenced contract's all-months-combined open swaps and swaptions open interest, combining, open interest attributed to cleared and uncleared swaps and swaptions, where the uncleared all-months-combined swap open interest shall be the absolute sum of all swap dealers' net uncleared open swaps and swaptions exposures by counterparty and by single referenced contract month.

(f) *Netting of positions.* (1) For referenced contracts in the spot month, a trader's positions in physical delivery and cash-settled contracts are calculated separately and traders can have up to the spot-month position limit in both the physically delivered and cash settled contracts unless the cash settled contract positions are held pursuant to the conditional-spot-month position limit.

(2) For the purpose of applying non-spot-month position limits, a trader's position shall be combined and the net resulting position shall be applied towards determining the trader's aggregate single-month and all-months-combined position.

(3) For the purpose of applying non-spot-month class limits, a trader's position in contracts of the same class shall be combined and the net resulting position shall be applied towards determining the trader's class single-month and all-months-combined position.

(g) *Additional provisions.* In determining or calculating all levels and limits under this section, a resulting number shall be rounded up to the nearest hundred contracts.

(h) *Process for fixing and publishing position limits.* (1) With the exception of initial position limits, the Commission shall fix position limits under this part by January 31st of each calendar year;

(2) The initial spot-month position limits for referenced contracts shall be as provided in Appendix A to this part.

(3) The initial spot-month, single-month and all-months-combined position limits must be made effective pursuant to a Commission order and may be made on any date.

(4) The Commission shall publish position limits on the Commission's Web site at *http://www.cftc.gov* prior to making such limits effective, and such limits, other than initial limits, shall become effective on the 1st day of March immediately following the fixing date and shall remain effective up until and including the last day of the immediately following February.

§ 151.5 Exemptions for referenced contracts.

(a) *Bona fide hedging transactions or positions.*

(1) Any trader that complies with the requirements of this section may exceed the position limits set forth in § 151.4 to the extent that a transaction or position in a referenced contract:

(i) Represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

(ii) Is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

(iii) Arises from the potential change in the value of—

(A) Assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

(B) Liabilities that a person owns or anticipates incurring; or

(C) Services that a person provides or purchases, or anticipates providing or purchasing; or

(iv) Reduces risks attendant to a position resulting from a swap that—

(A) Was executed opposite a counterparty for which the transaction would qualify as a *bona fide* hedging transaction pursuant to paragraph (a)(1)(i) through (a)(1)(iii) of this section; or

(B) Meets the requirements of paragraphs (a)(1)(i) through (a)(1)(iii) of this section. Notwithstanding the foregoing, no transactions or positions shall be classified as *bona fide* hedging for purposes of § 151.4 unless such transactions or positions are established and liquidated in an orderly manner in accordance with sound commercial practices and the provisions of paragraph (a)(2) of this section have been satisfied.

(2) *Enumerated Hedging Transactions.* The definition of *bona fide* hedging transactions and positions in paragraph (a)(1) of this section includes the following specific transactions and positions:

(i) Sales of any commodity underlying referenced contracts which do not exceed in quantity:

(A) Ownership or fixed-price purchase of the contract's underlying cash commodity by the same person; or

(B) Unsold anticipated production of the same commodity, which may not exceed one year for referenced agricultural contracts, by the same person provided that no such position is maintained in any referenced contract during the five last trading days of that referenced contract.

(ii) Purchases of referenced contracts which do not exceed in quantity:

(A) The fixed-price sale of the contract's underlying cash commodity by the same person;

(B) The quantity equivalent of fixed-price sales of the cash products and by-products of such commodity by the same person; or

(C) Unfilled anticipated requirements of the same cash commodity, which may not exceed one year for referenced agricultural contracts, for processing, manufacturing, or feeding by the same person, provided that such transactions and positions in the five last trading days of any referenced contract do not exceed the person's unfilled anticipated requirements of the same cash commodity for that month and the next succeeding month.

(iii) Offsetting sales and purchases in referenced contracts which do not exceed in quantity that amount of the same cash commodity which has been bought and sold by the same person at unfixed prices basis different delivery months of the referenced contract, *provided that* no such position is maintained during the five last trading days of any referenced contract.

(iv) Purchases or sales by an agent who does not own or has not contracted to sell or purchase the offsetting cash commodity at a fixed price, *provided that* the person is responsible for the merchandising of the cash positions which is being offset and the agent has a contractual arrangement with the person who owns the commodity or

holds the cash market commitment being offset.

(v) Sales and purchases in referenced contracts described in paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) of this section may also be offset other than by the same quantity of the same cash commodity, *provided that* the fluctuations in value of the position in referenced contracts are substantially related to the fluctuations in value of the actual or anticipated cash position, and *provided that* the positions shall not be maintained during the five last trading days of any referenced contract.

(b) *Information on cash market commodity activities.* Any trader with a position that exceeds the position limits set forth in § 151.4 pursuant to paragraph (a) of this section shall submit to the Commission a 404 filing, in the form and manner provided for in § 151.10, containing the following information with respect to such position:

(1) The cash market commodity hedged, the units in which it is measured, and the corresponding referenced contract that is used for hedging the cash market commodity;

(2) The number of referenced contracts used for hedging;

(3) The entire quantity of stocks owned of the cash market commodity that is being hedged by a position in a referenced contract;

(4) The entire quantity of open fixed price purchase commitments in the hedged commodity outside of the spot month of the corresponding referenced contract;

(5) The entire quantity of open fixed price purchase commitments in the hedged commodity in the spot month of the corresponding referenced contract;

(6) The entire quantity of open fixed price sale commitments in the hedged commodity outside of the spot month of the corresponding referenced contract; and

(7) The entire quantity of open fixed price sale commitments in the hedged commodity in the spot month of the corresponding referenced contract.

(c) *Anticipatory hedge exemptions.* (1) *Initial statement.* Any trader who wishes to exceed the position limits set forth in § 151.4 pursuant to paragraph (a) of this section in order to hedge unsold anticipated commercial production or unfilled anticipated commercial requirements connected to a commodity underlying a referenced contract, shall submit to the Commission a 404A filing at least ten days in advance of the date that such transactions or positions would be in excess of the position limits set forth in § 151.4. The 404A filing shall be made in the form and manner provided in § 151.10 and shall contain the following information with respect to such position:

(i) The cash market commodity and units for which the anticipated production or requirements pertain;

(ii) The dates for the beginning and end of the period for which the person claims the anticipatory hedge exemption is required, which may not exceed one year;

(iii) The production or requirement of that cash market commodity for the three complete fiscal years preceding the current fiscal year;

(iv) The anticipated production or requirements for the period hedged, which may not exceed one year;

(v) The unsold anticipated production or unfilled anticipated requirements across the period hedged, which may not exceed one year;

(vi) The referenced contract that the trader will use to hedge the unfilled, anticipated production or requirements; and

(vii) The number of referenced contracts that will be used for hedging.

(2) *Approval.* All or a specified portion of the unsold anticipated production or unfilled anticipated requirements described in these filings shall not be considered as offsetting positions for *bona fide* hedging transactions or positions if such person is so notified by the Commission within ten days after the Commission is furnished with the information required under this paragraph (c).

(i) The Commission may request the person so notified to file specific additional information with the Commission to support a determination that the statement filed accurately reflects unsold anticipated production or unfilled anticipated requirements.

(ii) The Commission shall consider all additional information filed and, by notice to such person, shall specify its determination as to what portion of the production or requirements described constitutes unsold anticipated production or unfilled anticipated requirements for the purposes of *bona fide* hedging.

(3) *Supplemental reports.* Whenever the sales or purchases which a person wishes to consider as *bona fide* hedging of unsold anticipated production or unfilled anticipated requirements shall exceed the amounts in the most recent filing or the amounts determined by the Commission to constitute unsold anticipated production or unfilled anticipated requirements pursuant to paragraph (c)(2) of this section, such person shall file with the Commission a statement which updates the information provided in the person's most recent filing, and for instances anticipated needs exceed the amounts in the most recent filing, at least ten days in advance of the date that person wishes to exceed these amounts.

(d) *Additional information from swap counterparties to bona fide hedging transactions.* All persons that enter into swap transactions or maintain swap positions pursuant to paragraph (a)(1)(iv) of this section shall also submit to the Commission a 404S filing not later than 9:00 a.m. on the business day following that to which the information pertains. The 404S filing shall be done in the form and manner provided for in § 151.10 and shall contain the following information:

(1) The commodity reference price for the swaps that would qualify as a *bona fide* hedging transaction or position;

(2) The entire gross long and gross short quantity underlying the swaps that were executed in a transaction that would qualify as a *bona fide* hedging transaction, and the units in which the quantity is measured;

(3) The referenced contract that is used to offset the exposure obtained from the *bona fide* hedging transaction or position of the counterparty;

(4) The gross long or gross short size of the position used to offset the exposure obtained from a *bona fide* hedging transaction or position of the counterparty;

(5) The gross long or gross short size of the position used to offset the exposure obtained from a *bona fide* hedging swap transaction or position that is in the spot month.

(e) *Recordkeeping.* Traders who qualify for *bona fide* hedge exemptions for cash market positions, anticipatory hedging, and swaps opposite counterparties that would qualify as *bona fide* hedging transactions or positions shall maintain complete books and records concerning all of their related cash, futures, and swap positions and transactions and make such books and records, along with a list of swap counterparties, available to the Commission upon request.

(f) *Conversion methodology for swaps not involving the same commodity.* In addition to the information required under this section, traders engaged in the hedging of commercial activity or positions resulting from swaps that are used for the hedging of commercial activity that does not involve the same quantity or commodity as the quantity or commodity associated with positions in referenced contracts that are used to hedge shall submit to the Commission a 404, 404A, or 404S filing, as

appropriate, containing the following information:

(1) Conversion information both in terms of the actual quantity and commodity used in the trader's normal course of business and in terms of the referenced contracts that are sold or purchased; and

(2) An explanation of the methodology used for determining the ratio of conversion between the actual or anticipated cash positions and the trader's positions in referenced contracts.

(g) *Requirements for bona fide hedging swap counterparties.* Upon entering into a swap transaction where at least one party is relying on a *bona fide* hedge exemption to exceed the position limits of § 151.4 with respect to such a swap:

(1) The party not hedging a cash market commodity risk, or both parties to the swap if both parties are hedging a cash market commodity risk, shall:

(i) Ask for a written representation from its counterparty verifying that the swap qualifies as a *bona fide* hedging transaction under paragraph (a)(1)(iv) of this section; and

(ii) Upon receipt of such written representation from the counterparty, provide written confirmation of such receipt to the counterparty.

(2) The party relying on the *bona fide* hedging exemption to enter into the swap transaction shall submit a written representation to its counterparty verifying that the swap qualifies as a *bona fide* hedging transaction, as defined in paragraph (a)(1)(iv) of this section.

(h) The written representation and receipt confirmation described in paragraph (g) of this section shall be retained by the parties to the swap and provided to the Commission upon request.

(i) *Filing requirement for bona fide hedgers.* Any party with cash market commodity risk relying on a *bona fide* hedging exemption to enter into and maintain a referenced contract position shall submit to the Commission a 404S filing, in the form and manner provided for in § 151.10, containing the information in paragraphs (b) and (c) of this section, for each business day on which such position was maintained, up to and including the day after the trader's position level is below the position limit that was exceeded.

(j) *Positions that are maintained.* For a swap that satisfies the requirements of paragraph (a) of this section, the party to whom the cash market commodity risk is transferred may itself establish, lift and re-establish a position in excess of the position limits of § 151.4 provided that:

(1) The party and its counterparty comply with the requirements of paragraphs (g) through (i) of this section; and

(2) The party may only exceed such position limit to the extent and in such amounts that the qualifying swap directly offsets, and continues to offset, the cash market commodity risk of a *bona fide* hedging counterparty.

§ 151.6 Position visibility.

(a) *Visibility levels.* A trader holding or controlling, separately or in combination, net long or net short, referenced contracts in the following commodities when such positions in all months or in any single month (including the spot month) are in excess of the following position levels, shall comply with the reporting requirements of paragraphs (b) through (d) of this section:

VISIBILITY LEVELS FOR REFERENCED METALS CONTRACTS

New York Mercantile Exchange Copper (HG)	4,200
New York Mercantile Exchange Palladium (PA)	900
New York Mercantile Exchange Platinum (PL)	1,400
New York Mercantile Exchange Gold (GC)	10,700
New York Mercantile Exchange Silver (SI)	4,500

VISIBILITY LEVELS FOR REFERENCED ENERGY CONTRACTS

New York Mercantile Exchange Light Sweet Crude Oil (CL)	22,500
New York Mercantile Exchange New York Harbor Gasoline Blendstock (RB)	7,800
New York Mercantile Exchange Henry Hub Natural Gas (NG)	21,000
New York Mercantile Exchange New York Harbor No. 2 Heating Oil (HO)	9,900

(b) *Statement of trader exceeding visibility level.* Upon acquiring a position in referenced contracts in the same commodity that reaches or exceeds a visibility level, a trader shall submit to the Commission a 401 filing for the position in a referenced contract, separately by futures, options, swaps, or swaptions that comprise the position in the form and manner provided for in § 151.10, and shall containing the following information:

(1) The date on which the trader's position initially reached or exceeded the visibility level;

(2) Gross long and gross short positions on an all-months-combined basis (using economically reasonable and analytically supported deltas);

(3) If the visibility levels are reached or exceeded in any single month, the contract month and the trader's gross long and short positions in the relevant single month (using economically reasonable and analytically supported deltas); and

(4) If applicable, the trader shall also certify that they do not hold or control positions subject to the filing requirements of paragraphs (c) and (d) of this section.

(c) *Related uncleared swaps position report.* Upon acquiring a position in referenced contracts in the same commodity that reaches or exceeds a visibility level, a trader shall submit to the Commission a 402S filing for any uncleared swap positions that are based on substantially the same commodity as that which underlies the referenced contract. The 402S filing shall be done in the form and manner provided for in § 151.10 and shall contain the following information for the date on which the trader's position initially reached or exceeded the visibility level:

(1) By commodity reference price;

(2) By swaps or swaptions;

(3) By open swap end dates within 30 days, 90 days, one year or outside of one year from the date on which the trader's position initially reached or exceeded the visibility level; and

(4) Gross long and gross short positions on a futures equivalent basis in terms of the referenced contract; or

(5) With the express written permission of the Commission or its designees, the submission of a swaps portfolio summary statement spreadsheet in digital format, only insofar as the spreadsheet provides at least the same data as that required by the 402S filing, may be substituted for the reporting requirements of the 402S filing.

(d) Any trader above a visibility level that holds or controls cash market commodity positions or has anticipated commercial requirements or unsold anticipated commercial production in the same or substantially the same commodity shall submit to the Commission 404 and 404A filings respectively. Such 404 and 404A filings shall be done in the form and manner provided for in § 151.10 and shall contain information regarding such positions as described in § 151.5(b) and (c). Notwithstanding this requirement, a visible trader may alternatively, upon written permission by the Commission or its designees, submit in digital format a physical commodity portfolio

summary statement spreadsheet, provided that such spreadsheet contains at least the same data as that required by the 404 or 404A filing.

(e) Reporting obligations imposed by regulations other than those contained in this section shall supersede the reporting requirements of paragraphs (b), (c), and (d) of this section but only insofar as other reporting obligations provide at least the same data and are submitted to the Commission or its designees at least as often as the reporting requirements of paragraphs (b), (c), and (d) of this section.

§ 151.7 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in § 151.4 shall apply to all positions in accounts for which any trader by power of attorney or otherwise directly or indirectly holds positions or controls trading and to positions held by two or more traders acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the position were done by, a single individual.

(b) *Ownership of accounts generally.* For the purpose of applying the position limits set forth in § 151.4, any trader holding positions in more than one account, or holding accounts or positions in which the trader by power of attorney or otherwise directly or indirectly has a 10 percent or greater ownership or equity interest, must aggregate all such accounts or positions.

(c) *Ownership by limited partners, shareholders or other pool participants.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, a trader that is a limited partner, shareholder or other similar type of pool participant with an ownership or equity interest of 10 percent or greater in a pooled account or positions need not aggregate such pooled positions or accounts if:

(i) The pool operator has, and enforces, written procedures to preclude the trader from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(ii) The trader does not have direct, day-to-day supervisory authority or control over the pool's trading decisions; and

(iii) The pool operator has complied with the requirements of paragraph (g) of this section and has received an exemption from aggregation on behalf of the trader or a class of traders from the Commission.

(2) A commodity pool operator having ownership or equity interest of 10 percent or greater in an account or positions as a limited partner, shareholder or other similar type of pool participant must aggregate those accounts or positions with all other accounts or positions owned or controlled by the commodity pool operator.

(3) Each limited partner, shareholder, or other similar type of pool participant having an ownership or equity interest of 25 percent or greater in a commodity pool must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader.

(d) *Identical trading.* For the purpose of applying the position limits set forth in § 151.4, any trader that holds or controls the trading of positions, by power of attorney or otherwise, in more than one account, or that holds or controls trading of accounts or positions in multiple pools, with identical trading strategies must aggregate all such accounts or positions.

(e) *Trading control by futures commission merchants.* The position limits set forth in § 151.4 shall be construed to apply to all positions held by a futures commission merchant or its separately organized affiliates in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or its separately organized affiliates, unless:

(1) A trader other than the futures commission merchant or the affiliate directs trading in such an account;

(2) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account;

(3) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of 10 percent or more in, or controls; and

(4) The futures commission merchant has complied with the requirements of paragraph (g) of this section and has received an exemption from aggregation from the Commission.

(f) *Owned non-financial entities.* An entity need not aggregate its positions with the positions of one of its owned non-financial entities, as defined in § 151.1, if it can sufficiently demonstrate, in an application for exemption submitted under paragraph (g) of this section, that the owned non-financial entity's trading is independently controlled and managed, indicia of which include:

(1) The entity and its other affiliates have no knowledge of trading decisions by the owned non-financial entity, and the owned non-financial entity has no knowledge of trading decisions by the entity or any of the entity's other affiliates;

(2) The owned non-financial entity's trading decisions are controlled by persons employed exclusively by the owned non-financial entity, who do not in any way share trading control with persons employed by the entity;

(3) The owned non-financial entity maintains and enforces written policies and procedures to preclude the entity or any of its affiliates from having knowledge of, gaining access to, or receiving information or data about its positions, trades or trading strategies, including document routing and other procedures or security arrangements; and

(4) The owned non-financial entity maintains a risk management system that is separate from the risk management system of the entity and any of its other affiliates.

(5) Any other factors the Commission may consider, in its discretion, that indicate that the owned non-financial entity's trading is independently controlled and managed.

(g) *Applications for exemption.* (1) Entities seeking an exemption from the position limits established by the Commission pursuant to this section, shall file an initial application for an exemption providing as part of the application all information required by the Commission, including but not limited to information:

(i) Describing the relevant circumstances that warrant disaggregation;

(ii) Providing an independent assessment report on the operation of the policies and procedures described in § 151.9(c)(1)(iii) for pool operators and § 151.9(f)(3) for owned non-financial entities;

(iii) Designating an office and employee(s) of the entity, with salaries and compensation that are independent of trading profits and losses, which shall be responsible for the coordination of aggregation rules and position limit compliance;

(iv) Providing an organizational chart that includes the name, main business address, main business telephone number, main facsimile number and main e-mail address of the entity and each of its affiliates;

(v) Providing the names of pertinent employees of the entity (trading, operations, compliance, risk

management and legal) and their work locations and contact information;

(vi) Providing a description of all information-sharing systems, bulletin boards, and common e-mail addresses;

(vii) Providing an explanation of the entity's risk management system;

(viii) Providing an explanation of how and to whom the trade data and position information is distributed, including which officers receive reports and their respective titles; and

(ix) A signature by a representative duly authorized to bind the entity.

(2) An application shall be submitted within the time specified by the Commission and in the form and manner provided for in § 151.10.

§ 151.8 Foreign boards of trade.

The aggregate position limits in § 151.4 shall apply to a trader with positions in referenced contracts executed on, or pursuant to the rules of a foreign board of trade, provided that:

(a) Such referenced contracts settle against the price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity; and

(b) The foreign board of trade makes available such referenced contracts to its members or other participants located in the United States through direct access to its electronic trading and order matching system.

§ 151.9 Preexisting positions.

(a) The position limits set forth in § 151.2 of this chapter may be exceeded to the extent that such positions remain open and were entered into in good faith prior to the effective date of any rule, regulation, or order that specifies a position limit under this part.

(b) Swap and swaption positions entered into in good faith prior to the effective date of any rule, regulation, or order that specifies a position limit under this part may be netted with post-effective date swap and swaptions for the purpose of applying any position limit.

(c) Swap and swaption positions entered into in good faith prior to the effective date of any rule, regulation or order that specifies a position limit under this part shall not be aggregated with positions in referenced contracts that were entered into after the effective date of such a rule, regulation or order.

§ 151.10 Form and manner of reporting and submitting information or filings.

Unless otherwise instructed by the Commission or its designees, any person submitting reports under this section shall submit the corresponding required filings and any other information required under this part to the Commission as follows:

(a) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission; and

(b) Not later than 9 a.m. on the next business day following the reporting or filing obligation is incurred *unless:*

(1) A 404A filing is submitted pursuant § 151.5(c), in which case the filing must be submitted at least ten days in advance of the date that transactions and positions would be established that would exceed a position limit set forth in § 151.4;

(2) A 404 or 404S filing is submitted pursuant to § 151.5, in which case the filing must be submitted the day after a position limit is exceeded and all days the trader exceeds such levels and the first day after the trader's position is below the position limit;

(3) The filing is submitted pursuant to § 151.6 and not under any other part under this title, then the 401, 402S, 404, or 404A filing, or their respective substitutes as provided for under § 151.6(c)(5) and (d), shall be submitted after the establishment of a position exceeding a visibility level on the latter of either (i) 9 a.m. five business day after such time or (ii) 9 a.m. the first business day of the subsequent calendar month. If the filing is submitted pursuant to § 151.6 and not under any other part under this title, the filing trader shall be required to submit a 401, 402S, 404, or 404A filing, or their respective substitutes, no more often than once per calendar month; or

(4) An application for exemption renewal is filed pursuant to § 151.7(g)(1), in which case the filing shall be submitted within 30 calendar days of January 1 of each year following the initial application for exemption.

§ 151.11 Registered entity position limits.

(a) *Generally.* (1) Registered entities shall adopt, and establish rules and procedures for monitoring and enforcing spot-month, single-month, and all-months-combined position limits with respect to agreements, contracts or transactions executed pursuant to their rules that are no greater than the position limits specified in § 151.4.

(2) For agreements, contracts or transactions with no Federal limits, or with respect to levels of open interest to which no Federal limits apply, registered entities that are trading facilities shall adopt spot-month, single-month and all-months-combined position limits based on the methodology in 151.4, *provided, however,* that a registered entity may adopt, notwithstanding the methodology in 151.4, single-month or all-months-combined limit levels of 1,000 contracts for tangible commodities other than energy products and 5,000 contracts for energy products and non-tangible commodities, including contracts on financial products.

(3) Securities futures products. Position limits for securities futures products are specified in Part 41.

(b) *Alternatives.* For a contract that is not subject to a Federal position limit, registered entities may adopt position accountability rules with respect to any agreement, contract or transaction:

(1) On a major foreign currency, for which there is no legal impediment to delivery and for which there exists a highly liquid cash market; or

(2) On an excluded commodity that is an index or measure of inflation, or other macroeconomic index or measure; or

(3) On an excluded commodity that meets the definition of section 1.13(ii), (iii), or (iv) of the Act; or

(4) On an excluded commodity having an average open interest of 50,000 contracts and an average daily trading volume of 100,000 contracts and a highly liquid cash market.

(c) *Aggregation.* Position limits or accountability rules established under this section shall be subject to the aggregation standards of § 151.7.

(d) *Exemptions.* (1) *Hedge exemptions.* (i) For purposes of exempt and agricultural commodities, no designated contract market or swap execution facility bylaw, rule, regulation, or resolution adopted pursuant to this section shall apply to any position that would otherwise be exempt from the applicable Federal speculative position limits as determined by § 151.5; *provided, however,* that the designated contract market or swap execution facility may limit *bona fide* hedging positions or any other positions which have been exempted pursuant to § 151.5 which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(ii) For purposes of excluded commodities, no designated contract market or swap execution facility bylaw, rule, regulation or resolution adopted pursuant to this section shall apply to any transaction or position defined under § 1.3(z); *provided, however,* that the designated contract market or swap execution facility may limit *bona fide* hedging positions which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(2) *Procedure.* Persons seeking to establish eligibility for an exemption must comply with the procedures of the designated contract market or swap execution facility for granting exemptions from its speculative position limit rules. In considering whether to permit or grant an exemption, a contract market or swap execution facility must take into account sound commercial practices and paragraph (d)(1) of this section apply principles while remaining consistent with § 151.5.

(f) *Other exemptions.* Speculative position limits adopted pursuant to this section shall not apply to:

(1) any position acquired in good faith prior to the effective date of any bylaw, rule, regulation, or resolution which specifies such limit; or

(2) any person that is registered as a futures commission merchant or as a floor broker under authority of the Act, except to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person.

(g) *Ongoing responsibilities.* Nothing in this Part shall be construed to affect any provisions of the Act relating to manipulation or corners or to relieve any designated contract market, swap execution facility, or governing board of a designated contract market or swap execution facility from its responsibility under other provisions of the Act and regulations.

§ 151.12 Delegation of authority to the Director of the Division of Market Oversight.

(a) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) In § 151.4(e) for determining levels of open interest;

(2) In § 151.5 for granting exemptions relating to *bona fide* hedging transactions; and

(3) In § 151.10 for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(c) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

APPENDIX A TO PART 151

Contract	Spot month	
	Current federal limit	Current exchange limit
Agricultural Contracts		
Cocoa		1,000
Coffee		500
Corn	600	600
Cotton No. 2	300	300
Feeder Cattle		300
Frozen Concentrated Orange Juice		300
Lean Hogs		950
Live Cattle		450
Milk Class III		1,500
Oats	600	600
Rough Rice		600
Soybeans	600	600
Soybean Meal	720	720
Soybean Oil	540	540
Sugar No. 11		5,000
Sugar No. 16		1,000
Wheat (CBOT)	600	600
Wheat, Hard Red Spring	600	600
Wheat, Hard Winter	600	600
Base Metals Contracts		
Copper Grade #1		1,200
Precious Metals Contracts		
Gold		3,000
Palladium		650
Platinum		150
Silver		1,500
Energy Contracts		
Crude Oil, Light Sweet ("WTI")		3,000
Gasoline Blendstock (RBOB)		1,000
Natural Gas		1,000
No. 2 Heating Oil, New York Harbor		1,000

Issued by the Commission, this 13th day of January 2011, in Washington, DC.

David Stawick,

Secretary of the Commission.

Appendices to Position Limits for Derivatives—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 Dunn, Chilton and O'Malia voted in the affirmative; Commissioner Sommers voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking to establish position limits for physical commodity derivatives. The CFTC does not set or regulate prices. Rather, the Commission is directed to ensure that commodity markets are fair and orderly to protect the American public.

When the CFTC set position limits in the past, the agency sought to ensure that the markets were made up of a broad group of market participants with a diversity of views. At the core of our obligations is promoting market integrity, which the agency has historically interpreted to include ensuring markets do not become too concentrated.

Position limits help to protect the markets both in times of clear skies and when there is a storm on the horizon. In 1981, the Commission said that "the capacity of any contract market to absorb the establishment and liquidation of large speculative positions in an orderly manner is related to the relative size of such positions, i.e., the capacity of the market is not unlimited."

Today's proposal would implement important new authorities in the Dodd-Frank Act to prevent excessive speculation and manipulation in the derivatives markets. The Dodd-Frank Act expanded the scope of the Commission's mandate to set position limits to include certain swaps. The proposal re-establishes position limits in agriculture, energy and metals markets. It includes one position limits regime for the spot month and another regime for single-month and all-months combined limits. It would implement spot-month limits, which are currently set in agriculture, energy and metals markets, sooner than the single-month or all-months-combined limits. Single-month and all-months-combined limits, which currently are only set for certain agricultural contracts, would be re-established in the energy and metals markets and be extended to certain swaps. These limits will be set using the formula proposed today based upon data on the total size of the swaps and futures market collected through the position reporting rule the Commission hopes to finalize early next year. It is only with the passage and implementation of the Dodd-Frank Act that the Commission will have broad authority to collect data in the swaps market.

It will be some time before position limits for single-month and all-months-combined can be fully implemented. In the interim, if a trader has a position that is above a level of 10 and 2½; percent of futures and options on futures open interest in the 28 contracts for which the Commission is proposing position limits, I have directed staff to collect information, including using special call authority when appropriate, to monitor these large positions. Staff will brief the Commission and make any appropriate recommendations based upon existing authorities for the Commission's consideration during its closed surveillance meetings at least monthly on what staff finds.

Collecting this data relating to large traders with positions in the futures markets above such levels or points of 10 and 2½; percent would give the Commission a better look into the market and help us identify potential concerns. For example, if a trader does not have a bona fide hedge exemption, we can look into the details of its position and its intentions. It may also give us additional information as to how the position limits in the proposed rulemaking would affect traders in these markets.

These levels, or points, are the positions at which CFTC staff will brief the Commission under its existing authorities. They would not be a substitute for current position limits or accountability levels, and they should not be interpreted to be a level that will automatically trigger any additional regulatory action.

Appendix 3—Statement of Commissioner Bart Chilton

I reluctantly concur in the Commission's approval of publication of notice of a proposed rulemaking on position limits for derivatives. I support the Commission's issuance of a position limits proposal, but I do not support the timing.

I have said repeatedly that it is of paramount importance to adhere to the deadlines imposed by Congress in the Wall Street Reform and Consumer Protection Act of 2010. Position limits is one of the rulemakings with an earlier target date. The current proposal does not meet the statutory time limits of imposition of limits within 180 days from the date of enactment for energy and metal commodities and 270 days for agricultural commodities. The agency does not have the authority to delay these statutory deadlines.

At the open Commission meeting of the agency on December 9, 2010, the Chairman indicated an intent to move forward with two proposals on speculative position limits and to move "expeditiously" to implement spot month limits. This bifurcation of spot and single month/aggregate rulemakings was a good attempt to meet the January deadline set by Congress. At the meeting on December 16, 2010, however, the Commission was presented with a single proposed rule, with a 60-day comment period, addressing spot, single month, and aggregate limits. Accordingly, it is now clear that spot month limits will not be implemented for many months, at best, and single month/aggregate limits—and the corresponding new bona fide hedging rule—may take more than a year to implement.

We need to address excessive speculation in these markets now. We already have more speculative positions in the commodities markets than ever before. There are some who suggest that certain commodity prices are currently delinked from supply and demand fundamentals, and are being impacted by excessive speculation. Should these conditions worsen, I will not hesitate to continue to criticize the delay that the Commission's position limits proposed rulemaking exacerbates.

I commend the position point agreement that the Chairman publicly directed the staff to undertake. This interim measure will give the agency a window into the "largest of the large" traders in our markets, and is an appropriate provisional effort as we transition to include the swaps market into our traditional surveillance systems.

The Commission should have acted so as to implement position limits as directed by Congress, pursuant to the statutory deadlines. I am disappointed that it failed to do so, and I will continue to aggressively advocate for rules that will appropriately address excessive speculatio

[FR Doc. 2011–1154 Filed 1–25–11; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 50, 53 and 58
Denial of the Petitions To Reconsider the Final Rule Promulgating the Primary National Ambient Air Quality Standard for Sulfur Dioxide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 53 and 58

[EPA–HQ–OAR–2007–0352; FRL–9255–7]

Denial of the Petitions To Reconsider the Final Rule Promulgating the Primary National Ambient Air Quality Standard for Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petitions to reconsider.

SUMMARY: The Environmental Protection Agency (EPA, or Agency) is denying the petitions to reconsider the final revised primary national ambient air quality standard (NAAQS) for oxides of sulfur as measured by sulfur dioxide (SO_2) issued under section 109 of the Clean Air Act (CAA). The final revised SO_2 Primary NAAQS was published on June 22, 2010, and became effective on August 23, 2010. EPA has carefully reviewed all of the petitions and revisited both the rulemaking record and the Administrator's decision process underlying the final revised SO_2 Primary NAAQS in light of these petitions. EPA's analysis of the petitions reveals that the petitions have provided inadequate and generally irrelevant arguments and evidence that the underlying information supporting the final revised SO_2 Primary NAAQS is flawed, misinterpreted or inappropriately applied by EPA. The petitioners' arguments fail to meet the criteria for reconsideration under the Clean Air Act.

DATES: This denial is effective January 14, 2011.

ADDRESSES: EPA's docket for this action is Docket ID No. EPA–HQ–OAR–2007–0352. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information where disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Stewart, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C504–06, Research Triangle Park, NC 27711; telephone: (919) 541–7524; fax (919) 541–0237; e-mail: *stewart.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

The following topics are discussed in this document:

I. Introduction

A. Summary

This is EPA's response denying the petitions to reconsider the final revised SO_2 Primary NAAQS promulgated under Section 109 of the Clean Air Act (CAA, or Act) (75 FR 35520, June 22, 2010). EPA has considered all of the petitions, including the arguments presented therein and information provided by the petitioners as supporting evidence of their claims, and including materials submitted to the District of Columbia Circuit Court of Appeals that petitioners provided regarding the same or similar claims raised there in support of motions to stay the revised SO_2 Primary NAAQS. EPA has evaluated the merit of the petitioners' arguments in the context of the entire body of scientific and other evidence before the Agency. This response provides EPA's justifications for denying these petitions. Sections III–VI of this Decision set forth EPA's specific responses to the petitioners' arguments.

After a comprehensive, careful review and analysis of the petitions, EPA has determined that the petitioners' arguments and evidence are inadequate, irrelevant to the promulgation of the final revised SO_2 Primary NAAQS, and do not show that the underlying information supporting the revised SO_2 Primary NAAQS is flawed, misinterpreted by EPA, or inappropriately applied by EPA. In fact, petitioners do not challenge the revised health-based SO_2 Primary NAAQS at all. The focus of their petitions is, instead, EPA's non-binding preamble discussion providing guidance regarding expected approaches for future implementation of the revised SO_2 Primary NAAQS, which they claim should not have been presented without first having undergone notice and comment procedures. They claim that this discussion relates to aspects of the revised SO_2 Primary NAAQS that are of "central relevance" to the NAAQS decision itself, and as such have an impact on the promulgated NAAQS. The fact that EPA did not present this discussion in the notice of proposed rulemaking (NPRM), petitioners argue, violates the procedural requirements of the Clean Air Act and requires EPA to reconsider the promulgated rule. Moreover, petitioners argue that the discussion in the final rule preamble conflicts with numerous substantive provisions of the Act, as well as the

regulatory text of the final NAAQS. Therefore, petitioners claim, EPA must stay the effectiveness of the revised SO_2 Primary NAAQS, pending the Agency's reconsideration of the preamble discussion and of the promulgated NAAQS.

As discussed in detail throughout this decision, petitioners' claims and the information they submit do not change or undermine our scientific conclusions regarding the appropriateness of the revisions to the SO_2 Primary NAAQS, as determined under section 109 of the CAA. Nor do they change or undermine our conclusions regarding the promulgated requirements for an SO_2 monitoring network or the conforming regulatory changes we made to the Air Quality Index (AQI). More specifically, the arguments in the petitions do not lead EPA to change its final decisions regarding the need to revise the prior SO_2 Primary NAAQS, and what those revisions should be. EPA's decisions were based on a thorough review in the Integrated Science Assessment for Oxides of Sulfur—Health Criteria (ISA) of scientific information on known and potential human health effects associated with exposure to SO_2 in the air. Those final decisions also took into account: (1) EPA's Risk and Exposure Assessment to Support the Review of the SO_2 Primary National Ambient Air Quality Standard (REA), which provided quantitative exposure and risk analyses based on the ISA; (2) advice and recommendations of the statutory review body, the Clean Air Act Science Advisory Committee (CASAC), as reflected in its letters to the Administrator and its public discussions of the ISA and REA; (3) public comments received during the development of the ISA and REA; and (4) public comments received on EPA's NPRM for the revised SO_2 Primary NAAQS.

A core defect in petitioners' arguments is that they are not based on consideration of the body of scientific information that informed EPA's final decisions in promulgating the revised SO_2 Primary NAAQS. In fact, petitioners' arguments have nothing at all to do with EPA's scientific conclusions, and provide no new information or basis for EPA to revisit either those conclusions or the specific SO_2 Primary NAAQS that EPA promulgated. Petitioners' objections regarding the final rule preamble's non-binding discussion of anticipated future implementation approaches are neither relevant to nor persuasive in challenging EPA's promulgated revised SO_2 Primary NAAQS. They certainly are not material or a reliable basis on which to question the validity and credibility of the body of science underlying EPA's SO_2 NAAQS decision, or the decision process as articulated in the NPRM and final rulemaking notice. Petitioners' assertions regarding the additional preamble discussion providing guidance on expected future and separate implementation actions are thus not an appropriate basis on which to challenge the voluminous and well documented body of science that is the technical foundation of EPA's revised SO_2 Primary NAAQS.

A second, and equally important, defect in petitioners' arguments is their assumption that EPA's non-binding preamble discussion of anticipated approaches for separate future implementation actions constituted, itself, final agency action governing those future actions. Although petitioners do not demonstrate how EPA's discussion has such final, binding and enforceable effect, their implicit assumption is that EPA has already taken final rulemaking action on the discussed implementation approaches. Only if EPA had taken such final action on these discussed approaches could there possibly be an issue regarding whether EPA's discussion was a "logical outgrowth" of the proposed rule, and whether it was of "central relevance" to the promulgated revised SO_2 Primary NAAQS sufficient to support a petition for reconsideration. Similarly, for the discussion to constitute a "procedural error," it would first have to represent a "determination" under section 307(d) that is a final rulemaking action. But the preamble discussion at issue was not such a final agency action. EPA plainly stated that the discussion represented non-binding guidance regarding future actions, that the Agency's anticipated approach could continue to evolve as further guidance is developed, and that the Agency expected there to be circumstances in which the anticipated approaches may not apply. In other words, regarding the implementation discussion, EPA has not yet taken a final action that could be "reconsidered."

Even assuming, for the sake of argument, that EPA's implementation discussion as presented in the final preamble to the SO_2 Primary NAAQS could have constituted final action, it is separate and independent from the establishment of the health-based SO_2 Primary NAAQS itself. Therefore, the Agency does not regard the discussion as having been of "central relevance" to the regulatory decision on the NAAQS itself. In setting NAAQS that are "requisite" to protect public health with an adequate margin of safety, as provided in section 109(b) of the Act, EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In so doing, EPA may not consider costs of implementing the standards. *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 471, 475–76 (2001). Petitioners frequently assert that the implementation discussion is an "aspect" of the final NAAQS itself, but this is incorrect given that issues regarding future implementation are not part of the NAAQS itself and are legally irrelevant to the setting of the NAAQS. At most, the preamble's discussion of modeling partly influenced only the reduced scope of the promulgated required monitoring network, compared to that proposed, and no petitioner has objected to that reduction. Consequently, we reject petitioners' assertions that the non-binding preamble discussion of the anticipated future implementation approaches, even if "final action," is "of central relevance" to the promulgation of the SO_2 Primary NAAQS, and therefore conclude that reconsideration of the rule in light of that discussion is not warranted.

Assuming again for the purpose of argument that the preamble's non-binding implementation discussion could be both "final action" and "of central relevance" to the outcome of the NAAQS decision, we further disagree with petitioners' claims that the discussion was not a "logical outgrowth" of the proposal and that the CAA required us to present the discussion in the NPRM before we could address the expected implementation approaches in the final rule's preamble or in other guidance documents. Although the NPRM did not specifically address the modeling based approach to implementation discussed in the preamble to the final rule, it has long been EPA's practice in implementing the prior SO_2 Primary NAAQS to rely upon both modeling and monitoring to determine whether areas have attained the NAAQS. To the extent the preamble discussion in the NPRM concerning a monitoring based approach was interpreted by interested parties to announce a proposed change to that longstanding practice, the context for this proposed change was the past practice of the Agency and the rulemaking process inherently leaves open the possibility that an agency will choose not to adopt any proposed change to its historic practice. Therefore, interested parties should have foreseen that EPA might not, in fact, "promulgate" any such change but instead discuss our expectation to continue our historic practice, and they

had ample opportunity to comment on that possibility. In fact, interested parties did comment on the related issue of the burden of relying on monitoring, and suggested that EPA instead use modeling to relieve that administrative burden. Partly in response to those comments, EPA explained its anticipated approaches of continuing to rely upon both modeling and monitoring in implementing the Primary SO_2 NAAQS, and made clear that except for the promulgated provisions relating to the scope of the monitoring network and associated requirements, the Agency was still developing its policy for future implementation actions such as area designations and determinations of NAAQS attainment, and would decide whether to base such actions on modeling or monitoring in the future on a case-by-case basis. Thus, although EPA disagrees with the petitioners' view that the non-binding preamble discussion on future implementation represents final agency action of central relevance to the NAAQS decision, even if the preamble to the final rule has this effect, EPA committed no procedural error in presenting this discussion in the final rule's preamble, and reconsideration is not warranted.

Furthermore, EPA disagrees with petitioners' assertions that the Agency is required under the CAA to promulgate, as regulatory provisions, requirements addressing future implementation of the NAAQS of the type that petitioners demand. Nothing in the CAA requires this, and the rulemaking for prior SO_2 Primary NAAQS did not contain such regulatory requirements. Consequently, we disagree with petitioners' claims that it is now improper to continue to address implementation issues in non-binding guidance such as that which EPA has frequently issued regarding SO_2 NAAQS implementation and which EPA presented in the final rule preamble. Although the preamble's inclusion of such guidance and statements regarding the intent to issue further guidance do not warrant reconsideration of the final rule, we fully expect to continue to evaluate implementation issues as we proceed to develop such non-binding guidance and take implementing actions.

In addition to petitioners' administrative process arguments, EPA disagrees with petitioners' claims that the final rule preamble's non-binding implementation discussion is inconsistent with applicable substantive CAA statutory provisions or with the regulatory text of the SO_2 Primary NAAQS. Petitioners present a series of arguments claiming that our explanation of our anticipated approaches for area designations and action on state implementation plan (SIP) submissions unlawfully conflicts with the principles of "cooperative federalism" embraced by the CAA and with provisions and past practice under, for example, CAA sections 107(d), 110(a), 171(2), and the promulgated regulatory text of 40 CFR 50.17(b) and (c) and Appendix T section 1.1. As we explain in section IV below, none of petitioners' arguments has merit or warrants reconsideration of the final rule. Moreover, petitioners must necessarily wait for final agency action to challenge whatever implementation approaches EPA eventually adopts when making designations and taking SIP actions. Moreover, we continue to believe the implementation approaches discussed in the final rule preamble, if taken in future final actions, would be consistent with governing statutory and regulatory provisions. Of course, if public comments we receive on those future actions persuade us otherwise, we would consider taking other approaches and nothing EPA has done or stated to this point forecloses ultimate adoption of entirely different approaches. The very fact that future actions will provide us this opportunity to refine and otherwise change our anticipated approaches in advance of taking final action to make them binding shows that reconsideration of them under CAA section 307(d)(7)(B), at this preliminary stage, is not warranted. Nor are these objections "of central relevance" to the outcome of the final SO_2 Primary NAAQS. Thus, they do not meet the criteria for reconsideration under CAA section 307(d)(7)(B).

For similar reasons, discussed further in Section V, we disagree with petitioners' claims that the non-binding implementation discussion has any "impact" on the promulgated NAAQS. As the discussion does not represent final agency action, it cannot have any direct and immediate "impact" on anything. Petitioners' objections on this point distill to a claim that using modeling to determine whether areas are attaining the SO_2 Primary NAAQS would be more "conservative" and could over-predict ambient SO_2 concentrations in a specific instance, resulting in more identified violations than if monitoring were exclusively used. Of course, if such over-prediction were claimed to occur in a given instance, interested parties would have a fair opportunity to show that using modeling in that case may not be appropriate. As explained in the preamble discussion, we believe that the opposite is more likely to be true. The SO_2 Primary NAAQS itself is premised on the three-year average of the 99th percentile of the daily maximum 1-hour average concentrations not exceeding the level of the NAAQS in the ambient air. *See* 40 CFR 50.17(b) at 75 FR 35592. Modeling can very accurately identify areas of potential daily maximum 1-hour concentrations above the NAAQS. *See* 75 FR at 35559. Accurate prediction of daily maximum 1-hour SO_2 concentrations does not make the NAAQS more stringent, but, rather, implements it faithfully.

Finally, as further explained in section VI, EPA concludes that there is no basis for an administrative stay of the final SO_2 Primary NAAQS. Under CAA section 307(d)(7)(B), EPA has authority to issue a stay for up to three months if it grants a petition to reconsider a final rule. As we are denying the petitions to reconsider, an administrative stay here is not warranted. In addition, a stay is not otherwise warranted. First, the petitioners have not made a strong showing on the merits that reconsideration is warranted, for all of the reasons upon which EPA is denying the petitions to reconsider. Second, the petitioners' general and speculative arguments concerning irreparable harm fail to account for the non-binding nature of the final rule preamble's implementation discussion, the opportunities for interested parties to assert their views in the future implementation actions about which petitioners are concerned, and also do not account for EPA's stated intention to provide further implementation guidance. Third, petitioners are incorrect in maintaining that it would be in the public interest to grant an administrative stay of the rule. Their arguments ignore the harm to the public that would occur from delayed implementation and attainment of the revised SO_2 Primary NAAQS, rendering such a stay contrary to the public interest.

B. Background

1. Revisions to the SO_2 Primary NAAQS

Based on its review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by SO_2, EPA published a revised Primary SO_2 NAAQS on June 22, 2010, so that the standards are requisite to protect public health with an adequate margin of safety, as appropriate under CAA section 109. *See* 75 FR 35520–35603. Specifically, EPA replaced the prior 24-hour and annual standards with a new one-hour SO_2 standard at a level of 75 parts per billion (ppb), based on the three-year average of

the annual 99th percentile of 1-hour daily maximum concentrations. EPA also established requirements for an SO_2 monitoring network under section 110. *See* 75 FR at 35602. EPA did not, in this regulation, promulgate requirements governing designations of areas as either nonattainment, attainment or unclassifiable with respect to the revised NAAQS under CAA section 107, or governing development and approval of SIPs under CAA sections 110 and 192. Instead, for these future implementation actions, EPA provided in the preamble non-binding guidance regarding how the Agency initially expects to designate areas under the new NAAQS and how the NAAQS would be implemented by States, Tribes, local governments and EPA. *See* 75 FR at 35550–54, 35569–82. EPA indicated that the Agency expected to provide additional guidance for those future actions. *Id.*

EPA revised the SO_2 primary NAAQS pursuant to two sections of the CAA that govern NAAQS establishment and revision. Section 108 directs EPA to identify and list air pollutants that meet certain criteria, including that the air pollutant "in [the Administrator's] judgment, cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources." CAA sections 108(a)(1). For those air pollutants listed, section 108 requires EPA to issue air quality criteria that "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air * * *" CAA section 108(a)(2).

Section 109(a) directs EPA to promulgate "primary" and "secondary" NAAQS for pollutants for which air quality criteria have been issued. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which in the judgment of the Administrator, based on [the air quality] criteria and allowing an adequate margin of safety, are requisite to protect the public health." CAA section 109(b)(1). The legislative history of section 109 indicates that a primary NAAQS is to be set at "the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population," and that for this purpose "reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group." S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970). *See also American Lung Ass'n* v. *EPA,* 134 F.3d 388, 389 (D.C. Cir. 1998) ("NAAQS must protect not only average healthy individuals, but also 'sensitive citizens'—children, for example, or people with asthma, emphysema, or other conditions rendering them particularly vulnerable to air pollution. If a pollutant adversely affects the health of these sensitive individuals, EPA must strengthen the entire national standard."); *Coalition of Battery Recyclers Ass'n* v. *EPA,* 604 F.3d 613, 617–18 (D.C. Cir. 2010) (same).

The requirement that primary NAAQS include an adequate margin of safety is intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It is also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Ass'n* v. *EPA,* 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied,* 449 U.S. 1042 (1980); *American Petroleum Inst.* v. *Costle,* 665 F.2d 1176, 1186 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 1034 (1982). Thus, in selecting primary NAAQS, EPA may seek not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollution levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to the nature or degree.

In addressing the requirement for a margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the at-risk population[s], and the kind and degree of the uncertainties that must be addressed. In setting standards that are "requisite" to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In so doing, EPA may not consider the costs of implementing the standards. *Whitman* v. *American Trucking Ass'n,* 531 U.S. 457, 475–76 (2001). Consequently, in establishing the revised SO_2 Primary NAAQS, EPA did not consider future implementation burdens or costs that might be borne by industrial sources, States, Tribes, local governments, or by EPA itself, such considerations not being relevant to the science based determinations required to be made under CAA section 109. However, as mentioned above, EPA did discuss and provide guidance on issues related to future implementation, without such considerations impermissibly affecting EPA's decision on the NAAQS itself.

States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA establishes them. Under CAA section 110 and related provisions, States submit, for EPA approval, SIPs that provide for implementation, maintenance, enforcement, and attainment of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the prevention of significant deterioration (PSD) program under CAA sections 160–169 that covers these sources. In addition, federal programs provide for nationwide control of emissions through: The motor vehicle and motor vehicle fuel program under title II of the CAA; the new source performance standards (NSPS) under CAA sections 111 and 129; and the acid rain program under CAA title IV. EPA has also promulgated the Clean Air Interstate Rule (CAIR) to require additional SO_2 emission reductions needed in the eastern United States. This rule was remanded by the U.S. Court of Appeals for the D.C. Circuit, and EPA recently proposed revisions to it. See *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008) and 75 FR 45210 (August 2, 2010). EPA is also developing "maximum achievable control technology" (MACT) standards under CAA sections 112 and 129 that the Agency expects will result in significant SO_2 reductions from the subject source categories.

EPA formally initiated the most recent review of the air quality criteria for oxides of sulfur and of the SO_2 Primary NAAQS on May 15, 2006 (71 FR 29023). The first draft of the ISA for Oxides of Sulfur-Health Criteria (ISA) and the Sulfur Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment (EPA, 2007b) were reviewed by CASAC at a public meeting held on December 5–6, 2007. EPA then developed the second draft of the ISA and the first draft of the Risk and Exposure Assessment to Support the Review of the SO_2 Primary [NAAQS] (REA), which CASAC reviewed at a public meeting held on July 30–31, 2008. EPA released the final ISA in September 2008 (EPA, 2008a). A second draft of the REA was reviewed by CASAC at a public meeting held April 16–17, 2009. The final REA containing the final staff policy assessment that considered the evidence presented the final ISA and the air quality, exposure, and risk characterization results as they related to the adequacy of the then-current SO_2 NAAQS and potential alternative primary SO_2 standards, was completed in August 2009 (EPA 2009a).

On December 8, 2009, EPA published its proposed revisions to the primary SO_2 NAAQS. *See* 74 FR 64810. EPA

presented a number of conclusions, findings, and determinations proposed by the Administrator, and invited general, specific, and/or technical comments on all issues involved with this proposal, including all such proposed judgments, conclusions, findings and determinations. EPA carefully considered these comments as it made its final decisions regarding the revised SO_2 Primary NAAQS, as EPA described in its notice of final rulemaking. *See* 75 FR at 35523. The Administrator signed the final rule on June 2, 2010, and it was published in the **Federal Register** on June 22, 2010. EPA's thorough and detailed scientific rationale for the revised SO_2 Primary NAAQS is set forth at 75 FR 35524–35550. For the reasons discussed therein, and taking into account information and assessments presented in the ISA and the REA, as well as the advice and recommendations of CASAC, the Administrator concluded that the then-current 24-hour and annual primary SO_2 NAAQS were not requisite to protect public health with an adequate margin of safety. The Administrator also reviewed each of the elements of the NAAQS—indicator, averaging time, form, and level—and promulgated a revised standard of 75 ppb based on the three-year average of the annual 99th percentile of the daily maximum one-hour average concentrations of SO_2. The Administrator concluded that this standard will appropriately protect public health with an adequate margin of safety, and specifically will afford appropriate increased protection for asthmatics and other at-risk populations against an array of adverse respiratory health effects related to short-term (5 minutes to 24 hours) SO_2 exposure. These effects include decrements in lung function, increases in respiratory symptoms, and related serious indicators of respiratory morbidity including emergency department visits and hospital admissions for respiratory causes. As the petitions for reconsideration do not challenge EPA's scientific conclusions or any element of the new standard, this response to the petitions does not further discuss the Administrator's scientific determinations or her decision regarding the final revised SO_2 Primary NAAQS, other than to reiterate that issues regarding how the standard would be implemented or the costs of implementation received no consideration in the decision regarding the NAAQS. *See Whitman* v. *American Trucking Ass'ns,* 531 U.S. at 475–76.

2. Preamble Discussion of Anticipated Approaches for Implementation

Although discussions regarding implementation are not part of the NAAQS itself, it is EPA's customary practice to provide separate implementation guidance—and in some cases regulatory requirements—regarding a new or revised NAAQS, along with guidance on designations and other issues. The December 8, 2009, NPRM for the SO_2 Primary NAAQS included a summary discussion regarding future implementation actions such as designations of areas under the standard, SIP development, and new source review (NSR) and PSD permitting. *See* 74 FR 64810, 64858–64. This discussion essentially outlined the separate statutory provisions and requirements that would be triggered following final promulgation of a revised NAAQS under section 109(d). As part of this general discussion, EPA presented limited preliminary explanations of how the Agency expected some of these future actions might be addressed. For example, regarding area designations under section 107(d) of the Act, EPA stated it did not expect new monitors required under a new monitoring network would be in place in time to generate data to inform designations under the statutory timetable, and the Agency explained that some areas could be designated as unclassifiable because EPA would be unable to determine whether they are violating the 1-hour standard or contributing to a violation in a nearby area. *See* 74 FR at 64859. EPA also summarized the CAA section 110 requirement that States submit SIPs showing attainment and maintenance of a revised NAAQS through control programs directed at sources of SO_2 emissions, including, for example, NSR and PSD programs. *See* 74 FR at 64859–63. Regarding PSD, EPA specifically discussed preliminary issues regarding the use of modeling to demonstrate that emissions increases from new or modified sources will not cause or contribute to a violation of the new NAAQS. *See* 74 FR at 64862. However, the NPRM did not contain any proposed regulatory provisions regarding area designations under section 107, or regarding SIP implementation under section 110 and related provisions, except as discussed below.

The NPRM also proposed regulatory amendments regarding the monitoring network design, in order to better identify where short-term, peak ground-level concentrations of SO_2 may occur. *See* 74 FR at 64849–55. EPA proposed a two-pronged monitoring network comprised of all source-oriented monitors, with requirements that the network contain at least a specified number of monitors in the following locations: (1) Monitors in urban areas where there is a higher coincidence of population and emissions, utilizing a Population Weighted Emissions Index (PWEI), and (2) monitors in States based on each State's contributions to the national SO_2 emissions inventory. This two-pronged network would have resulted in a minimum of approximately 348 source-oriented monitors nationwide. EPA noted that due to multiple variables that affect ground-level SO_2 concentrations caused by one or more stationary sources, it is difficult to specify *a priori* a source-specific threshold, algorithm, or metric by which to accurately identify the monitoring location where peak concentrations occur. *See* 74 FR at 64850–51. Consequently, EPA explained that States may need to conduct other quantitative analyses, such as modeling, to identify where ground-level SO_2 maximum concentrations may occur and where to site monitors (*see* 74 FR at 64851–52, 64853–54), and requested comment on whether to utilize existing screening and refined modeling tools to identify facilities with the potential to cause an exceedance of the proposed revised SO_2 NAAQS (*see* 74 FR at 64854–55).

Besides monitoring and reporting requirements, the only implementation related regulatory provisions EPA proposed had to do with making the transition to the new standard and including "anti-backsliding" principles consistent with section 172(e) of the Act. *See* 74 FR at 64863–64. EPA announced it was proposing that the prior NAAQS would remain in place for one year following the effective date of a designation under the new NAAQS in an area, before being revoked in most attainment areas. Further, EPA proposed that all existing SIP and FIP requirements currently in effect under CAA sections 110, 191 and 192 would remain in effect. For all areas designated nonattainment under the prior NAAQS or subject to "SIP Calls," EPA proposed that the prior NAAQS would remain in effect until the area had received full approval of a SIP meeting the attainment requirements of the new NAAQS. EPA proposed regulatory amendments to 40 CFR 50.4 to this effect. The final NAAQS rulemaking promulgated these proposed requirements, with minor clarifying amendments to address public comments received on the proposed

requirements. *See* 75 FR at 35580–82; 40 CFR 50.4(e).

The final rulemaking notice, in addition to explaining the codified requirements regarding monitoring and anti-backsliding, also presented a more thorough non-binding discussion than did the NPRM of how EPA anticipated subsequent designations and SIP planning actions would be implemented. *See* 75 FR at 35550–80. Partly in response to public comments arguing that the proposed monitoring network was simultaneously insufficient to identify all points of maximum ambient SO_2 concentrations and overly burdensome in the number of monitors it proposed to require, EPA explained that it now expected to follow its traditional approach in SO_2 NAAQS implementation of utilizing both modeling and monitoring to inform future designation and SIP approval actions. EPA explained that its anticipated approach would better address: (1) The unique source-specific impacts of SO_2 emissions, (2) the special challenges SO_2 emissions present in terms of monitoring short-term SO_2 levels for comparison with the NAAQS, (3) the generally superior utility that modeling offers for assessing SO_2 concentrations, and (4) the most appropriate method for ensuring that areas attain and maintain the NAAQS, taking into account the potential substantial SO_2 emissions reductions from forthcoming national and regional rules currently under development. *See* 75 FR at 35550. EPA explained that except for the final regulatory provisions such as those regarding the promulgated monitoring network, the implementation discussion explained the Agency's expected and intended approach to future action as guidance, not as final agency action, and acknowledged that EPA's approaches may continue to evolve as actual implementation proceeds. *Id.* For example, in the part of the discussion outlining EPA's general expectation for what roles modeling and monitoring would play in initial area designations under CAA section 107, EPA noted that decisions about whether to base an attainment designation on monitoring alone would be made on a case-by-case basis. *See* 75 FR at 35552, n. 22. EPA further explained that it planned to issue more implementation guidance, particularly regarding the use of refined dispersion modeling. *See* 75 FR at 35550. EPA has in fact already provided some further guidance regarding implementation of the revised SO_2 Primary NAAQS. *See* Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, "Guidance Concerning Implementation of the 1-hour SO_2 NAAQS for the Prevention of Significant Deterioration Program," and attachments (Aug. 23, 2010) (included in the docket for this notice of denial).

EPA described its historical preference for having used modeling more than monitoring to support SO_2 NAAQS compliance determinations, and referred to numerous prior actions dating from the late 1970s through 2002 in implementing the SO_2 NAAQS that had taken this approach. *See* 75 FR at 35551. EPA explained the unique aspects of SO_2 that had caused the Agency to have less confidence in relying on monitoring compared to situations involving other NAAQS pollutants and how this affected its expected approach to initial designations, given that the new monitoring network would not be in place in time under the statutory timetable for issuing designations. EPA also indicated that it did not expect States to be able in that timeframe to conduct refined dispersion modeling for all of the sources that may potentially cause or contribute to a violation of the revised NAAQS. *See* 75 FR at 35551–52. EPA thus explained that it was likely that most areas would therefore be initially designated as "unclassifiable" under the new NAAQS, and that an appropriate approach needed to be identified to ensure that all areas ultimately attain and maintain the revised NAAQS. *See* 75 FR at 35552–53. The anticipated approach, EPA discussed, was to rely upon the CAA section 110(a)(1) requirement for SIP submissions from all areas—attainment, unclassifiable, and nonattainment—following NAAQS revision. Although EPA had often historically expected very little from States in this submission in the way of substantive demonstrations or control requirements, relying on new source review programs to keep areas in attainment, EPA explained that in the case of SO_2 the section 110(a)(1) SIP provided an opportunity to allow States to include in attainment demonstration modeling expected SO_2 reductions from future federal and regional control programs currently in development that would not be in effect in time to inform initial designations. *Id.* To ensure that these attainment demonstrations would result in timely nationwide attainment of the new NAAQS just as expeditiously as would occur if EPA were to designate as nonattainment areas with sources that may potentially cause or contribute to NAAQS violations in advance of these new national and regional programs becoming effective, EPA explained that it anticipated States would submit section 110(a)(1) SIPs to show attainment on the same schedule as would apply for nonattainment areas, i.e., no later than approximately August 2017. EPA indicated its expectation that this date would represent attainment as expeditiously as practicable for all areas. *Id.* EPA provided detailed non-binding guidance discussions of its expected approach toward future designations at 75 FR 35569–71, and of its expected implementation strategy at 75 FR 35571–80. However, EPA noted that any determination of actual attainment dates would await notice and comment rulemaking with respect to a particular area and SIP. *Id.* at 35573.

Although the discussion regarding designations and SIP implementation constituted non-binding guidance, the approach discussed had a role in EPA's final decisions on the size of the required monitoring network, and the anti-backsliding requirements. The discussion had no impact on the Agency's final decision on the NAAQS itself. In particular, partly as a result of EPA's review of its historic practice in assessing SO_2 NAAQS compliance, EPA in the final rule modified its proposed requirements concerning the minimum size of the monitoring network. *See* 75 FR at 35554, 35556–62. The result was that EPA reduced the final minimum monitoring network requirement to approximately 163 monitors from the proposed number of approximately 348. *See* 75 FR at 35557. And, as mentioned above, within the implementation discussion EPA discussed its promulgated requirements addressing the "anti-backsliding" provisions of CAA section 172(e). *See* 75 FR at 35580–82. Finally, both in order to conform the regulatory text for the new NAAQS to that addressing other NAAQS, and in recognition of the fact that both monitoring and modeling may be used by States to implement the new NAAQS, EPA added clarifying regulatory text to refer to those situations in which compliance is measured by use of monitoring. *See* 75 FR at 35582; 40 CFR 50.17(b) and section 1(a) of Appendix T to part 50.

3. Petitions for Reconsideration and for Judicial Review and Stay Requests

Following promulgation of the revised SO_2 Primary NAAQS, on August 23, 2010, numerous parties filed petitions for judicial review in the U.S. Court of Appeals for the D.C. Circuit. *See National Environmental Development Association's Clean Air Project* v. *EPA,*

No. 10–1252 (consolidated with Nos. 10–1254, 10–1255, 10–1256, 10–1258 and 10–1259) (D.C. Cir.). Each of those parties also on the same day submitted to EPA petitions for administrative reconsideration of the rule under CAA section 307(d)(7)(B). The petitions for reconsideration objected to EPA's final rulemaking preamble discussion explaining the Agency's anticipated approaches in future designations and SIP actions. Some of the petitioners characterized their petitions as requesting, first, "clarification" from EPA regarding "key portions of the implementation provisions of the Rule to ensure that the Rule is implemented as written" (*see, e.g.,* UARG Petition at 3), and, second, in the alternative, that EPA reconsider its discussed approach of how it intends to implement the revised NAAQS and conduct notice and comment on implementation procedures (*see, e.g., id.*). In addition, each petition requested that EPA administratively stay the final rule's effectiveness pending such reconsideration. *Id.*

Specifically, EPA received: A single petition for reconsideration from the Utility Air Regulatory Group (UARG), the America Petroleum Institute (API), the Council of Industrial Boilers (CIBO), the American Iron and Steel Institute (AISI), the American Coke and Coal Chemicals Institute (ACCCI), the American Chemistry Council (ACC), the American Forest & Paper Association (AF&PA), the American Wood Council (AWC), the Brick Industry Association (BIA), the Corn Refiners Association (CRA) and the National Oilseed Processors Association (NOPA) (collectively, UARG); and separate petitions from the National Environmental Development Association's Clean Air Project (NEDA/CAP), ASARCO LLC (ASARCO), the Montana Sulphur & Chemical Company (MSCC), the Texas Commission on Environmental Quality (TCEQ), and the States of North Dakota and South Dakota (ND and SD). Additionally, EPA's Region 3 Office received a letter from the West Virginia Department of Environmental Protection (WVDEP) objecting to the final rule and urging EPA to "reconsider" its anticipated approach to implementation of the NAAQS, and the Arkansas Department of Environmental Quality (ADEQ) sent the Administrator a letter in support of the petitions submitted by TCEQ and by North Dakota and South Dakota.

Before EPA could respond to the petitions for reconsideration and their requests for an administrative stay of the SO_2 Primary NAAQS, on October 8, 2010, the State of North Dakota filed in the D.C. Circuit a motion (ND Motion) asking the Court to either stay the effectiveness of the final SO_2 Primary NAAQS pending completion of judicial review of the rule, or, in the alternative, stay the effectiveness of the June 2, 2011, statutory deadline for States to submit any recommendations for attainment/nonattainment designations. *See* ND Motion at 20. On November 8, 2010, UARG, NEDA/CAP, and the SO_2 NAAQS Coalition filed a response in support of the ND Motion, as did TCEQ and ASARCO. On the same day, EPA filed its response in opposition to the ND Motion, and so did the American Lung Association (ALA) and the Environmental Defense Fund (EDF) as intervenor-movants. Following this, on November 22, 2010, North Dakota filed its reply to the various responses, and EPA filed a motion to strike the responses filed by the UARG, NEDA/CAPS, the SO_2 NAAQS Coalition and ASARCO. On December 2, 2010, these petitioners filed their response to EPA's motion to strike, to which EPA replied on December 10, 2010. On December 14, 2010, the Court issued an order denying EPA's motion to strike, granting EPA's motion to hold the litigation in abeyance, allowing EPA to file a response to the responses in support of the ND Motion by January 18, 2011, directing EPA to file a motion to govern further proceedings in the litigation by January 18, 2011, and deferring a ruling on the ND Motion to stay the rule pending further order of the Court.

II. Standard for Reconsideration

Section 307(d)(7)(B) of the CAA strictly limits petitions for reconsideration both in time and scope. It states that: "Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed pending such reconsideration, however, by the Administrator or the court for a period not to exceed three months."

Thus, by the terms of CAA section 307(d)(7)(B), it is clear that the right to seek reconsideration of a rule is afforded with respect to decisions that are final rulemaking actions for which judicial review may be obtained under CAA section 307(b)(1) and which have some final effect that could potentially be stayed by either a court or by the Administrator. EPA may not be required to reconsider non-final actions, such as non-binding guidance discussions, for which judicial review is not otherwise available and which do not themselves take effect at any time. Moreover, the requirement to convene a proceeding to reconsider a rule is based on the petitioner demonstrating to EPA both: (1) That it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (i.e., within 60 days after publication of the final rulemaking notice in the **Federal Register**, see CAA section 307(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule.

As to the first procedural criterion for reconsideration, a petitioner must show why the issue could not have been presented during the comment period, either because it was impracticable to raise the issue during that time or because the grounds for the issue arose after the period for public comment (but within 60 days of publication of the final action). Thus, CAA section 307(d)(7)(B) does not provide a forum to request EPA to reconsider issues that actually were raised, or could have been raised, prior to promulgation of the final rule.

In EPA's view, an objection is of central relevance to the outcome of the rule only if it provides substantial support for the argument that the promulgated regulation should be revised. *See, e.g.,* EPA's Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202 of the Clean Air Act, 75 FR 49556, 49561 (Aug. 13, 2010). This interpretation is appropriate in light of the criteria adopted by Congress in this and other provisions in section 307(d). Section 307(d)(4)(B)(i) provides that "[a]ll documents which become available after the proposed rule has been published and which the Administrator determines are of central

relevance to the rulemaking shall be placed in the docket as soon as possible after their availability." This provision draws a distinction between comments and other information submitted during the comment period, and other documents which become available after publication of the proposed rule. The former are docketed irrespective of their relevance or merit, while the latter must be docketed only if a higher hurdle of central relevance to the rulemaking is met.

Congress also used the phrase "central relevance" in sections 307(d)(7)(B) and (d)(8), and by reference in (d)(9)(D), and in each case Congress set a more stringent hurdle than in section 307(d)(4). Under section 307(d)(7)(B), the Administrator is required to reconsider a rule only if the objection is "of central relevance to the outcome of the rule." Likewise, section 307(d)(8) authorizes a court to invalidate a rule for procedural errors only if the errors were "so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been substantially changed if such errors had not been made." Section 307(d)(9)(D) then applies both the section 307(d)(7)(B) and (d)(8) requirements in limiting a court's ability to reverse an EPA final action found to be without observance of procedure required by law. In each of these provisions, it is not enough that the objection or error be of central relevance to the issues involved in the rulemaking, as in section 307(d)(4). Instead, the objection has to be of central relevance "to the outcome of the rule" itself, and the procedural error has to be of such central relevance that it presents a "substantial likelihood that the rule would have been substantially changed." Central relevance to the issues involved in the rulemaking is not enough to meet the criteria Congress set under sections 307(d)(7)(B), (d)(8) or (d)(9)(D). These provisions all require that the objection or error be central to the substantive final decision that is the outcome of the rulemaking and that is taking effect. This difference is significant, and indicates that Congress set a much higher hurdle for disturbing a final rule that has already been issued, as compared to the less stringent criteria for docketing of documents before a decision has been made and a rule has been issued.

In this context, EPA's interpretation of section 307(d)(7)(B) gives full and appropriate meaning to the criteria adopted by Congress. An objection is considered of central relevance to the outcome of the rule only if it provides substantial support for the argument that the final promulgated regulation should be revised. This properly links the criteria to the promulgated outcome of the rulemaking, not just to the issues addressed in the rulemaking which may or may not have influenced that final action taken by EPA. It requires that the objection be of such substance and merit that it can be considered central to the final outcome of the rulemaking. This interpretation is consistent with section 307(d)(8), which also ties central relevance to the outcome of the rulemaking, in terms of a "substantial likelihood" that the promulgated rule would be "substantially changed," and with section 307(d)(9)(D), which assumes that the objection regard an "action" that a court "may reverse" and for which a "procedure required by law" exists. This interpretation gives proper weight to the approach throughout sections 307(b) and (d) of the importance Congress attributed to preserving the finality of agency rulemaking decisions, once they have in fact been made. This interpretation is also consistent with the case law, as discussed below.

As discussed in this decision, EPA is denying the petitions because they fail to meet these criteria. At the outset, the objections raised in the petitions to reconsider all regard non-final, non-binding guidance discussion that is not final rulemaking action that is ripe for either judicial review or for reconsideration. Additionally, in all cases the objections are not of central relevance to the outcome of the rule because they do not provide substantial support for the argument that the final SO_2 Primary NAAQS should be revised. Moreover, the objections raised in the petitions regard issues that were or could have been raised during the comment period of the NPRM. Parts III–V of this decision explain why EPA is denying the petitions with respect to the objections set forth in these petitions for reconsideration. For some of these issues, the petitioners have not met the procedural predicate for reconsideration. That is, the petitioners have not demonstrated that it was impracticable to raise these objections during the comment period, or that the grounds for these objections arose after the close of the comment period but within 60 days after publication of the final rule. As such, they do not meet the statutory criteria for administrative reconsideration under CAA section 307(d)(7)(B). For all of the objections, the petitioners' objections and argument in terms of substance are not "of central relevance" to the outcome of the promulgated rulemaking establishing the revised NAAQS. Moreover, the objections regard discussion in the preamble that is not final action at all, and therefore EPA concludes that the non-binding discussion cannot arguably be considered either of central relevance to the promulgated SO_2 NAAQS or something that EPA was required to provide pursuant to section 307(d)'s procedural requirements. Thus, none of the objections meet the criteria for reconsideration under the CAA.

EPA also rejects TCEQ's claim that EPA should reconsider the final rule under section 557 of the Administrative Procedure Act (APA), even if the criteria for reconsideration under CAA section 307(d)(7)(B) are not met (TCEQ at 4). First, CAA section 307(d)(1) provides that APA sections 553 through 557 do not, except as expressly provided in section 307(d), apply to actions to which CAA section 307(d) applies, such as promulgation of a NAAQS (*see* CAA section 307(d)(1)(A)). Second, by its own terms APA section 557 applies only when a hearing is required to be conducted under APA section 556, which in turn applies only to hearings required under APA sections 553 or 554. *See* APA sections 557(a), 556(a). Since those provisions do not apply to actions promulgated under CAA section 307(d), APA section 557 is inapplicable.

As mentioned above, EPA also received requests to administratively stay the final revised SO_2 Primary NAAQS as part of the petitions for reconsiderations. Petitioners either tied their requests for an administrative stay to their petitions for reconsideration under CAA section 307(d)(7)(B), referred to EPA's general authority to prescribe such regulations as are necessary to carry out EPA's functions under CAA section 301(a), did not refer to any specific statutory authority for granting an administrative stay, or filed the stay request under section 705 of the Administrative Procedure Act, 5 U.S.C. 705. As described below, EPA is denying the petitions to reconsider; hence there is no basis for issuance of a stay under CAA section 307(d)(7)(B). Nor is it necessary for EPA to grant a stay by rulemaking under authority of CAA section 301(a) to carry out the Agency's functions in denying the petitions for reconsideration. APA section 705 authorizes an agency to postpone the effective date of an agency action pending judicial review when the agency finds that justice so requires. In this case, the revised SO_2 Primary NAAQS was effective as of August 23, 2010. TCEQ's request for an administrative stay relying upon APA section 705 was submitted by petition on the same day that the SO_2 Primary

NAAQS became effective. Even if EPA believed that an administrative stay was warranted, which it does not, it is not clear whether EPA would have authority under APA section 705 to stay an agency action that has already gone into effect. Postponing an effective date implies action before the effective date arrives.

In any case, an administrative stay of the final SO_2 Primary NAAQS is not warranted. As explained in Part VI below, in response to the arguments raised by petitioners, (1) the petitioners have not made a strong showing on the merits, for all of the reasons upon which EPA is denying the petitions to reconsider; (2) the petitioners' arguments concerning irreparable harm fail to adequately account for the fact that no final actions implementing the approaches discussed in the preamble have yet been taken under the revised NAAQS; (3) the petitioners' arguments do not consider the possibility of harm to other parties if a stay of the NAAQS were to be granted; and (4) granting a stay would be contrary to the public interest.

III. Administrative Process Issues

A. Summary of Petitioners' Arguments

Petitioners' procedural objections come in several forms, with most petitioners raising them repeatedly. The central assumption of each objection is that EPA's final NAAQS rulemaking took final action on the discussed implementation approaches, and that the discussion and approaches are of central relevance to the outcome of the final revised SO_2 Primary NAAQS. Further, petitioners often assert that but for the inclusion of the discussion of implementation approaches, which was allegedly done in a procedurally flawed manner, EPA would have promulgated a different revision of the SO_2 Primary NAAQS. They claim that notice and comment rulemaking is required for the implementation "aspect" of the final NAAQS, and rely upon the premise that the final preamble discussion constitutes final agency action on such an allegedly required aspect.

Several petitioners argued that EPA gave no indication in the NPRM that the Agency might "reduce the role of monitoring" in NAAQS attainment designations or that modeling might play a greater role in SO_2 NAAQS implementation, or that the requirements of CAA section 110(a)(1) might be interpreted or implemented differently than in the past. *See* UARG at 13–14, 22–25; NEDA/CAP at 3–4; ASARCO at 2–4, 4–6, 6–8, 8–10; MSCC at 1–2, 3–6, 6–9; TCEQ at 4, 11–14; ND and SD at 7–8, 8–9; WVDEP at 1, 2; ADEQ at 1. Consequently, the petitioners claim the final preamble's implementation discussion deviates too sharply from the NPRM to "logically follow" from the proposal without first undergoing notice and comment procedures, as petitioners claim is required by *Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506, 547 (D.C. Cir. 1983), and related cases. Presenting the implementation discussion in response to limited comments, petitioners argue, does not satisfy the claimed requirement to subject such a discussion to notice and comment proceedings, and EPA's alleged procedural error was so severe that there is a substantial likelihood that the final NAAQS would have been changed if the error had not been made, resulting in EPA's revised NAAQS not having been adequately justified. *See* UARG at 22–25; NEDA/CAP at 3–4; ASARCO at 2–8; MSCC at 1–2, 3–6, 6–9; TCEQ at 4, 11–14; ND and SD at 8–9; WVDEP at 1, 2; ADEQ at 1.

The petitioners argue that reconsideration is warranted because their objections regarding the implementation discussion "are based on actions" EPA took in the final rulemaking and "are of central relevance to the outcome" of the NAAQS rulemaking. As such, petitioners claim, the public must be given an opportunity to comment not just on the regulatory provisions of the NAAQS itself but also on any intended implementation approach and possible methods for determining compliance. *See* UARG at 17–19; NEDA/CAP at 3–4; ASARCO at 4–6; MSCC at 1–2; TCEQ at 11–14; ND and SD at 7–8. Moreover, petitioners argue, EPA's stated intention in the final rulemaking preamble to provide an opportunity for public comment on additional guidance cannot "cure" the alleged procedural defect of not having provided an opportunity to comment on the changed approach to implementation of the NAAQS, especially where such guidance would not be promulgated according to the CAA's required procedures for rulemaking. *See* UARG at 27–28; NEDA/CAP at 3–4; ASARCO at 8–10.

Below, EPA summarizes each of the petitioners' separate arguments regarding procedural objections. While the petitioners' arguments are thematically similar, they are structured differently, and do not each raise the same points. Our responses, however, do not separately address each petition, but rather provide our answers to the various objections the petitioners raise.

1. UARG

UARG claims that the NPRM included nothing in either its preamble discussion or proposed regulatory text indicating that EPA intended to reduce the emphasis on monitoring in issuing designations or to enhance the emphasis on modeling compared to implementation in the past, and that nothing in the NPRM suggested EPA would discuss a new approach toward section 110(a)(1). UARG at 13. UARG points out that multiple petitioners filed comments on the NPRM addressing the proposed level of the NAAQS and the proposed revised design of the SO_2 monitoring network and other implementation aspects, but did not provide comments on any "changes to the way EPA had historically expected States to make their section 107(d) designations." *Id.* at 13–14, fns. 29–33. UARG then claims that reconsideration is appropriate under CAA section 307(d)(7)(B) because its objections are based on actions EPA took for the first time in the final SO_2 NAAQS rulemaking and thus petitioners could not have raised them during the comment period, that UARG's objections arose following promulgation of the rule and during the period for judicial review, and that the objections are of central relevance to the outcome of the rulemaking. *Id.* at 17. UARG claims petitioners did not object to EPA's discussed implementation approach focusing on modeling because EPA did not discuss it in the NPRM, thus depriving interested parties of any meaningful opportunity to comment on all aspects of the proposed revised NAAQS, including its implementation. *Id.* at 18. Because EPA had not previously, according to UARG, implemented the SO_2 NAAQS based primarily on the use of modeling and because the discussion cannot in UARG's view be considered a logical outgrowth of the NPRM, petitioners have not had a meaningful opportunity to comment. *Id.*

UARG's central claim is that the public must be given an opportunity to comment on "all aspects" of a NAAQS, not only its numerical level but also the approaches EPA may use to implement it. Id. Therefore, UARG asserts, EPA cannot make "substantial changes in methods being used to implement" a NAAQS without notice and a hearing. *Id., citing Donner Hanna Coke Corp.* v. *Costle,* 464 F.Supp. 1295, 1305 (W.D. N.Y. 1979). UARG claims that EPA may "require the use of a certain method" to determine compliance with the SO_2 NAAQS only if EPA provides notice of such, citing *Wisc. Elec. Power Co.* v.

Costle, 715 F.2d 323, 326 (7th Cir. 1983) in which the court explained that EPA could require monitored data of SO_2 concentrations to be reported in running averages, rather than block averages, if EPA provides adequate notice. *Id.* at 18–19. If EPA does not provide notice of an emission standard's implementation procedure, UARG claims, the court will remand to EPA to allow for public comment on the rule. *Id.*

UARG's objections also rely upon its premises that EPA has not previously favored or required dispersion modeling to support SO_2 NAAQS compliance determinations, particularly in initial designations under CAA section 107(d), and that EPA is now interpreting CAA section 110(a)(1) "to require" that States include in SIPs submitted under that provision modeled demonstrations of NAAQS attainment and maintenance. *Id.* at 19–21. UARG disputes EPA's cited examples as showing that the Agency has long utilized modeling in SO_2 NAAQS implementation, stressing its view that in the new SO_2 NAAQS EPA has now "required States to support their initial designation recommendations with modeling data alone or with both monitoring and modeling data." *Id.* at 19–20. Instead, UARG claims, EPA has historically expressed a preference of reliance on monitoring data, and cites in support of this claim EPA's February 1994 "SO_2 Guideline Document," EPA–452/R–94–008; a Letter from Barber, Walter C., OAQPS, to Pickard, Ralph C., Indiana Air Pollution Control Board (Sept. 3, 1981), and EPA's recent rulemakings for the Lead NAAQS and NO_2 NAAQS, 73 FR 66964 (Nov. 12, 2008) and 75 FR 6474 (Mar. 24, 2010), respectively. *Id.* at 20–21.

In arguing that the final SO_2 NAAQS is not a logical outgrowth of the NPRM, UARG focuses on the proposed revised monitoring requirements and absence of proposed requirements regarding modeling, and again claims that the final rule "would now require" States to conduct modeling for initial designations. *Id.* at 22. UARG claims that the final rule "does not adopt the monitoring approach that was discussed" in the NPRM, and that EPA "is adopting" a different modeling-based approach. *Id.* This alleged change is too radical a departure from the NPRM to satisfy the Small Refiner test, UARG claims, as commenters could not have anticipated that EPA "would adopt" a modeling approach "in" the final NAAQS nor that EPA would "change" how it "is implementing" CAA section 1109(a)(1). *Id.* at 22–23. Thus, asserts UARG, granting reconsideration "and conducting rulemaking on a modeling-based SO_2 NAAQS implementation approach" would provide the first opportunity for the public to comment and persuade EPA to "change the Rule." *Id.* at 23. EPA itself must provide this opportunity to comment, UARG claims, and may not rely upon "bootstrapping" from comments regarding a modeling implementation approach to satisfy its burden. *Id.* at 23–24. UARG further claims that it would have submitted extensive comments on this approach that could have changed the final NAAQS, based on UARG's view that the conservatism of modeling approaches somehow has the effect of making the NAAQS more stringent than its numerical level. *Id.* at 24–25. EPA's stated intention to provide further guidance, including an opportunity to comment on this guidance, is not an adequate substitute for conducting "full notice and comment rulemaking before changing the final rule" which allegedly "now requires" States to use modeling. *Id.* at 28–29.

2. NEDA/CAP

NEDA/CAP likewise claims that EPA committed procedural violations in the final NAAQS rule because the NPRM "provided that initial SO_2 designations were based on monitoring," whereas EPA allegedly concedes that its "final action" reflects a change from the proposed approach. NEDA/CAP at 1–2. NEDA/CAP claims EPA never provided a meaningful opportunity to comment on this "major change to the NAAQS implementation process," and that NEDA/CAP would provide "extensive information" on this issue if EPA grants reconsideration. *Id.* at 3. Like UARG, NEDA/CAP asserts that its objections, per CAA section 307(d)(7)(B), are based on actions EPA took for the first time in the final rule, could not have been raised during the public comment period on the NPRM, arose following promulgation of the final rule and during the period for judicial review, and are of central relevance to the outcome of the rulemaking. *Id.* at 4.

Also like UARG, NEDA/CAP claims that the public must be afforded a chance to comment on "all aspects of proposed revisions to NAAQS, including the method of implementation," and that since EPA has allegedly "not previously utilized a modeling approach to implementation" the final preamble discussion of such an approach "mandating the use of modeling, instead of monitoring, in the initial implementation of the designation process is therefore a substantial departure from the proposal" and cannot be considered a logical outgrowth of the proposal. *Id.* NEDA/CAP further claims that the NPRM did not meet the requirement of CAA section 307(d)(3) to provide notice, a "critical legal issue regarding the requirement in the final rule for States to use modeling." *Id.* at 4–5. Therefore, NEDA/CAP argues, the public did not receive the proper legal notice that EPA "might take away" State discretion in recommending area designations, and the public was deprived of its right to comment on this issue. *Id.* at 5, *citing Appalachian Power* v. *EPA,* 135 F.3d 791, 816 (D.C. Cir. 1998) for the proposition that a final rule is a logical outgrowth only if commenters "clearly understood" that a matter was under consideration.

3. ASARCO

ASARCO also alleges that the NPRM violated CAA section 307(d)(3) in not providing the public an opportunity to comment on the final rule preamble's discussion of the anticipated implementation approach. ASARCO at 2. ASARCO also claims that a subsequent opportunity to comment on future guidance "cannot cure the violation." *Id.* In addition to supporting UARG's arguments, ASARCO stresses that the NPRM's discussion of modeling was limited to how it could be used to identify where monitors should be placed within the proposed network that would have employed 348 monitors. *Id.* at 2–3. ASARCO claims EPA gave no notice of its position stated in the final preamble that modeling is a technically appropriate, efficient and readily available method to assess short-term ambient SO_2 concentrations, and disputes EPA's explanation that the Agency has long preferred modeling over monitoring in SO_2 implementation. *Id.* at 3–4. Thus, ASARCO asserts, it was impracticable for commenters to address EPA's "final determination to move toward a 'hybrid' approach." *Id.* at 4.

ASARCO then claims that the discussed "hybrid" approach played a "central role in EPA's final determinations" for implementation of the new NAAQS, such as how monitors in the scaled-back network design would be used. *Id.* It also "changed" how areas would be designated under the NAAQS, with areas with monitors showing no violations being designated as unclassifiable, ASARCO claims. *Id.* at 5. And such unclassifiable areas will have more "onerous requirements" than were described in the NPRM. *Id.* at 5–6. That EPA "will also require" modeling in SIPs demonstrating attainment is of "vital importance" to the stringency of the NAAQS, ASARCO claims, and thus is "of central relevance to the outcome of the Final Rule" such

that the public should have had an opportunity to comment on it, particularly since it "is a departure from how EPA has generally implemented NAAQS" according to ASACO. *Id.* at 6.

EPA's discussion in the final rule violates CAA sections 307(d)(3), (4) and (5), ASARCO claims, and cannot be supported as a response to public comments, none of which asked EPA to "shift the focus" from monitoring to modeling in showing NAAQS attainment, ASARCO claims. *Id.* at 6–7. ASARCO cites several cases for the proposition that such a response to comments is not adequate to meet the initial notice and comment requirements of the CAA. *Id.* at 7, *citing, e.g., McLouth Steel Products Corp.* v. *Thomas,* 838 F.2d 1317, 1323 (D.C. Cir. 1988). ASARCO dismisses EPA's observation that the discussed anticipated approach would address commenters' complaints that the proposed monitoring network was too burdensome, and asserts that that burden would only be replaced by more burdensome modeling, which according to ASARCO prevents the discussion from being a logical outgrowth of the proposal. *Id.* at 7–8. Since EPA was required to have provided an opportunity to comment on the hybrid approach in the NPRM, ASARCO argues, the "promise of an opportunity to comment on guidance in the future," at which point EPA "will not likely abandon the modeling requirement" ASARCO claims the final rule imposed, is insufficient. *Id.* at 8–9. This, AASARCO claims, runs afoul of cases such as *Grand Canyon Air Tour Coal.* v. *FAA,* 154 F.3d 455, 468 (D.C. Cir. 1998) ("agency's mind must be open to considering" comments) and *McLouth* (the curative effect of later notice "depends upon the agency's mind remaining open enough at the later stage"). *Id.* at 9. Thus, EPA is constrained by *Kennecott Corp.* v. *EPA,* 684 F.2d 1007, 1019 (D.C. Cir. 1982) and *PPG Indus., Inc.* v. *Costle,* 659 F.2d 1239, 1250 (D.C. Cir. 1981), which rejected subsequent reconsideration as a cure for an initial procedural violation. *Id.*

ASARCO then asserts that subsequent modeling guidance cannot cure the alleged procedural error, under *Appalachian Power Co.* v. *EPA,* 208 F.3d 1015, 1024 (D.C. Cir. 2000), because EPA notes that a purpose of a monitoring data interpretation rule for a NAAQS is to give effect to the form, level, averaging time and indicator specified in the regulatory text, resolving in advance ambiguities that might occur regarding use of monitoring data. *Id.* at 9–10. ASARCO asserts that since the promulgated regulation addressing monitoring applies only to situations where monitoring is used, "the same holds true" for reliance on modeling, which could render EPA's specificity regarding monitoring "essentially meaningless without further direction on the use of modeling." *Id.* at 10. Finally, ASARCO claims that a notice and comment opportunity on implementation approaches must be provided since the approach allegedly "may affect the stringency of the standard," as ASARCO in fact commented on the NPRM that current modeling is conservative and that there is a discrepancy between modeling and monitoring data. *Id.* at 11, *citing* Asarco Comments at 12 (EPA–HQ–OAR–2007–0352–0963.1) and UARG Comments at 32 (EPA–HQ–OAR–2007–0352–0967.1). EPA did not explain how modeling will be used to meet requirements for demonstrating NAAQS attainment, such as CAA section 107(d)(3)(E)(i) and (iii), ASARCO claims, or why modeling provides accurate or reliable information to reflect NAAQS compliance, and the failure to give the public notice of EPA's "decision" to use modeling in the NPRM did not give the public sufficient information to understand the full implications of the revised NAAQS, ASARCO claims. *Id.* at 11–12.

4. MSCC

MSCC claims that the grounds for its objections to the SO_2 Primary NAAQS arose after the public comment period, that its objections were impracticable to raise during the comment period, and that the objections are of central relevance to the outcome of the rule. MSCC at 1. Therefore, MSCC claims, the "final rules" are not a logical outgrowth of the "proposed rules," and EPA failed to provide an adequate opportunity for notice and comment. *Id.* at 2. MSCC objects to EPA's not having specifically, in the NPRM, asked for public comments on using monitoring and modeling in a combined "hybrid" manner to assess NAAQS compliance, or on whether to use modeling for larger sources and monitoring for smaller sources and those not conducive to modeling. *Id.*

Citing *Small Refiner* and related cases, MSCC argues that the test for whether a final rule is a logical outgrowth of its proposal is whether commenters should have anticipated whether a final requirement might be imposed, and were fairly apprised of the subjects and issues of the rulemaking. *Id.* at 3. MSCC analyzes the *Small Refiner* Court's differing treatment of final actions that were taken in response to numerous comments, and in response to a single comment. *Id.* at 4; *see also Small Refiner* at 546–549. MSCC argues that since no single commenter on the SO_2 NAAQS recommended EPA's discussed "hybrid" modeling and monitoring approach to implementation, and since the NPRM made no mention of such an approach, EPA's discussion cannot be a logical outgrowth. MSCC at 5. MSCC asserts that EPA "(1) focused its proposal entirely on changes to the existing monitoring network, (2) proposed no changes to modeling requirements, and (3) did not mention the word 'hybrid' even once." *Id.* (emphasis removed). That makes the connection between the NPRM and the final preamble discussion too tenuous, MSCC claims. *Id.*

Moreover, MSCC argues, the final rule's preamble discussion deviates too sharply from the proposal for interested parties to have been afforded an opportunity to comment on it. *Id.* at 6. Thus, MSCC claims EPA failed to serve the purposes of public notice, namely to ensure the regulation will be tested by exposure to diverse public comment, provide fairness to affected parties, and enhance the quality of judicial review. *Id.* Citing numerous instances in the NPRM discussing the proposed changes to monitoring as a means of assessing NAAQS compliance, and contrasting those to instances in the final preamble discussing a hybrid modeling and monitoring approach, which MSCC conceded EPA discussed partly in response to comments claiming that the proposed monitoring approach "was not a desirable one," MSCC argues that the basic difference between the two approaches reflects impermissible procedural error. *Id.* at 7–8. MSCC argues that in not having first discussed a hybrid approach in the proposal it is not clear whether EPA would have discussed it in the same way in the final preamble. *Id.* at 8–9.

5. TCEQ

TCEQ asserts that in the final SO_2 NAAQS EPA "determined that dispersion modeling would be required to determine attainment" with the NAAQS in designations and re-designations, without having provided for public comment "on the impact of this decision on the form of" the NAAQS or on whether modeling is permissible under the CAA. TCEQ at 3. Like the other petitioners, TCEQ claims that this means the objections to the discussion arose after the public comment period and are of central relevance to the outcome of the rule, triggering the duty to reconsider it

under CAA section 307(d)(7)(B). *Id.* at 4–5. TCEQ also claims EPA has authority to reconsider the rule under APA section 557, even if CAA section 307(d)(7)(B) does not require reconsideration. *Id.* at 4. TCEQ claims that its three primary objections, (1) that the hybrid modeling-monitoring discussion results in an inappropriate form of the NAAQS, (2) that EPA's "interpretation" does not adhere to the regulatory text of 40 CFR 50.17(b), and (3) that a hybrid approach would be a "divergence from CAA section 110(a)(1) and (2) attainment and maintenance requirements for all areas, whether designated as nonattainment or not," are of central relevance to the "final SO_2 rule and its eventual implementation by states." *Id.* at 5.

TCEQ argues that EPA's introduction of the use of modeling in SO_2 NAAQS implementation in the final preamble, as opposed to the NPRM, led TCEQ to limits it comments on the "form" of the NAAQS without consideration of issues such as whether EPA's existing modeling guidelines and procedures would apply regarding elements such as evaluation of background sources and the integration of predicted concentrations with monitoring data. *Id.* at 6. TCEQ asserts that difficulties with integrating modeling and monitoring data that it claims have arisen regarding other pollutants will apply to SO_2, and that EPA gave "no reason for TCEQ to expect that EPA would adopt a form of the SO_2 standard with similar problems, without an opportunity to comment." *Id.* at 7.

TCEQ also argues that amendments to proposed regulatory text were made without proposal for comment, such as adding the phrase "at an ambient monitoring site" to the 40 CFR 50.17(b) and (c) and Appendix T section 1 (a) provisions addressing monitoring. *Id.* at 9. TCEQ observes that the explanatory preamble language regarding these monitoring provisions' amendments, in which EPA noted that "[t]his text does not restrict or otherwise address approaches which EPA or States may use to implement the new 1-hour NAAQS, which may include, for example, use of modeling" (see 75 FR at 35582), "was never proposed for comment," and claims that it reflects an interpretation that conflicts with the regulatory text and is not within EPA's discretion. *Id.* at 9–10. TCEQ claims it had no notice that the regulatory text could be so amended, nor that EPA "intended to interpret this rule language in a manner inconsistent with its plain meaning, and thus could not have commented on this issue during proposal." *Id.* at 10.

TCEQ also claims that as a result of the final preamble discussion unclassifiable areas "will now be required to submit maintenance plans, to show maintenance and attainment of the NAAQS, containing elements that were not clearly discussed in the proposed rule." *Id.* at 10–11. TCEQ asserts it "could not have foreseen that EPA would change its admitted historical interpretation of the maintenance requirement upon adoption of the final SO_2 NAAQS, and thus could not have commented on this change." *Id.* at 11. TCEQ also claims that EPA's discussion of the use of modeling "could not have been anticipated by Texas or other stakeholders given that the use of modeling to determin[e] nonattainment areas was" in TCEQ's view removed in the 1990 CAA Amendments. *Id.* at 12–13.

Consequently, TCEQ argues, the final rule is not a logical outgrowth of the NPRM, and is like a rule struck down in *National Mining Ass'n* v. *Mine Safety and Health Admin.,* 116 F.3d 520, 531 (D.C. Cir. 1997), where the agency's rule changed longstanding practice after issuing a proposal that would have left that aspect of the rules unchanged. MSCC at 13–14. TCEQ further argues that the SO_2 NAAQS is analogous to the situation in *Environmental Integrity Project* v. *EPA,* 425 F.3d 992, 998 (D.C. Cir. 2005), stating that a logical outgrowth may not include an agency decision to repudiate its proposed interpretation and adopt its inverse. MSCC at 14.

6. North Dakota and South Dakota

ND and SD object to EPA's not having publicly discussed "its intention to have states use modeling data over monitoring data" until the final preamble. ND and SD at 2. After presenting their substantive objections to EPA's preamble discussion (*id.* at 2–7), ND and SD claim they did not have an opportunity to raise them during the comment period because the NPRM did not discuss the use of modeling, and that their objections are of central relevance to the final rule. *Id.* at 7. Thus, ND and SD argue, EPA must reconsider the final rule and provide an opportunity to comment, in order to cure the NPRM's alleged failure to satisfy the CAA section 307(d)(3) requirement to provide an adequate opportunity to comment on the proposal. *Id.* at 7–8. ND and SD assert that the final rule departs too sharply from the proposal to satisfy the *Small Refiner* test for a logical outgrowth, and that EPA's final rule preamble discussion cannot be supported as a response to comments received from the public. *Id.* at 8–9.

7. WVDEP

Although not submitted as a formal petition for reconsideration under CAA section 307(d)(7)(B), WVDEP communicated with EPA Region 3 by a letter entitled "Objection to Final SO_2 NAAQS Rule [75 FR 35520; Docket No. EPA–HQ–OAR–2007–0352]" to raise objections very similar to those presented in the actual petitions. WVDEP claims that the "final rule contains a number of significant changes from the proposed rule, which warrant supplemental rule-making." WVDEP at 1. Therefore, WVDEP urges EPA to "reconsider its intended approach," and asserts that EPA "should conduct supplemental rule-making and offer proper opportunity for public review and comment of significant changes from the proposed rule." *Id.* at 2.

8. ADEQ

Similarly, ADEQ did not submit its own formal petition for reconsideration under CAA section 307(d)(7)(B), but sent a letter to EPA in support of TCEQ's and ND and SD's petitions. ADEQ asserted EPA had failed to properly conduct notice and comment rulemaking "regarding a significant departure from the monitoring approach set forth in the proposed rule," thus denying ADEQ the opportunity to comment." ADEQ at 1.

B. Responses to the Claims and Arguments Raised by the Petitioners

EPA presents its responses to the petitioners' procedural objections below in a collective format, rather than on a petitioner-by-petitioner basis, since the objections to a great extent are identical, incorporate other petitioners' arguments, or repeat similar arguments. Where necessary and appropriate, EPA responds to specific claims raised by individual petitioners within our broader responses.

1. Petitioners Object to Agency Action Which Is Not Final

Petitioners' claims, arguments and the information they submit do not undermine or lead us to change our scientific and other conclusions regarding what SO_2 Primary NAAQS is requisite to protect public health with an adequate margin of safety, as determined under section 109 of the CAA. Nor do they change or undermine our conclusions regarding the promulgated requirements for an SO_2 monitoring network centered on areas where there is an increased coincidence

of population and SO_2 emissions. The petitions do not change EPA's final decisions regarding the need to revise the prior SO_2 Primary NAAQS, and what those revisions should be. The petitioners' arguments are not based on consideration of the body of scientific information that informed EPA's final decisions in promulgating the revised SO_2 Primary NAAQS. In fact, petitioners' arguments have nothing to do with EPA's scientific conclusions, and provide no new information or basis for EPA to revisit those conclusions or the specific SO_2 Primary NAAQS that EPA promulgated.

Instead, petitioners' arguments rely on an apparent assumption that EPA's non-binding preamble discussion of anticipated approaches for separate future implementation actions constituted, itself, final agency action that governs those future actions now and imposes immediate binding requirements to implement the NAAQS in a certain way. Although petitioners do not demonstrate how EPA's discussion has such final, binding and enforceable effect, their requests that EPA reconsider the final rule necessarily relies upon their implicit assumption that EPA has already taken final rulemaking action on the discussed implementation approaches. Only if EPA had taken such final action on these discussed approaches could there be an issue regarding whether EPA's discussion was a "logical outgrowth" of the proposed rule, and whether it was of "central relevance" to the actually promulgated revised SO_2 Primary NAAQS.

Similarly, for EPA's discussion to constitute a "procedural error," it would first have to have been an actual "determination" that is a final action, but it is not. EPA plainly stated that the discussion represented non-binding guidance regarding future expected actions, that EPA's anticipated approach could continue to evolve as further expected guidance is developed, and that EPA expected there to be circumstances in which the anticipated approaches may not apply. *See* 75 FR at 35552, n.22. In other words, regarding the implementation discussion, EPA has not yet even taken a final action that could be presently "reconsidered" under CAA section 307(d)(7)(B). Instead, any interested party may raise its objections to EPA's future use of an approach like that presented in the preamble discussion (should that ever occur) in a specific action that applies it, such as a designation action under CAA section 107(d)(1) or a SIP approval action under section 110.

As the preamble makes clear, EPA has not taken any final action or promulgated any regulatory requirements regarding either designations under CAA section 107(d) or SIPs under CAA section 110(a)(1), and, in particular, has taken no final action on its approach to making attainment determinations. To the contrary, the preamble specifically preserves EPA's ability to make those decisions solely on the basis of monitoring data. *See* 75 FR at 35552, n.22. Nothing in the final promulgated rule prevents a State, for example, from basing its designation recommendation on monitoring data. EPA did not promulgate or revise any requirements regarding the use of modeling in the final SO_2 NAAQS. Because the preamble discussion regarding implementation is not final agency rulemaking action, it is not appropriate for reconsideration under CAA section 307(d)(7)(B).

In the preamble to the final rule, EPA explained that the Agency anticipated that in subsequent actions it would continue its historic practice of relying on both modeling and monitoring for determining whether an area is in attainment with the SO_2 NAAQS, and adopted rules for a smaller monitoring network than EPA initially proposed. *See* 75 FR at 35550–51. But the preamble makes clear that, except for the promulgated requirements relating to the scope of the monitoring network and the new Federal Reference Method, EPA is still developing its policy for such future actions as designations and SIP approvals, and intends to issue further guidance in the future through a notice-and-comment process. *Id.* And, as noted above, the preamble also states EPA's expectation that any decisions about whether to base an attainment designation or determination on monitoring alone, without reliance on modeling, would similarly be made on a case-by-case basis through rulemaking. *Id.* at 35552 n.22.

The procedural objections boil down to a claim that the preamble of the final rule requires the use of air quality modeling for determining whether an area is in attainment with the revised SO_2 NAAQS, that this approach differs from the approach discussed in the preamble to the proposal, and that the public did not have an opportunity to comment on the approach discussed in the final rule. This claim lacks merit for two reasons.

First, in objecting to the implementation discussion in the preamble, the petitioners do not challenge any provision of the promulgated regulations, but rather a discussion in the preamble, *e.g.,* 75 FR at 35550–54. Although preamble discussions may in some situations constitute final agency action, it is clear that EPA's particular discussions in the preamble to this final rule regarding designations and implementation do not. Rather, the discussions regarding the potential use of modeling are, at most, non-binding guidance. The preamble specifically states: "In many respects, both the overview discussion below and the subsequent more detailed discussions explain our expected and intended future action in implementing the 1-hour NAAQS—in other words, they constitute guidance, rather than final agency action—and it is possible that our approaches may continue to evolve as we, States, and other stakeholders proceed with actual implementation. In other respects, such as in the final regulatory provisions regarding the promulgated monitoring network, we are explaining EPA's final conclusions regarding what is required by this rule. We expect to issue further guidance regarding implementation * * * EPA intends to solicit public comment prior to finalizing this guidance." *Id.* at 35550.

Moreover, nowhere in the preamble (much less in any promulgated regulation) does EPA state that modeling must be used for designating areas as attainment, nonattainment or unclassifiable. Thus, the alleged requirement to which petitioners object does not exist. Rather, the preamble states: "We expect that EPA's final area designation decisions in 2012 would be based principally on data reported from SO_2 monitors currently in place today, and any refined modeling the State chooses to conduct specifically for initial designations." *Id.* at 35552. The preamble then goes on to say "EPA anticipates making the determination of when monitoring alone is 'appropriate' for a specific area on a case-by-case basis, informed by the area's factual record, as part of the designation process." *Id.* at 35552 n.22.

In short, EPA has simply not taken the final agency action alleged by petitioners, and there is no such rulemaking action for EPA to reconsider as part of the SO_2 NAAQS. To the contrary, the preamble states that EPA believes that its historic approach to SO_2 designations continues to appear to be appropriate, while at the same time giving States and other entities the flexibility to recommend the appropriate mix of data to rely on, including the possibility of relying entirely on monitoring if supportable. States and other parties will have opportunities to provide input on

designations and SIP actions before they are issued, see CAA section 107(d)(1)(ii), and those future actions, which would for the first time constitute final agency action regarding EPA's anticipated approaches, should be where any claims that EPA may be inappropriately using modeling can and should be raised. *See Pa. Dept. of Envt'l Prot.* v. *EPA,* 429 F.3d 1125 (D.C. Cir. 2005). At this point, EPA's non-binding preamble discussion regarding its anticipated approaches in designations and SIP actions is merely an announcement of general principles addressing EPA's exercise of its discretion when taking those actions, and does not impose any requirements on States in those processes. *See Catawba County* v. *EPA,* 571 F.3d 20, 40 (D.C. Cir. 2009).

EPA therefore rejects the asserted notion that the non-binding preamble discussion is an "aspect" of the final promulgated NAAQS that must be established as a requirement through notice and comment rulemaking. EPA always treats implementation issues and establishment of NAAQS separately and independently, as required by the CAA and the Supreme Court's ruling in *Whitman* v. *American Trucking Ass'ns.* In advance of taking subsequent designation actions and SIP actions, the CAA nowhere requires that EPA promulgate an approach to designations or general implementation, and EPA did not do so here as an "aspect" of the SO_2 Primary NAAQS in presenting its discussion of anticipated implementation approaches, apart from establishing reduced requirements related to the size of the monitoring network to which petitioners do not appear to object. EPA similarly rejects the argument that the non-binding preamble discussion had any kind of final impact on the promulgated NAAQS. Instead, it is clear from the regulatory text at 40 CFR 50.17 that the level of the NAAQS is simply expressed as 75 ppb measured in the ambient air as SO_2, with a specified averaging time and form. The additional regulatory language in 40 CFR 50.17(b) and (c) and in Part 50 Appendix T addressing how attainment is shown via monitoring is specific to when monitoring is used. None of these provisions is affected in any way by the preamble's discussion of the ability to also use modeling to assess SO_2 concentrations. See 75 FR at 35583; see also section IV.B below. These provisions are not currently affected by the non-binding guidance, and they would not have been affected if EPA had either presented its guidance discussion in the NPRM or had waited until a first designation or SIP action in which modeling were used, just as the prior SO_2 NAAQS, and related monitoring requirements, set forth in 40 CFR 50.4(a)-(d) and Part 50 Appendix A were never affected by EPA's and States' use of modeling to assess compliance with those standards over the last 30 years.

As mentioned before, many petitioners captioned their petitions initially as seeking a "clarification" that EPA intends to implement the NAAQS consistently with the promulgated regulatory text, and only in the alternative sought reconsideration and a new round of notice and comment proceedings if EPA instead intended to implement the NAAQS according to the preamble discussion. When those regulatory provisions in Part 50 addressing assessment of compliance with the NAAQS at an ambient monitoring site are applicable (i.e., when monitoring is being used), EPA expects that those provisions will be followed by States and by EPA. Additionally, since EPA's actual use of implementation approaches resembling (or refining or departing from) those discussed in the final rule preamble will be taken in future actions to which interested parties may provide comments, criticisms, or objections, EPA will (and must) consider that input before taking final actions. But because the non-binding preamble discussion of anticipated approaches does not reflect final action, EPA disagrees that the procedural duties of CAA section 307(d) that petitioners claim EPA violated even applied to EPA's guidance, and that the duty to presently reconsider it can even be triggered.

2. EPA's Implementation Discussions Are Not of Central Relevance to the Promulgated Decisions on the Final Revised SO_2 Primary NAAQS

Even if EPA's non-binding implementation discussions presented in the final preamble could have constituted any kind of final action, the Agency does not regard it as having been of "central relevance" to the regulatory decision on the NAAQS itself. In setting NAAQS that are "requisite" to protect public health with an adequate margin of safety, under CAA section 109(b), EPA establishes standards that are neither more nor less stringent than necessary for these purposes. In so doing, EPA may not consider costs of implementing the standards. *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 471, 475–76 (2001). Petitioners frequently assert that the implementation discussion is an "aspect" of the final NAAQS itself in complaining about the added burden they claim modeling would impose on States and pollution sources. In fact, issues regarding future implementation are legally irrelevant to the setting of the NAAQS. And, again, in no respect does the preamble discussion of modeling as an implementation tool affect either the promulgated NAAQS in 40 CFR 50.17 or the provisions addressing when monitoring is used to assess compliance. Consequently, we reject petitioners' assertions that the non-binding preamble discussion of the possible future implementation approaches is "of central relevance" to the promulgation of the SO_2 Primary NAAQS or to the monitoring network design requirements, and we therefore conclude that reconsideration of the rule in light of that discussion is not warranted.

An objection is of central relevance if it provides substantial support for the argument that the underlying promulgated decisions, in this case the NAAQS set forth in 40 CFR 50.17 and requirements addressing network design requirements for monitoring, should be revised. None of the petitioners' arguments summarized above provide substantial support for such a claim. Even in complaining that the use of modeling may be difficult, if attempted, and in their characterizations of the NAAQS as an allegedly "probabilistic" standard and of modeling as a "deterministic" tool, they present no information indicating that the scientific conclusion of what NAAQS is requisite to protect public health with an adequate margin of safety is erroneous. Nor do they explain how the regulatory provisions in Part 58 are erroneous for the purpose of network design. A petition for reconsideration cannot merely object to a non-binding guidance discussion and claim that is sufficient to require initiation of the reconsideration of related, but not affected, promulgated regulations. Allegations that such a discussion is of central relevance will not suffice. To justify reconsideration, a petitioner has to show why the objectionable guidance discussion demonstrates that the Agency's underlying decision on the promulgated NAAQS should be changed.

Petitioners have not met this burden. The core defect in petitioners' arguments is that they do not address the scientific evidence regarding the NAAQS, and do not address the policy or technical rationale supporting EPA's promulgated revisions to the network design monitoring requirements. TCEQ's and others' claims that the guidance discussion conflicts with the

"form" of the NAAQS are misplaced. The form of the NAAQS defines the air quality statistic that is to be compared to the level of the standard in determining whether an area attains the standard. See 75 FR 6474, 6479 n. 5 (Feb. 9, 2010). For the revised primary SO_2 NAAQS, the form is the three year average of the 99th percentile of the daily maximum 1-hour average concentrations of SO_2. EPA justified in detail its decision to revise the previous expected exceedance-based form with a percentile-based form, as well as its choice of using the 99th percentile of the air quality distribution. 75 FR at 35539–41. Air quality distributions can, of course, be generated by modeling tools or by monitoring. See REA section 8.4 where EPA generated one-hour SO_2 air quality distributions in the exposure analysis. In any case, all such questions are fact-dependent and await specific circumstances for resolution. Indeed, if EPA had first presented its non-binding discussion on implementation in the NPRM, and had said no more on this subject in the final rulemaking notice, it would not have failed to promulgate any required regulatory "aspect" of the NAAQS itself, and such placement of the discussion in the NPRM would not have made it of any more central relevance to the separate scientific decision of whether the NAAQS should be revised and how, or to the reasonableness of the limited promulgated requirements relating to minimum size of a monitoring network. Although implementation guidance discussions may be of central relevance to future actions that employ approaches discussed therein, they are not so regarding final promulgated NAAQS that are required to be based on entirely different criteria—and may not be based on cost of implementation considerations at all—where the rulemaking does not actually promulgate implementation requirements. Thus, the implementation discussions to which petitioners object could not lawfully be of central relevance to the promulgated SO_2 Primary NAAQS. See *Whitman* v. *American Trucking Associations,* 531 U.S. 471, 475–76.

3. EPA's Implementation Discussions Were Logical Outgrowths of the Proposed Rule

Even if the preamble's non-binding implementation discussion could be both "final action" and "of central relevance" to the outcome of the promulgated NAAQS decision, we consider the discussion to be a "logical outgrowth" of the proposal. The CAA does not require us to have presented the discussion in the NPRM before we could further address the expected implementation approaches in the final rule's preamble or in other guidance documents. The NPRM contained initial discussions of how the proposed revised NAAQS might be implemented, and therefore the general issues and related specific issues regarding implementation were squarely opened up for public comment. Although the NPRM did not specifically address this fact, it has long been EPA's practice in implementing the prior SO_2 Primary NAAQS to rely upon both modeling and monitoring to determine whether areas have attained the NAAQS. *See, e.g.,* EPA's February 1994 SO_2 Guideline Document (available at *http://www.epa.gov/ttn/oarpg/t1/memoranda/SO2_guide_092109.pdf*) at 2–5 ("For SO_2 attainment demonstrations, monitoring data alone will generally not be adequate.") and at 2–1 ("Attainment determinations for SO_2 will generally not rely on ambient monitoring data alone, but instead will be supported by an acceptable modeling analysis which quantifies that the SIP strategy is sound and that enforceable emission limits are responsible for attainment."). The NPRM was published with this history of prior SO_2 NAAQS implementation, and there was no reason for any interested party to have assumed that over 30 years' worth of prior implementation actions might not have some bearing on the way a revised NAAQS might be implemented.

To the extent the NPRM, in not explicitly discussing that prior history, was interpreted by interested parties to announce a proposed change to that longstanding practice, the rulemaking process inherently leaves open the possibility that an agency will choose not to adopt any proposed change. Therefore, interested parties could have foreseen that EPA might not, in fact, make any such change but instead discuss our expectation to continue our past practice, and they had ample opportunity to comment on that possibility or ask directly whether EPA intended to no longer follow it. In such circumstances, affected parties can be expected to be aware that not adopting a change reflecting a departure from the Agency's prior practice is a possibility. *See American Iron & Steel Inst.* v. *EPA,* 886 F.2d 390, 400 (D.C. Cir. 1989) ("One logical outgrowth of a proposal is surely, as EPA says, to refrain from taking the proposed step.").

In fact, some interested parties did comment on the related issue of the burden of relying on monitoring, and suggested that EPA instead use modeling to relieve that administrative burden. *See* 75 FR at 35551. Moreover, ASARCO notes that it and others commented on their view that modeling is overly conservative, when used to assess compliance. Partly in response to comments, EPA explained its anticipated approaches of continuing to rely upon both modeling and monitoring, and made clear that except for the promulgated provisions relating to the scope of the monitoring network and associated requirements, the Agency was still developing its policy for future actions such as area designations and determinations of NAAQS attainment, and would decide whether to base such actions on modeling or monitoring on a case-by-case basis through rulemaking. It cannot credibly be asserted that EPA's mind does not remain open to other views following these explanations.

Petitioners' arguments that providing an opportunity for public comment on future guidance documents would not cure EPA's alleged procedural defect in the final preamble discussion ignore the fact that such an opportunity necessarily will be provided in subsequent regulatory actions issuing designations and acting in response to SIP submissions. While the CAA does not require that EPA provide an opportunity for public comment on designations, States initiate the process and present their own views to EPA in submitting designations recommendations, and EPA's responses to those recommendations must be well-reasoned and are judicially reviewable. Further, EPA has recently elected to provide a brief public comment period on designations as well. SIP actions undergo public notice and comment in two stages, once at the state level and again at the federal approval/disapproval stage.

Thus, while EPA disagrees with the petitioners' view that the non-binding preamble discussion on future implementation represents final agency action of central relevance to the NAAQS decision, even if the final rule's guidance discussion were to have final effect, EPA committed no procedural error in presenting this discussion in the final rule's preamble, and reconsideration is not warranted. This is true particularly as further administrative process in which objections can be raised before binding actions are taken will be provided before any of EPA's discussion has a direct and binding effect in any specific case, which will be based on the relevant facts of its own situation, which even EPA's allegedly "adopted" guidance explicitly provides.

4. EPA Is Not Required To Promulgate Regulatory Requirements Regarding NAAQS Implementation and May Discuss Implementation Issues Through Non-Binding Guidance

As explained above in our explanation for why petitioners' objections are not of central relevance to the outcome of the revised NAAQS, EPA disagrees with petitioners' assertions that the Agency is required under the CAA to promulgate, as regulatory provisions, requirements addressing future implementation of the NAAQS of the type petitioners demand. Nothing in CAA sections 107(d), 110 or 192, or anywhere else in the CAA requires this. The prior SO_2 Primary NAAQS rulemaking did not contain such regulatory requirements on implementation, while EPA has provided numerous guidance documents for implementing the prior SO_2 NAAQS that address issues such as the use of modeling. *See, e.g.,* SO_2 Guideline Document, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA–452/R–94–008, Feb. 1994. Moreover, EPA does not assume that petitioners thought that the proposed monitoring network of less than 400 monitors would have generated data from the nationwide inventory of significant sources of SO_2. Petitioners never commented that EPA should have proposed additional measurement requirements to cover situations in which monitors would have been unusable to predict future source emissions, or were simply non-existent in an area that sought designation as attainment or non-attainment and was in search of some kind of supporting factual record. Consequently, we disagree with petitioners' claims that it is now improper to continue to address implementation issues in non-binding guidance such as that which EPA has frequently issued regarding SO_2 NAAQS implementation and which EPA presented in the preamble. Although we stress that the preamble's inclusion of such guidance and statements regarding the intent to issue further guidance do not warrant reconsideration of the final rule, we also note that the continued development of guidance necessarily represents a continuing evaluation and "reconsideration" of the issues addressed therein, and we fully expect to continue to evaluate implementation issues as we proceed to develop such guidance and take implementing actions. In sum, EPA denies petitioners' procedural claims because EPA was not required to issue initial guidance through use of notice and comment rulemaking.

IV. Statutory and Regulatory Issues

A. Summary of Petitioners' Arguments

In addition to their procedural objections, the petitioners raise several objections based on their views that EPA's implementation discussion provided in the final rule preamble conflicts with applicable statutory and regulatory provisions. At the outset, EPA regards it as impossible for our non-binding guidance to have an effective "conflict" with the CAA or our regulations, as it is not final and imposes no independent requirements. Thus, we respond to petitioners' arguments conditionally, while reserving the right to reach different final conclusions than are reflected in our preliminary, non-final responses provided here if petitioners were to raise these and other objections in the context of future final actions such as designations or SIP approvals/disapprovals.

1. Consistency With "Cooperative Federalism" of CAA

Several petitioners raise a broad philosophical objection to EPA's non-binding implementation discussion, namely that it is allegedly in conflict with the scheme of "cooperative federalism" of the CAA under which States are to be given the first opportunity, before EPA, to make judgments regarding how pollution sources should be controlled in order to attain the NAAQS. UARG asserts that the discussed anticipated modeling approach "usurps the role that States are to play when making [section] 107(d) designations and thus is inconsistent with [c]ongressional intent." UARG at 18. In the 1977 Amendments to the CAA that added section 107, UARG claims, States were "the basic units from which pollution control decisions, plans, administration, and enforcement would follow. On the other hand, the federal government's role was merely to provide guidance and set national standards." *Id.* at 25, citing H.R. Rep. No. 95–294, at 289 (1977). UARG then claims that Congress "granted States the power to make initial designations of areas within State borders." *Id.* In support of this claim, UARG cites the legislative history of differing versions of the bills addressing designations in the 1990 CAA Amendments, and claims that the House Report shows the bill "was amended to leave the States' power intact." *Id.* at 26. UARG then claims that case law supports the view that States are given deference in determining whether areas are designated as attainment, nonattainment or unclassifiable. *Id., citing Pa. Dept. of Envtl Prot.* v *EPA,* 429 F.3d 1125, 1129 (D.C. Cir. 2005). UARG asserts that EPA's final rule "directs States to submit [section] 107(d) attainment/nonattainment designation recommendations by June 2, 2011," and that if States "must use modeling" that "EPA now appears to require," they will not be able to do so due to EPA's not yet having provided additional guidance. *Id.* at 26–27. "This essentially deprives States of their powers to make their [section] 107(d) designation recommendations by the compliance deadline," and "will limit the ability of States to use their sound judgment in making designation recommendations and developing maintenance SIPs," UARG claims. *Id.* at 27.

ASARCO endorses UARG's claims, and adds that "EPA appears to be usurping the role of the State in an effort to impose more stringent controls on sources than may be necessary because of overly conservative modeling results even where monitoring may show no exceedances of the revised NAAQS." ASARCO at 10. TCEQ less explicitly raises this objection, but argues in several places that states such as Texas have primary responsibility in implementing the NAAQS and have been left in "an untenable position" of having to make designation recommendations before EPA provides further modeling guidance. TCEQ at 2–3, 15. North Dakota and South Dakota echo these points, arguing that EPA's guidance discussion "limits the role that Congress intended States to play in the ambient standard implementation process, and it limits the discretion that States [are] to have in choosing the appropriate tools for making determinations of whether or not areas within their jurisdiction are attaining" the NAAQS. ND and SD at 4. They explain that they currently use monitors to measure ambient pollution levels, and that models can be difficult and time-consuming to use and are allegedly less accurate, predicting higher pollution levels than monitors detect. *Id.* at 5. As EPA has not yet provided additional specific guidance on how to use modeling for the new NAAQS, States will not be able to undertake the designations recommendation work that EPA "is insisting" they perform. *Id.* This deprives states of their authority under section 107(d), North Dakota and South Dakota assert, and is compounded by EPA's discussion that "require[s] the use of conservative modeling" in section 110(a)(1) SIPs that would be due from

unclassifiable areas, if States choose to not perform modeling in time for initial designations. *Id.,* at 6.

2. Consistency With CAA Section 107(d) Designation Requirements

UARG disputes EPA's preamble explanation that it has previously employed modeling in making designations under CAA section 107. UARG at 6–9, 19. UARG states that the examples of prior actions cited in EPA's discussion cites, instead, address situations where EPA decided to not change a designation of nonattainment because modeling showed violations where monitoring did not, or addressed instances where EPA issued a SIP call for an attainment area based on modeled violations. *Id.* at 19–20. Although States sometimes choose to use modeling, UARG claims EPA has "never before required States to conduct modeling data to make their initial attainment designations." *Id.* at 20. UARG then asserts that EPA's prior guidance reflects a preference for monitoring over modeling, including when there is a conflict between the two, and that in the context of other NAAQS EPA has clearly favored monitoring. *Id.* at 20–21, n. 38.

NEDA/CAP, without further analysis regarding section 107(d), claims that EPA's discussion "is a significant departure from prior procedures for designating areas and re-designating unclassifiable areas." NEDA/CAP at 5. ASARCO objects that EPA has not explained how "its modeling proposal will meet" the requirements of CAA section 107(d)(3)(E)(i) and (iii) that an area show it has attained the NAAQS based on permanent and enforceable reductions in emissions. ASARCO at 11. North Dakota and South Dakota's federalism objections also reflect their arguments that EPA's guidance is inconsistent with CAA section 107, which they interpret as giving States the ability to use their sound judgment, as opposed to EPA's, in making designation recommendations. ND and SD at 4–5. They claim monitoring is preferable to modeling to implement section 107(d), is more accurate, and will avoid overestimating SO_2 concentrations that result in nonattainment designations triggering the requirement for pollution controls to solve "problems that do not exist in the real world." *Id.* at 5–6. For example, use of modeling to designate areas under section 107 might result in electric utility plants being forced to control their SO_2 pollution with "potentially unfeasible emission control requirements" that cause electricity rates to increase substantially. *Id.* at 6. WVDEP asserts that EPA's guidance discussion "radically departs from agency practice in the last three revised NAAQS. WVDEP at 2. ADEQ echoes these concerns by stating that attainment status determinations will be impracticable until EPA issues further guidance on modeling, which is not expected before States have to make designation recommendations under section 107. ADEQ at 1.

3. Consistency With CAA Section 110 SIP Planning Requirements

UARG outlines the 1970 version of the CAA section 110(a)(1) SIP requirements, and asserts that EPA's guidance discussion is "the first time that EPA stated its intent to use air quality modeling in the development of SIPs under [section] 110(a)(1)," and notes that previously EPA has required SIPs that only included a PSD program and "other infrastructure SIP elements." UARG at 4, 6, 9–10, 21. UARG claims EPA "is now interpreting [section] 110(a)(1) to require that a State" demonstrate NAAQS attainment and maintenance via dispersion modeling. *Id.* at 15, 21. UARG therefore claims that the guidance discussion "significantly changes the way EPA interprets requirements for maintenance SIPs." *Id.* at 22. NEDA/CAP echoes this claim. NEDA/CAP at 3.

TCEQ objects to EPA's alleged "divergence from CAA section 110(a)(1) and (2) attainment and maintenance requirements for all areas, whether designated nonattainment or not." TCEQ at 5. TCEQ claims EPA's guidance discussion "significantly changed the planning requirements for attainment and 'unclassifiable' areas—those areas that do not have sufficient monitoring or modeling data to show attainment of the NAAQS." TCEQ at 10. Like UARG, TCEQ unfavorably compares the guidance discussion's outline of an expected SIP that shows the area meets the statutory elements of 110(a)(1), to what EPA previously accepted as approvable. TCEQ at 10–11. North Dakota and South Dakota also object to the guidance discussion's description of expected section 110(a)(1) SIPs that would "force the States to devote substantial time and resources" to addressing modeled SO_2 concentrations and impose costly and potentially unfeasible emission control measures. ND and SD at 6. WVDEP objects to how EPA discusses it would treat unclassifiable areas under the SO_2 program compared to other NAAQS pollutants. WVDEP at 2.

4. Consistency With CAA Section 171(2) Definition of "Nonattainment Area"

Two petitioners attempt to buttress their objections with claims that EPA's guidance discussion conflicts with how Congress revised the statutory definition of "nonattainment area" in the 1990 CAA Amendments to section 171(2). NEDA/CAP asserts that "Congress repealed the language from Section 171(2) which allowed states to use either modeling or monitoring for its attainment designation." NEDA/CAP at 5. Prior to 1990, NEDA/CAP observes, section 171(2) defined "nonattainment area" as one "which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any [NAAQS]." *Id.* But in 1990 Congress deleted references to the type of data used to identify NAAQS nonattainment, which NEDA/CAP claims means that it is "arbitrary and capricious for EPA to rely entirely on modeling to determine whether an area is meeting the NAAQS." *Id.* It argues that the Senate Committee's report supports this view, in stating that "EPA may rely for these designations on sound data that is available, preferably air quality monitoring data, but in some cases where appropriate and necessary, the [EPA] may rely on modeling or on statistical extrapolation from monitored concentrations of another pollutant." S. Rep. No. 101–228, at 15 (1989). TCEQ endorses this reading as a "clear direction by Congress that modeling is not to be used to determine nonattainment areas for a NAAQS pollutant," as part of its argument that there is no possible way the public could have foreseen that EPA would "require modeling for compliance and implementation." TCEQ at 12–13.

5. Consistency With SO_2 Primary NAAQS Regulatory Text

All petitioners except MSCC argue that EPA's guidance discussion conflicts with the promulgated regulatory text of the NAAQS. UARG argues that the promulgated regulatory text of the final rule "nearly mirrors the language" of the proposed rule regarding the use of monitoring to measure SO_2 concentrations, but the preamble's guidance discussion suggests EPA "intends to require the use of air quality modeling analyses." UARG at 1, 14–15. UARG notes that the regulation does not require States to use modeling for section 107(d) designations or for section 110(a)(1) SIPs. *Id.* at 16. "Given the difference between the preamble discussion and the actual regulatory

language," UARG asks that EPA clarify that the regulatory language reflects how EPA intends the NAAQS to be implemented. *Id.*

NEDA/CAP contrasts the regulatory text of 40 CFR 50.17(b) and of Appendix T, which apply to situations where monitoring is used, to EPA's guidance discussion regarding modeling, echoing UARG's view that the final regulation "nearly mirrors" the proposed regulatory text. NEDA/CAP at 2–3. NEDA/CAP asserts that "the rule is therefore internally inconsistent and confusing," and similarly requests that EPA clarify that the NAAQS will be implemented according to the regulatory text. *Id.* at 3. ASARCO argues that the revised regulatory text, like the prior SO_2 NAAQS' text at 40 CFR 50.4, refer to attainment for SO_2 based on measuring ambient air concentrations through monitoring. ASARCO at 4. ASARCO then endorses UARG's view that the preamble discussion is inconsistent with "the plain language of the Final Rule." *Id.* at 10, n. 12.

TCEQ contrasts the regulatory text not just with the general preamble guidance discussion but also with specific preamble language addressing the relationship of the regulatory text applicable to monitoring situations to other possible methods for assessing SO_2 levels. TCEQ at 5, 9–10. TCEQ asserts that EPA's statement recognizing that the monitoring-specific language does not speak to other measurement approaches "commits EPA to interpret [its] adopted rule language in a way that inherently conflicts with the plain language of the rule," which TCEQ says the Agency may not do. *Id.* at 9–10. TCEQ claims EPA undertook this "change in its interpretation" without notice and comment procedures in contravention of *Paralyzed Veterans of America, et al.,* v. *D.C. Arena L.P.,* 117 F.3d 579, 586 (D.C. Cir. 1997), and that EPA's "error is compounded by the fact that EPA interprets the rule language as permissive, while stating elsewhere in the Final Rule that monitoring data demonstrating attainment will not be deemed adequate" absent confirming modeling data. *Id.* at 10, n. 37.

North Dakota and South Dakota also claim the guidance discussion is inconsistent with the regulatory provisions, and ask EPA to clarify how it intends States to implement the NAAQS. ND and SD at 2–3, 4, 7. Like the other petitioners, they focus on the regulatory text that specifically addresses situations in which monitors are required to be used. *Id.* at 4. ADEQ endorses North Dakota's and South Dakota's position. ADEQ at 1. WVDEP takes a different approach from other petitioners, characterizing the final regulatory text of 40 CFR 50.17(b) as a "substantive alteration" that "implies that monitored air quality data cannot represent, for regulatory purposes, an area larger than the site boundaries," which WVDEP calls a "fundamental, disturbing change from past practice." WVDEP at 1.

B. Responses to the Petitioners' Statutory and Regulatory Arguments

As stated earlier, EPA regards it as impossible for our non-binding preamble guidance to have an effective "conflict" with the CAA or our regulations, as it is not final and imposes no independent requirements. Only in subsequent designations actions under section 107 or in SIP actions under sections 110 or 192 would the objections petitioners raise relate to final actions that could theoretically represent the "conflicts" that petitioners allege. Thus, we respond to petitioners' arguments conditionally, while reserving the right to reach different final conclusions than are reflected in our preliminary, non-final responses provided here, if petitioners were to raise these and other objections in the context of future final actions such as designations or SIP approvals.

Regarding the claimed conflict with federalism principles underlying the CAA that place primary responsibility for implementation on States and restrict EPA's roles, EPA has taken no action that can be characterized as encroaching in States' roles in future implementation. As EPA explained in the preamble, decisions on what data should be used to support individual designations or SIP actions will be made on case-by-case bases and through future rulemaking, and States are not restricted by our non-binding guidance from recommending designations based on monitoring, modeling, or a combination. We have, however, as we commonly do in advance of designations under revised NAAQS, provided guidance regarding what we currently expect would provide the most accurate data to support those actions, and we expect to provide further guidance. Even the petitioners, in their objections, concede that providing guidance for stakeholders to subsequently use is an appropriate role for EPA. It is difficult to understand how this can result in EPA having presently usurped States' roles in future implementation. Moreover, EPA notes that although it is true that States have the initial role of recommending designations under CAA section 107(d) and in developing and submitting for approval SIPs under sections 110 and 192 to show implementation, attainment, maintenance and enforcement of the SO_2 NAAQS, EPA has the ultimate responsibility to make final decisions in these actions, whether or not States even fulfill their own initial roles. *See, e.g.,* CAA sections 107(d)(1)(B)(ii), 107(d)(3)(E), and 110(c)(1)(A)–(B). Moreover, as the DC Circuit explained in response to similar arguments that EPA guidance in the designations process "impermissibly encroaches on states' statutory prerogative to have a first-say on area designations within their borders," although EPA indeed must wait its turn following the period for States to recommend designations before EPA makes any individual designations, "nothing in section 107(d)(1) prevents EPA from developing general principles to govern its exercise of discretion when the time comes, or from announcing those general principles before the states submit their initial designations. To the extent petitioners think that EPA owes the states a measure of *substantive* deference under section 107(d)(1) [* * *] we disagree. Though EPA may, of course, go along with states' initial designations, it has no obligation to give any quantum of deference to a designation that it 'deems necessary' to change." *Catawba County* v. *EPA,* 571 F.3d at 40 (emphasis in original).

Similarly, EPA does not agree that its guidance discussion can presently pose a "conflict" with either the terms of CAA section 107 or the Agency's past practice in issuing designations and re-designations, as petitioners assert. EPA has not yet taken any designation action that arguably "departs" from our past practice, and as petitioners concede, the final regulation itself does not impose a binding requirement that States conduct modeling in the manner to which petitioners object. EPA observes, however, that the Agency has previously extensively used modeling to support designation and re-designation decisions for the SO_2 primary NAAQS, as explained in the preamble, and that our long-standing guidance supports this approach for SO_2 NAAQS, particularly in the absence of monitoring data. *See, e.g.,* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Office Air Division Directors, "Redesignation of Sulfur Dioxide Nonattainment Areas in the Absence of Monitored Data," Oct. 18, 2000; Memorandum from Sheldon Meyers, OAQPS Director, "Section 107 Designation Policy Summary," April 21, 1983. [Available at: *http://www.epa.gov/ttn/naaqs/so2/so2_tech_res.html*].

EPA does not agree that the preamble discussion of the possible approach of implementing CAA section 110(a)(1) actually imposes a requirement to demonstrate attainment with the revised NAAQS on a specific schedule as a consequence of the final rule. As petitioners observe, we have not promulgated such a requirement, and the application of this approach in a future section 110(a)(1) SIP approval or disapproval action would be the first instance in which EPA could allegedly act in conflict either with the applicable provisions of section 110(a)(1) itself or with our prior practice regarding this provision for SO_2 or any other NAAQS pollutant. If any interested party objects to such an approach that EPA might propose in such a future action, EPA will respond to that objection then. In the meantime, we note that section 110(a)(1) is fairly straightforward in providing that following revision of a NAAQS States are to adopt and submit SIPs that "provide[] for implementation, maintenance, and enforcement" of the NAAQS, and EPA is required on a case-by-case basis to take action under CAA section 110(k)(3) to approve or disapprove such a SIP based on whether it meets the applicable requirements of the Act. EPA has not yet "significantly changed" how this statutory requirement applies.

As for the argument that the 1990 CAA amendment to section 171(2)'s definition of "nonattainment area" forces a conflict with the EPA's preamble discussion, again, EPA does not consider it possible for non-binding guidance to create such a conflict. Petitioners should present this argument, if at all, in the context of an actual implementation action that could theoretically cause such a conflict. Moreover, petitioners' argument appears to make the remarkable claim that because the amended section 171(2) definition removed explicit reference to both monitoring and modeling, it somehow follows that EPA may use the former type of non-referenced data to support nonattainment designations but may not use the latter. It is not clear how the statutory text can compel this result, and the legislative history cited by petitioners appears to endorse the use of both monitoring and modeling, as necessary and appropriate, on a case-by-case basis. Clearly, the opportunity to endorse or object to the use of either monitoring or modeling (or some combination) will be available in future implementation actions, but it is not apparent that Congress issued an absolute prohibition on the use of modeling that EPA's guidance in advance of such an action could violate.

In response to the arguments that the preamble guidance conflicts with the promulgated regulatory text of the final rule, again EPA points out that there can be no such effective conflict between promulgated final action (the regulations) and non-binding guidance discussions that address how EPA may act in future. The final regulatory text is binding, as are the final preamble explanations of how that specific regulatory text must be implemented, but the rest of EPA's implementation discussion is not.

In any case, EPA addressed the relationship of the regulatory provisions in section 50.17 (b) referring to "at an ambient monitoring site" and similar provisions in Part 50 Appendix T related to when the primary NAAQS for SO_2 "are met at an ambient air quality monitoring site" and the non-binding guidance elsewhere in the preamble relating to potential implementation strategies. EPA stated that the references to monitoring in the rule "makes clear that the regulatory text refers to situations where compliance with a NAAQS is measured by means of monitoring. This text does not restrict or otherwise address approaches which EPA or States may use to implement the new 1-hour NAAQS, which may include, for example, use of modeling." 75 FR at 33582. There consequently is no such conflict as petitioners allege, even if EPA's implementation discussions were other than non-binding initial guidance. Thus, where monitoring is used, sections 50.17 and the corresponding provisions in Part 50 Appendix T are to be followed. But where on case-by-case bases additional tools are used to accurately assess SO_2 concentrations, such as where monitoring would not yield reliable data of the maximum 1-hour daily concentrations in an area or location, it is clear that States and EPA may make use of those tools separate from the regulatory provisions governing monitoring's use to evaluate whether the ambient air quality exceeds the NAAQS for SO_2, as defined by the specified level, averaging time, and form. Nothing in the Act prohibits this approach. *See, e.g.,* CAA sections 107(d)(3) (any "air quality data" may be used for redesignations); 110(a)(1) (does not address the issue of the types of data States may use in devising plans for implementation, maintenance, and enforcement of a primary NAAQS); 192(a) (does not specify the types of data that may support a demonstration that a non-attainment area has attained a NAAQS). Again, only in those possible future actions would it be possible to evaluate whether the State's or EPA's implementation actually then "conflicts" with the regulatory text.

Finally, it must be repeated that whether monitoring or modeling is used in assessing compliance with the NAAQS, all elements of the NAAQS must be satisfied so that the ultimate determination remains identical: whether the three-year average of the 99th percentile of daily maximum 1-hour average concentrations of SO_2 exceed 75 ppb. The preamble discussion of implementation approaches is consistent with, and does not affect, this requirement.

V. Impact on Final Standard Issue

A. Petitioners' Arguments

Several petitioners claim that EPA's guidance discussion has a present impact on the promulgated NAAQS, either to make it more stringent, of the wrong "form," or impossible to measure compliance with. UARG asserts that the guidance "has the effect of making the new standard more stringent than the lower end of the range of the standard in the Proposed SO_2 Rule because of the conservatism of modeling analyses." UARG at 18. Later, however, UARG states that "the new 1-hour standard for SO_2 *could effectively* become more stringent than the lower end of the 50 to 100 ppb range that was proposed for comment based on studies that relied on monitored SO_2 levels." *Id.* at 28 (emphasis added). "EPA's *recommended* approaches for modeling of sources of SO_2—including EPA's insistence on the use of peak emission rates for all modeled sources—will in all *likelihood* substantially over-predict concentrations of SO_2 thereby *possibly* falsely indicating violations of the new 1-hour SO_2 NAAQS." *Id.* at 28–29 (emphasis added). UARG continues that "[m]odeled predictions of source impacts will also *likely* be unrealistically high because of the approaches that are being used to determine the regional background values that *should be* added to predicted source impacts. [* * *] Although EPA *does not require* States to use this approach, the Agency's failure to have in place rules that *suggest* better options make[s] it *likely* that States *could* continue their current practice." *Id.* at 29 (emphasis added). "In short," UARG argues, "because models routinely over-predict short-term concentrations of SO_2, the use of modeling to assess compliance with the new SO_2 standard *could have* the effect of making the new SO_2 standard—as implemented—more stringent than 75 ppb and, indeed,

could effectively make the standard more stringent than even the lower end of the 50 to 100 ppb range that EPA" proposed. *Id.* (emphasis added).

ASARCO cites *Appalachian Power Co.* v. *EPA,* 208 F.3d at 1027, and *Donner Hanna Coke Corp.,* 464 F. Supp. At 1304, for the proposition that the method of determining compliance can affect the stringency of the standard or the level of performance needed to meet the standard. ASARCO at 11. ASARCO notes that it commented on the proposed rule to claim that current modeling is conservative and that there is a discrepancy between modeling and monitoring data. *Id.* "How attainment *must* be demonstrated similarly *can* affect the stringency of the standard and the requirements that may be imposed on sources within the area," ASARCO asserts. Id. (emphasis added).

TCEQ, with the endorsement of ADEQ (*see* ADEQ at 2), makes a different kind of argument, alleging that EPA's guidance discussion lacks an explanation for "why dispersion modeling is an appropriate comparison or 'fit' for the form of the standard," and that EPA's actual promulgation of 40 CFR 50.17(b) governing compliance shown by monitoring is itself arbitrary and capricious. TCEQ at 3. The guidance results in "an inappropriate form of the standard," TCEQ claims, which it asserts is "probabilistic" as opposed to "deterministic," which it considers EPA's generally preferred modeling method to be. *Id.* at 5–9. TCEQ states that in the REA, EPA developed a statistical model to determine 5-minute peak SO_2 concentrations and concluded that at a given level of SO_2, a 99th percentile form of a 1-hour standard is effective at limiting 5-minute peak SO_2 concentrations. *Id.* at 5–6. TCEQ characterizes the form of the final NAAQS as "the 3-year average of the 99th percentile of the annual distribution of daily maximum 1-hour average concentrations," as set forth in 40 CFR 50.17(b) applicable to situations in which monitoring is used. *Id.* at 6. TCEQ states that following the proposed SO_2 NAAQS, EPA issued guidance regarding implementation of the PM2.5 and NO_2 NAAQS which indicates there is difficulty integrating modeling and monitoring data, which "would also be true for the SO_2 standard." *Id.* at 6–7. TCEQ complains that EPA has, like for PM2.5 and NO_2, adopted a "form" of the SO_2 NAAQS for which the Agency has not yet explained how to translate the modeling results into a form appropriate for comparison to the new standard. *Id.* at 7. TCEQ asserts EPA must refine modeling procedures to "realistically address the frequency of peak short-term impacts in order to appropriately implement the new 1-hour SO_2 NAAQS," and that the "joint frequency of worst-case cumulative emissions and adverse dispersion conditions become more important for probabilistic ambient standards." *Id.*

EPA's preferred model for SO_2 implementation, "AERMOD," instead, is a "deterministic" model that provides point estimates based on a worst-case set of input parameters that TCEQ argues is not appropriate for probabilistic standards. *Id.* at 7–8. Use of peak emissions for all sources on a continuous basis will lead to overestimates of the frequency of peak total impacts, TCEQ claims, while a model should instead consider the use of a frequency distribution of emissions for the sources being considered in order to "match" the adopted form of the standard. *Id.* at 8. TCEQ recognizes that EPA allows States to propose to use other models than AERMOD, but complains that EPA "requires an arduous demonstration before [it] will approve the use of other models." *Id.* TCEQ claims that EPA's preferred air dispersion models have not been developed to predict short-term locations of maximum concentration or account for a probabilistic standard. *Id.* TCEQ claims that where the probability of simultaneous occurrence of peak emissions and worst-case meteorology is low, standard modeling will exaggerate ambient concentrations, particularly where sources do not operate continuously and make "overly conservative" modeled projections inappropriate for use in designations. *Id.* at 8–9.

B. EPA's Response

First, as UARG's arguments suggest by their own terms, and as we have explained regarding the other procedural and substantive objections petitioners raise, the claims that EPA's discussion has an impact on the promulgated standard ignore the fact that the guidance is not final binding action that has any immediate and direct effect on anything. As UARG appears to recognize, future implementation actions using EPA's "recommended" approaches which EPA "does not require" "could" have an impact by "possibly" or "likely" resulting in States using modeling in a way to "likely" overestimate SO_2 emissions only if, in fact all of that actually occurs, which it may not. Thus, UARG's claim as presented necessarily concedes that any arguable impact on NAAQS compliance of the guidance discussion is speculative at this point. There is no reason to accept this result as inevitable, and if, in a given case (such as PSD permitting), UARG believes that a particular modeling method is over-predicting SO_2 emissions in a manner that is not representative of a source's potential to cause or contribute to a NAAQS exceedance, it will in that future action be able to object based on the facts then presented. But here there are no such facts to dispute, and it is therefore not possible for the guidance itself, as expressed in EPA's preamble, to have any impact on the NAAQS.

Likewise, ASARCO's objection raises an issue that does not presently exist, as the final rule does not in fact provide that modeling "must" be used to demonstrate attainment, but instead leaves for future actions the decision whether in specific cases monitoring or modeling or some combination of the two will best measure ambient SO_2 concentrations. If EPA were to determine in a given action that the monitoring data were not sufficient to determine an area's attainment status, and thus that the area would have to be categorized as unclassifiable until sufficient monitoring data or modeling results were available, that designation would be the result of the insufficiencies in the data, not of anything that EPA has done in the final rule or discussed in the preamble guidance. Although it might seem to petitioners that monitoring, where actually conducted, should be inherently more accurate than modeling, this is not necessarily the case with respect to SO_2. In fact, "[i]n the past, EPA used a combination of modeling and monitoring for SO_2 during permitting, designations and re-designations in recognition of the fact that a single monitoring site is generally not adequate to fully characterize ambient concentrations, including the maximum ground level concentrations, which exist around stationary SO_2 sources." 75 FR at 35559. This is especially important because "[t]he 1-hour NAAQS is intended to provide protection against short-term (5 minute to 24 hour) peak exposures." *Id. See American Lung Ass'n* v. *EPA,* 134 F. 3d at 392–93 (remanding EPA's determination that such exposures to SO_2 do not constitute a threat to public health) and 75 FR at 35536 (5–10 minute SO_2 exposures can result in adverse health effects to asthmatics).

TCEQ's more detailed and alternative argument claiming that the discussion of modeling makes the form of the standard when monitoring is to be used unlawful must be similarly rejected, since at this point it is entirely

speculative as to whether the alleged poor "fit" between modeling and the standard will in fact occur in any specific instances. TCEQ has presented no facts to support a claim that the guidance discussion itself compels that this result has already or must inevitably occur. Moreover, TCEQ presents no argument as to why the form of the standard is inappropriate. See 75 FR at 35539–41 (discussing and justifying at length EPA's choice of a 99th percentile form for the new 1-hour standard). Like UARG and ASARCO, TCEQ appears to implicitly object to the fact that EPA did not in the final rule either require modeling to be used in all cases or promulgate specific requirements regarding modeling's use from which States may not deviate or to which no alternatives may be recommended in future implementation. Ironically, the petitioners thus appear to complain of the flexibility that they and States will have in future implementation actions to recommend data measurement tools that they believe will more accurately predict SO_2 emissions concentrations. Certainly such flexibility, no matter how "arduous" it seems in application, cannot be the basis for a claim that a guidance discussion has any present and immediate impact on the promulgated NAAQS.

VI. Stay of Final Rule Issue

A. Summary of Petitioners' Requests

Nearly all of the petitioners requested that EPA stay the effectiveness of the final SO_2 NAAQS pending some period of reconsideration. UARG at one point requests a stay of the final NAAQS "pending completion of rulemaking," and at another asks for a stay "while EPA decides whether to reconsider key portions of the Rule," but ultimately requests a stay "for a period of three months" with the possibility of being extended. UARG at 3, 30, 32. UARG bases its request for a stay under CAA sections 307(d)(7)(B) and 301(a) on the perceived hardships that could befall pollution sources if they are required to achieve increasingly lower emissions rates, at increasingly higher costs, on the asserted restriction of State discretion resulting from EPA's guidance discussion, and on States' future burden of having to adopt and submit SIPs that show attainment via modeling. *Id.* at 30–31. NEDA/CAP requests a stay of the SO_2 NAAQS pending "agency review and action on" its petition to "prevent confusion and to conserve resources in responding to the final rule's requirements for initial attainment/nonattainment designations." NEDA/CAP at 6. ASARCO claims EPA "should stay the effective date of the rule to provide adequate notice and opportunity to comment on the rulemaking," and therefore "fully supports" UARG's request for a stay. ASARCO at 12.

TCEQ argues EPA should stay the NAAQS under APA section 705's authority to postpone the effective date of action, pending judicial review, when an agency finds that justice so requires. TCEQ at 15. Under this standard, TCEQ argues, it is not required to demonstrate irreparable harm to support granting a stay. *Id.* at 15–16. North Dakota and South Dakota, "because of the hardships that could result from implementation of EPA's 1-hour SO_2 Standard in the manner described in the Final Rule's preamble," asks for a three-month stay, followed by an extension through the completion of rulemaking if EPA decides to change the rule. ND and SD at 9–10. ADEQ, in supporting the petitions of TCEQ and North Dakota and South Dakota in general, appears to also seek a stay. ADEQ at 2.

B. EPA's Response

Consistent with our position in the litigation on the final SO_2 Primary NAAQS in response to the motion filed by North Dakota to judicially stay the rule, EPA concludes that there is no basis for an administrative stay of the final SO_2 Primary NAAQS. Under CAA section 307(d)(7)(B), EPA may issue a stay for up to three months if it grants a petition and initiates reconsideration of a final rule. Since we are denying the petitions to reconsider, an administrative stay is not warranted under that authority. In addition, a stay is not otherwise warranted. First, the petitioners have not made a strong showing of likelihood of success on the merits, for all of the reasons we present above for denying the petitions to reconsider. Second, the petitioners' speculative arguments do not show that they will suffer irreparable harm (as no implementation actions have yet been taken reflecting EPA's discussed possible approaches), and they fail to account for the non-binding nature of the final rule preamble's implementation guidance discussion, the opportunities for interested parties to assert their views in the future implementation actions about which petitioners are concerned, and EPA's stated intention to provide further implementation guidance. Third, petitioners' arguments that a stay would not harm other parties flatly ignore the harm to the public that would occur from delayed attainment of the SO_2 Primary NAAQS and deferred public health benefits, and they therefore fail to show that such a stay would not be contrary to the public interest.

In addition, it is not necessary for EPA to grant a stay under CAA section 301(a) to carry out the Agency's functions in denying the petitions for reconsideration, since EPA intends to take no further action regarding the petitions following this denial. APA section 705 authorizes an agency to postpone the effective date of an agency action pending judicial review when the agency finds that justice so requires. In this case, the revised SO_2 Primary NAAQS was effective as of August 23, 2010. TCEQ's request for an administrative stay relying upon APA section 705 was submitted by petition on that same day that the SO_2 Primary NAAQS became effective. Even if EPA believed that an administrative stay was warranted under TCEQ's theory that the total absence of irreparable harm is not an impediment to granting an administrative stay in this matter, which it does not, it is not clear whether EPA would have authority under APA section 705 to stay an agency action that has already gone into effect. Postponing an effective date implies action before the effective date arrives.

VII. Conclusion

For all of the reasons discussed above, the petitions to reconsider the final revised SO_2 Primary NAAQS are denied, as are the petitions for an administrative stay.

Dated: January 14, 2011.

Lisa P. Jackson,

Administrator.

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