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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 7

RIN 0560–AG90

Selection and Functions of Farm Service Agency State and County Committees

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends the regulations governing the selection and functions of Farm Service Agency (FSA) State and county committees. The amendments are needed to make the regulations consistent with the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) and the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The intent of the amendments is to ensure that socially disadvantaged farmers and ranchers are appropriately represented on county committees, to make the county committee election process more open and accountable, and to clarify requirements for committee membership in the situation where existing county committees are consolidated or combined. All of these amendments have already been implemented by FSA, except for the new provisions specifying that the Secretary may appoint a voting member to the county committee when required to ensure fair representation of socially disadvantaged farmers and ranchers. There will be no change in State and County Committee functions and election procedures as a result of this rule, except for limited appointments of socially disadvantaged voting members. This rule is needed to make the regulations consistent with current FSA practice.

DATES: *Effective Date:* September 4, 2012.

Comment Date: We will consider comments that we receive by August 6, 2012.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the Regulation Identifier Number (RIN) and the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Barbara Boyd, Field Operations Program Manager, FSA, United States Department of Agriculture (USDA), Mail Stop 0542, 1400 Independence Avenue SW., Washington, DC 20250–0542.
- *Hand Delivery or Courier:* Deliver comments to the above address.

All written comments will be available for inspection online at *www.regulations.gov* and at the mail address above during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the FSA home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Barbara Boyd; telephone: (202) 720–7890. Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 10708 of the 2002 Farm Bill (Pub. L. 107–171) mandates several changes in the election process for FSA county committees and in the functions of both State and County committees in conducting county committee elections. Section 1615 of the 2008 Farm Bill (Pub. L. 110–246) makes minor additional changes. This interim rule implements those changes in the regulations, and also makes additional clarifying changes in response to comments on a previous proposed rule for the 2002 Farm Bill changes. This rule includes provisions for the appointment of a voting member to a county committee, which is authorized by the 2002 Farm Bill, but has not been implemented.

Consistent with the 2002 Farm Bill, the purpose of the amendments is to increase the transparency and accountability of county elections and to provide opportunities for the nondiscriminatory participation of socially disadvantaged (SDA) farmers and ranchers in county committees and in the programs of USDA. The 2002 Farm Bill requires several actions by FSA to achieve those goals. These regulations are one of those actions; the other actions include collecting and reporting extensive data on the results of county committee elections and establishing Uniform Guidelines for conducting those elections. The 2008 Farm Bill requires additional changes to increase the maximum number of county committee members in the situation where counties are combined or consolidated into a single multi-county office, and to clarify that a farmer or rancher may serve only on the county committee for the county office where their farm records are administered.

This interim rule follows a proposed rule published in the **Federal Register** on November 28, 2006 (71 FR 68755–68762). The 60-day comment period for the proposed rule closed on January 29, 2007; 13 comments were submitted. The issues raised in the comments and the resulting changes to the rule in response to those comments are discussed later in this document. The changes between the proposed and interim rule in response to comments are minor because most of the issues raised by the commenters have already been addressed or can be addressed with minor clarifying changes.

The ''Uniform Guidelines for Conducting Farm Service Agency County Committee Elections'' (the Uniform Guidelines) were published in the **Federal Register** on January 18, 2005 (70 FR 2837–2842). These regulations are consistent with the Uniform Guidelines. The Uniform Guidelines are available on the FSA Web site at *www.usda.fsa.gov/elections.*

This rule uses the phrase ''county committee'' in both the preamble and in the regulations. A county committee may have jurisdiction over a geographical area that is different from an actual county, such as more than one county, or a county and a Tribal area. The proposed rule and the current regulations refer to ''area committees'' for county committees that have jurisdiction over more than one county,

which some commenters found confusing, so this interim rule does not use that phrase.

This document first provides background information on county committees, then discusses the changes to county committee procedures specified in this rule. Most of the changes have already been implemented. Comments on the previous proposed rule, and our responses to those comments, are at the end of the preamble, followed by the amended regulations.

Background on County Committees

County committees were originally authorized by Congress in the 1930s to allow for grassroots input and local administration of Agricultural Adjustment Administration programs. At that time, local farmers elected delegates to a county convention, which selected the members of the county committee. Direct election of county committee members has been FSA practice since FSA itself was authorized by the Federal Crop Insurance Reform and Department of Agriculture Reauthorization Act of 1994 (Pub. L. 103–334).

County committees provide local input on the administration of FSA programs, including commodity price support loans and payments, conservation programs, disaster payments, and emergency programs. Committee members are a critical component of the day-to-day operations of FSA. They help deliver and provide outreach for FSA Farm Programs at the local level. Farmers who serve on committees help decide the kind of programs their counties will offer. They provide input on how to improve program delivery. They work to make FSA agricultural programs serve the needs of local farmers and ranchers, and help local farmers and ranchers know what programs are available. The duties of county committees currently include:

- Informing farmers of the purpose and provisions of FSA programs;
- Keeping the State FSA Committee informed of local administrative area (LAA) conditions;
- Monitoring changes in farm programs;
- Participating in monthly county meetings;
- Directing outreach activities;
- Making recommendations to the State committee on existing programs;
- Conducting hearings and reviews as requested by the State committee; and
- Ensuring socially disadvantaged farmers and ranchers are fairly represented.

County committee decisions are made by consensus. Committee members vote to come to consensus on various items, for example, yield determination for the county, the county executive director (CED) ratings, and approving producer applications when required for various Farm Programs.

County committees do not oversee the administration of FSA direct or guaranteed farm operating loans or ownership loans. Those are administered by FSA federal employees.

There are currently more than 7,700 committee members serving on more than 2,200 committees nationwide. More than 235,000 ballots were cast in the 2010 county elections. Elected committee members serve for a 3-year term, and roughly one-third of seats are up for election each year. There are term limits, which enables beginning farmers and those who have not participated in the past have an opportunity to serve. This rule adds provisions specifying that the Secretary may appoint an SDA voting member when there is no elected SDA member and one is needed to ensure fair representation. In the context of this rule, SDA groups are women, African Americans, American Indians, Alaska Natives, Hispanics, Asian Americans, and Pacific Islanders. Appointed members serve a 1-year term and also have term limits. The determination of the need for an appointed member will be performed after each annual election.

Nomination forms for county elections are distributed to all eligible voters by June 15th of each year; the forms are also available online and at all county offices. Anyone who is an eligible voter can nominate themself or another person to be on the slate of candidates. An organization, such as a local nonprofit, Tribal government, or local Tribal organizations representing SDA farmers, can also nominate a candidate. Nominations are due in August, and elections take place in December. Anyone of legal voting age who lives in the county, or whose FSA farm records are administered in the county, and participates in a USDA program or has provided the county office with information about their farming operation, can vote in the election. Minors can vote if they are in charge of the operations on an entire farm. The person receiving the most votes in the election serves on the county committee, and the first and second runners up may serve as alternates, if they meet the eligibility requirements and agree to serve.

County committees may also have appointed non-voting SDA advisors. The appointment of those advisors is one of the efforts USDA has made to address the concerns in the 2002 Farm Bill about fair representation of SDA farmers and ranchers on county committees. Non-voting SDA advisors are recommended by the local county committee, in consultation with local groups and local Tribal organizations, representing SDA farmers and ranchers, and appointed by the State committee. Advisors attend county committee meetings and ensure that SDA issues and viewpoints are understood and considered in FSA actions. Non-voting advisors do not have the authority to sign documents or vote on county committee actions.

The county committee is the official employer of CED, and in the case of a vacancy, will be responsible for selecting the new CED.

As discussed in the next section, this rule updates the regulations to make them consistent with current practice, but does not change the role of county committees or county committee voting members from current practice, with the exception of the new appointment authority.

Amendments to the Regulation That Are Consistent With Current FSA Practice

This interim rule amends 7 CFR part 7 ''Selection and Functions of Agricultural Stabilization and Conservation State, County, and Community Committees.'' Those regulations were most recently updated in 1994, and are no longer consistent with current FSA practice. This rule makes substantive changes to the regulations that are needed to add requirements from the 2002 and 2008 Farm Bills. This section of the document discusses the amendments to the regulations that have already been implemented administratively. The next section discusses the new provisions to appoint SDA members that have not yet been implemented.

In addition to the changes required by the two Farm Bills, this rule also removes obsolete terms. This rule removes text that does not relate to public compliance and is therefore appropriately addressed in FSA handbooks and directives. It changes the name of the part to ''Selection and Functions of Farm Service Agency State and County Committees.''

This rule includes definitions for ''participate'' and ''cooperate.'' These terms, which are specified in the 2002 Farm Bill, are used to clarify who is eligible to vote in county elections and be nominated to serve on county committees. Farmers and ranchers who ''participate,'' meaning they receive

assistance, benefits, or services from USDA or indirectly through another federal government agency, may vote in county elections and be nominated as county committee members. Farmers and ranchers who provide information to the FSA county office about their farming operation, thus meeting the definition of ''cooperate'' in § 7.3 of this rule, may also be eligible voters and nominees even if they do not directly receive benefits or services from USDA. For example, farmers who grow specialty crops that do not qualify for FSA programs and beginning farmers may qualify to vote by providing information about their farming operation to the county office. Those who do not both own and operate their farm, such as landowners, tenants, and sharecroppers, may qualify to vote by providing such information. USDA uses this information to better understand the agricultural communities that our programs serve, or might serve in the future. We also wish to ensure that persons who have an interest in farming that may not qualify for our programs at this time have an opportunity to be represented on the county committee.

The additional requirements for eligibility for county committee members in this rule, including term limits for elected members, are largely unchanged from the current regulations. The requirement that a voter who operates a farm or ranch in more than one local administrative area (LAA) in a county can only vote in any election in any one LAA is unchanged. (An LAA is similar to a precinct or voting district in function.) Similarly, the requirements for spouse eligibility and entity eligibility are unchanged. This rule specifies that the county office will maintain the list of eligible voters in the county and must disclose that list to the public, which is also not a new requirement.

The regulations for the establishment of LAAs are revised to be consistent with current practice and with the two Farm Bills. The current regulations specify exactly three LAAs per county, with some exceptions that include fewer than three LAAs per county. The revised regulations specify at least 3 LAAs per county, with up to 11 LAAs for county committees that have jurisdiction over multiple counties. The purpose of having more LAAs is, in part, to ensure that SDA representation is not reduced when county offices are combined. In some circumstances, such as a very large county or one with many farms, a single county committee can have up to five LAAs. The LAA boundaries will be determined by the State committee, after considering recommendations from the county committee in which an LAA is located. The county committee must give public notice of LAA designations before the election and nomination processes. FSA has already implemented these provisions through handbooks and the Uniform Guidelines.

This rule revises the nomination process regulations to be consistent with current FSA practice. The revisions make the nomination process and deadlines provisions more clear and specific than the current regulations. Nominations for county committee are due not less than 90 days before the election date. The nomination form is distributed to eligible voters and is also available at county offices and on the internet at *http://www.sc.egov.usda.gov.* Nominees must meet eligibility requirements, which include residing in the LAA for which the election is being held and being willing to serve if elected. The eligibility requirements for nominees, county committee members, and other personnel are largely unchanged from the current regulations. As specified in the 2008 Farm Bill, a farmer or rancher with farming interests in multiple LAAs or counties can only serve on the county committee in the jurisdiction where their FSA records are administered.

This rule has revised provisions, consistent with the Uniform Guidelines, on how the slate of candidates for the election will be determined. The slate of candidates for a county committee election will typically consist of the farmers and ranchers nominated through the public solicitation of nominees. If at least one nomination is filed, the county committee will not take any action to add more nominees to the slate, although write-in candidates are always allowed. If no nominations are received, which is not common, the existing county committee will develop a slate of candidates following the procedures in the Uniform Guidelines. As specified in the Uniform Guidelines, if there are no nominations, the Secretary and the State committee may nominate up to two individuals to the slate. If they choose not to do so, the county committee must ensure that the slate is filled by selecting two nominees. Slates developed by the county committee must include at least one individual representing the interests of SDA farmers and ranchers.

The current regulation provides that election dates will be held sometime after July 1st each year, on a date or within a time period specified by the Deputy Administrator. This rule includes more specific requirements to give the public advance notice at least 30 days before the election on how, where, and when eligible voters may vote. FSA has already implemented this. FSA holds all the county elections at the same time every year, with ballots available in November and counted in December. The elections are widely publicized at the county, State, Tribal, and national levels. As specified in this rule, the public may observe the opening and counting of the ballots, and the county committee must provide at least 10 days advance notice of the date, time, and place at which the ballots will be opened and counted.

Occasionally, there is a vacancy on the county committee that occurs outside of the normal election cycle, such as when a member resigns or moves away. This rule specifies that in the case of a vacancy, there can be a special election to fill the vacancy, or the State committee may designate an alternate to serve out the remaining term. While the option to have the State committee designate an alternate is specified in the regulation so that FSA can exercise that option if needed, special elections are normally held to fill vacancies. The obsolete provisions on vacancies in the current regulations that specify the procedures for the county conventions and community committees to fill the vacancies are removed, but those provisions have not been used in many years because those entities have not been authorized since 1994.

The challenges and appeals requirements regarding the voter eligibility or results of a county committee election follow the Uniform Guidelines and current practice and are largely unchanged from the current regulations. Obsolete references to challenging the results of county conventions have been removed. This rule includes specific requirements to allow nominees to challenge the results of elections within required times and to allow a special election if the election is nullified.

The 2002 Farm Bill requires FSA to collect and report detailed information on county election results. Therefore, the regulations include new requirements for FSA county committees to collect this information and provide it to the FSA national office. This information is already being collected and reported. FSA publishes this information annually, and it is available on our Web site at *www.fsa.usda.gov/elections.* Election results for 2002 through 2010 are currently posted.

The political activity restrictions and personnel actions procedures were modified in the regulation to be

consistent with the specific procedures in FSA handbooks and directives that are already in use. Since the details are in the handbooks and directives, the provisions now reference the appropriate handbooks and directives. Obsolete appeals provisions were removed.

New Provisions To Appoint SDA Members to County Committees

The 2002 Farm Bill grants the Secretary the authority to appoint a committee member to a committee to achieve the goal of fair representation in a county committee jurisdiction. The 2008 Farm Bill requires the Secretary to develop procedures to maintain SDA representation on county committees.

Since the 2002 Farm Bill, USDA has increased outreach to SDA communities to encourage participation in COC elections. SDA non-voting advisors have been appointed by State committees to many county committees. However, voter turnout has remained low among all groups, and particularly among SDA farmers and ranchers, whose voter participation rate is about 7 percent. That is about half the voter participation rate for all eligible voters. USDA has also collected and analyzed extensive data on county committee election results, and found that a few counties (about 5 percent) still do not have fair representation of SDA farmers and ranchers. Given the continued low SDA voter turnout, despite sustained and extensive outreach over the past decade, it is unlikely that the regular election process alone will result in fair SDA representation on all county committees. An additional effort is needed to achieve fair representation on county committees in a few cases. USDA has therefore decided to utilize the appointment authority provided in the 2002 Farm Bill.

In the preamble to the 2006 proposed rule, USDA stated that ''in the event the Secretary does decide to utilize the appointment authority, the Secretary will only do so after providing an opportunity for the public to comment on the proposed provisions under which such appointments will be made.'' This interim rule provides that opportunity for public comment. This rule specifies in 7 CFR 7.17 that the Secretary will use the discretionary authority to make appointments when such appointments are necessary to maintain fair representation. USDA will continue to monitor the effectiveness of the Uniform Guidelines and these regulations to ensure that they are sufficient to ensure fair representation of SDA farmers and ranchers on county committees. If needed to ensure fair representation, the Secretary will use the authority to appoint committee members when the statistical evidence, measured at the county-level, demonstrates a lack of diversity and underrepresentation on selected county committees over a period of at least 4 years. The appointed committee member will be in addition to the elected voting members. The appointed member does not replace any of the elected members.

This rule does not specify what specific procedures the Secretary will use to determine that an appointment is necessary. The method USDA currently plans to use to identify counties where an appointment is appropriate is as follows: USDA will first determine a baseline number of eligible voters in a county, using operator data in the Census of Agriculture and eligible-voter data in FSA records. The baseline eligible voter pool for each county committee will be measured annually against the demographics of the current committee to ensure fair representation each year on the committees and to identify where there is a need for increased SDA representation. The method used to determine if an appointment should be made will be a benchmark level of expected representation, which will be the number of SDA representatives expected in the county to ensure fair representation. The benchmark is a threshold percentage that is calculated as follows:

1 ÷ 1 plus the current number of elected COC members

For example, if there are 3 elected county committee members, the threshold will be 1 divided by 4, or 25 percent. If more than 25 percent of the eligible voters in the county are SDA, but there is no SDA voting member on the COC, that county will be considered for an SDA appointment. Where the county already has an SDA advisor, the Secretary plans to appoint that advisor as the SDA voting member.

Our current analysis of 2010 election results shows that of the 2,244 county committees, about 13 percent met the threshold where SDA representation would be expected based on the demographics of the eligible COC voters in the county. (In the example above, if 10 percent of the eligible voters in the county are SDA farmers and ranchers, but there is no SDA member on the existing 3-member COC, that county does not meet the threshold where an SDA voting member would be expected.) FSA analysis shows that 153 counties met the threshold where SDA representation would be expected based on race or ethnicity of eligible voters, and 160 counties met the threshold where SDA representation would be expected based on gender of eligible voters (28 counties were in both groups). Of these counties where SDA representation would be expected, over half already had an SDA voting member. Almost all of the counties where SDA representation would be expected already had a non-voting SDA advisor. Only 17 counties that met the benchmark for expected SDA representation had neither an SDA voting member nor an SDA advisor.

FSA analysis also considered observed historical voting patterns. FSA has collected detailed election data for the past decade of county committee elections, as required by the 2002 Farm Bill. Voting patterns are relevant because individual voting members may resign or reach term limits, resulting in a temporary lack of SDA representation. Only counties that have an observed pattern of non-representation for at least the past four election cycles will be considered for SDA appointments. Analysis of 2007 through 2010 election data found that about 5 percent of counties would be in this group. Counties that meet the benchmark for lacking SDA representation and do not currently have an SDA voting member, but have had one in at least one of the last four election cycles, will not be considered for appointments. Where counties do not currently have an SDA voting member, meet the benchmark for lacking SDA representation for at least four election cycles, and have an advisor, the Secretary plans to select the existing advisor as the appointed SDA voting member. The vast majority of the appointments (roughly 80 percent) are expected to be elevation to voting status of persons who are already serving on their local county office committee as a non-voting SDA advisor. In the few counties with no SDA advisor, the selection of an appointed member will follow the same procedure used to identify an SDA advisor, including, among other things, outreach to community based organizations.

FSA will continue outreach efforts to increase SDA voter participation and SDA representation on county committees through the regular election process. We will also continue to update the statistical analysis with current year election data. Going forward, the appointment process will be used where and when it is needed to ensure fair representation of SDA farmers and ranchers. If in any year the statistical analysis finds that SDA farmers and ranchers are fairly represented on all county committees, then USDA will not

need to make any SDA appointments that year.

Removal of Obsolete Provisions and Other Technical Changes

This rule removes the current section of the regulations specifying procedures for county conventions. All county committee elections are conducted by direct election by eligible voters. County conventions have not been used to select county committee members in many years, because they were removed from the authority with the reorganization of USDA required by the Federal Crop Insurance Reform and Department of Agriculture Reauthorization Act of 1994 (Pub. L. 103–334).

This rule removes all references to community committees. Community committees were also removed from the underlying authority in 1994 as part of the USDA reorganization. Community areas are no longer used to establish the boundaries of LAAs, and have not been for many years.

This rule removes the reference to consideration of at large and cumulative voting that were in § 7.17 in the proposed rule because USDA assessed the at large and cumulative alternatives and found them not viable.

As noted earlier, obsolete appeals and hearings provisions for appealing a suspension, disqualification, or removal from office are removed. Updated procedures are now in the employee handbooks and Uniform Guidelines.

Non-substantive editorial changes were made throughout to improve clarity by providing plain language explanation of election procedures and by grouping related provisions in the same section. Plain language changes, such as replacing ''shall'' with ''will'' or ''must,'' have been made.

Discussion of Comments on Proposed Rule

FSA received 13 comments on the proposed rule. The comments were received from agricultural associations and representative groups, Indian tribes and communities, FSA employee associations, an FSA county committee, USDA's Office of Inspector General, and individuals. The commenters generally supported the 2002 Farm Bill goals of making election processes more transparent and ensuring fair SDA representation, but requested clarification and objected to specific proposed regulatory provisions to implement those goals. Some issues raised by commenters were subsequently addressed in the 2008 Farm Bill. Most of the issues raised by commenters have already been addressed in current FSA practice.

Comment: Provide addition clarification or further definition of the terms ''assistance,'' ''services,'' ''benefits,'' ''enroll,'' and ''indirect service'' because these terms are used to establish eligibility.

Response: FSA procedural handbooks will include the definitions of these terms. This rule specifically defines ''cooperate'' and ''participate'' as they relate to voter eligibility. The other terms listed are not specific to the county election process and FSA does not use them in a different way from their dictionary meaning to establish voter eligibility, so therefore they are not defined in this rule.

Comment: Please define and clarify the term ''fairly representative.'' A common dictionary meaning would mean that the committee's make-up is proportional to the make-up of the farming or ranching population of the administrative area in terms of race, ethnicity, and gender.

Response: The 2002 Farm Bill and the Uniform Guidelines specify the information that we must collect to measure SDA farmer participation and representation. This information, including the total ballots cast by race, gender, and ethnicity, the total eligible voters in each category, and the total nominees in each category, is currently collected and reported on the FSA Web site. This information is collected and reported at the LAA, county, State, Tribal, and national levels. Detailed county election results are available on our Web site for the 2002 through 2010 elections. As required by Congress, these detailed statistics on participation rates at the LAA, county, State, Tribal, and national levels are how FSA measures SDA representation on our county committees and participation in the elections.

The benchmark for what will be considered ''fairly representative'' for the purpose of appointments is a percentage that is calculated as follows:

1 ÷ 1 plus the current number of COC members

For example, if there are 3 county committee members, the benchmark for fair representation will be 1 divided by 4, or 25 percent. If 25 percent of the eligible voters in the county are SDA, and there is at least one SDA member on the COC, that county will be considered to have fair representation of SDA voters. If not, it will be considered for a Secretarial appointment of one SDA member. The 2002 Farm Bill does not provide authorization to appoint more than one member, nor does it specify strictly proportional representation as a goal.

Comment: Provide clarification on whether both participants and cooperators would have voting rights and eligibility for county committees if they are reporting on the same tract of land. As written, both the landowner and the farm operator would have voting rights if they either participated or cooperated. We are particularly concerned that SDA farmers who are tenants, operators, or sharecroppers are eligible to vote.

Response: Both a landowner and an operator may be eligible to vote based on reporting on the same tract of land. An owner and an operator are not an entity; they are both individuals both eligible to vote. Only one vote is allowed for an entity such as a cooperative or trust, but tenants and sharecroppers are unlikely to be entities.

Comment: The time requirements that farmers and ranchers must have participated or cooperated within the past year to vote or be nominated appear to be in direct conflict with the goal of increasing SDA participation. The time frame should be increased.

Response: Anyone who lives in the county can be eligible to vote or be nominated if they ''cooperate'' by providing information about their farming operation and their current name and address to the county office no later than the final date to return ballots (to be eligible to vote) or the final date for nomination forms (to run for county committee). So, if someone has not received farm benefits recently but wishes to vote in county elections, they should be able to easily meet the ''cooperate'' eligibility criteria by updating their records at the county office at any time up to the day ballots are due. Farmers and ranchers can be eligible voters under the cooperation requirement even if they have not participated in programs (received benefits or services) within the past year. They can provide their information the day they vote or pick up their ballot. Therefore, this requirement should not discourage SDA participation. It is unclear how a longer time frame would increase participation by SDA farmers or by any other group. The intent of the ''within the past year'' provision, as discussed in the preamble to the proposed rule, was in part to ensure that county committee members are elected by those who are directly affected by committee actions, including those who have participated in USDA programs in the past year.

Comment: The regulations may exclude certain landowners that have been eligible voters.

Response: The voter eligibility requirements are specified in the rule to ensure that farmers and ranchers, including landowners, are fully informed of the voter eligibility requirements. Please note that landowners who provide information to the FSA county office about their farming operation, thus meeting the definition of ''cooperate'' in 7 CFR 7.3, may be eligible voters even if they do not directly receive benefits or services from USDA or from other federal agencies. To ''cooperate,'' a landowner must provide their current name and address information to the county office.

Comment: Some Tribal members may no longer be considered eligible voters under the proposed rules. Section 7.5 of the proposed rule says that they must be producers, and 7 CFR part 718 defines producers as a person who shares in the risk of producing a crop. Tribal members as owners of Tribal agricultural land may not meet the requirements for voter eligibility because most of the parcels are operated under a lease or permit. We recommend changing the definition of ''producer'' to include owners of crop producing lands.

Response: As specified in this rule, a farmer or rancher is eligible to vote if they participated or cooperated in USDA programs, as participated and cooperated are defined in this rule. Specifically, a Tribal member of a tribe with Tribally owned agricultural land who provides their name and current address to the county office will meet the requirement of ''cooperate'' and be eligible to vote. In response to this comment, § 7.5 has been modified to refer to ''farmers and ranchers,'' the term used for voters in the relevant sections of the 2002 and 2008 Farm Bills.

Comment: The rule isn't clear how the voter or FSA determines which LAA is the correct area for a voter with an interest in more than one LAA in the county.

Response: A voter with an interest in more than one LAA in the county will vote based on the location of their home. As specified in § 7.18, the LAA where the voter resides, or in cases where the LAA boundary or other jurisdictional boundary runs through a farm, the county office and LAA where the farm's FSA records are kept is the LAA for the voter.

Comment: The proposed rule doesn't have language on how a producer can seek relief if they have been deemed ineligible to vote. That appeals provision is in the Uniform Guidelines but it should also be in the rule in § 7.5, with the 15 day response period, like in the Uniform Guidelines.

Response: This rule specifies in § 7.15 that challenges and appeals on voter eligibility will be handled in accordance with the Uniform Guidelines. In response to this comment, an appeals provision specifically for voter eligibility has also been added to § 7.5. This is not a change from current practice, or from the current regulations.

Comment: Disciplinary action and political activity guidance should not be removed from the rule.

Response: They are not entirely removed from the rule. The requirements are updated to be consistent with current legal requirements, and some details have been moved to FSA procedural handbooks and directives, which are the appropriate location for detailed disciplinary action and political activity guidance.

Comment: The authority granted to the Secretary in the 2002 Farm Bill to appoint a voting member should not be included in the rule. Neither the Secretary of Agriculture nor anyone else should appoint members.

Response: The Secretary was provided the authority in the 2002 Farm Bill to appoint a member to represent socially disadvantaged farmers and ranchers after a thorough analysis of the representation of socially disadvantaged farmers and ranchers in a particular county committee jurisdiction. The 2002 Farm Bill also required USDA to collect detailed election data, which we have done. USDA now has multiple years of data available to identify which counties do not currently have appropriate SDA representation, and have not had appropriate SDA representation in the recent past. The procedures for appointing SDA members are included in the regulations so that members of the public are fully informed of what actions USDA may take in the future to achieve appropriate SDA representation on a county committee.

Comment: If the Secretary uses the authority to appoint SDA committee members, the regulations should require the Secretary to solicit and accept nominations from community-based organizations that represent SDA farmers and ranchers in the area.

Response: When the authority is used, it will be in consultation with local organizations and Tribal organizations that represent SDA producers in the area, as was discussed in the notice published in the **Federal Register** in which the Uniform Guidelines were published. Where an SDA non-voting COC member exists, the Secretary will typically appoint that member as the SDA voting member, if such an appointment is made.

Comment: Releasing the names and addresses of eligible voters to candidates for county committees may violate the Privacy Act.

Response: The release of names and addresses is handled in accordance with the requirements of the Privacy Act of 1974. The Privacy Act requires that agencies publish a System of Records notice in the **Federal Register** with a period for public comment before personal information is collected, to inform the public on how collected information will be used. Personally identifiable information may be released for certain routine uses, which must be specified in the System of Records notice. The release of names and addresses of eligible voters to candidates for county committees was specifically listed as a ''routine use'' of that information in the System of Records notice that covers the collection of that information. Only names and addresses are provided to candidates; other information such as financial information about farming operations, geospatial information about farm tracts, etc., is not released to candidates.

Comment: Restrict the use of the names and addresses to the county committee elections—prohibit anyone who received the list of names from selling it or using it for any political or profitable use. The list of voters must not be used for any other purpose than to inform or educate the voters in the capacity as county committee candidate.

Response: We do not have the authority to restrict the use of this public information, however a disclaimer will be provided with the list of voters indicating that the information is for use in running as a COC candidate and should not be used for any other purpose.

Comment: Maintain local control of FSA county committees' ability to supervise FSA county office employees. Provide further clarification on the proposed change to remove references to county office employee personnel actions from the regulations. Does this apply only to FSA county committee elections?

Response: County committees retain the authority to employ a county executive director and are considered the supervisor(s) of record of the county executive director. Personnel actions will be conducted under official FSA handbook procedure with input from the county committee. The scope of the county committee authority regarding personnel actions is not limited to committee elections, and has not changed with this rule.

Comment: On the LAA issue, the rule changed the intent of LAA delineation, which was meant for commodity similarities rather than for fair representation of producers.

Response: The purpose of establishing LAAs has been and remains fair representation of farmers and ranchers in the county or larger area under the jurisdiction of a county committee. Commodities grown in an area are only one of many criteria used for LAA delineation. That has not changed with this rule.

Comment: Increase the number of LAAs from 3 to 7.

Response: This rule specifies up to 11 LAAs per county. The 2002 Farm Bill allows 3 to 5 county committee members for a single county jurisdiction and the 2008 Farm Bill allows up to 11 members in a combined or consolidated county. That is reflected in this interim rule, and in current practice. The number of LAAs will correspond to the number of members on the county committee, which could be as many as 11 for a combined or consolidated committee.

Comment: The Uniform Guidelines should be included in the regulation.

Response: As noted above, the Uniform Guidelines were issued previously in the **Federal Register**. They are too extensive to include in the regulations, and include provisions that do not apply to members of the public. As revised by this rule, the regulations are consistent with the Uniform Guidelines. If the Uniform Guidelines are updated in the future, they will be published in the **Federal Register**. They are available on FSA's Web site at *http://www.fsa.usda.gov/elections.*

Comment: A disinterested party should maintain the ballots and the ballots should not be handled by employees of the county committees.

Response: While it is not appropriate for candidates to handle the ballots, FSA county employees may not run for election and are therefore disinterested parties. As specified in the Uniform Guidelines, any candidate may request that ballots be sent to the State FSA Office until the official counting, and the county committee must do so if requested.

When the Uniform Guidelines were originally developed in 2004, FSA considered requiring that ballots be sent to the State FSA Office in all cases, and tested that approach in a pilot program. After a review of the pilot program, it was determined to be impractical to require this approach for all county committees, so it was decided to keep State office collection of ballots as an option, but not a requirement, unless a candidate requests it. That provision is in the final Uniform Guidelines and in this rule.

Comment: The community committees should not be removed from the regulation. Community committees are a valuable resource.

Response: The community committees are removed from the regulation because they have not been used since 1995. The authorization for community committees was removed from the relevant United States Code in 1994 as part of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994.

Comment: The Guidelines specify that only mail or hand-delivered ballots are allowed, but the rule in § 7.11 provides for meeting or polling place method. The guidelines and the rule should be consistent.

Response: The Guidelines will be updated to properly reflect the options for meeting or polling place method.

Comment: The rule usually refers to county committees, but there are a few references to area committees that are potentially confusing.

Response: Those references have been removed from the interim rule to address this comment. Area committees is a commonly used term for county committees that have jurisdiction over multiple counties.

Comment: FSA should include a provision setting forth an appropriate retention period for county committees to maintain books, records, and documents in § 7.30, which only specifies the retention period for ballots.

Response: The proper retention period for the various program and administrative records are documented in applicable agency handbooks and are not needed in this rule. Retention periods vary depending on program or administrative function.

Comment: When Tribal lands cross state boundaries, Tribal farmers and ranchers also be able to have the ability for unified decision-making and implementation by county committees.

Response: When Tribal lands cross state boundaries, members of the Tribe may choose to all participate at a single county office, and therefore vote in a single LAA to have unified decision making and implementation for their land.

Comment: The final rule should reflect that the political activity of county office employees must comply with the Hatch Act.

Response: That is an appropriate topic for handbooks and directives, and has therefore been addressed there, rather than in the rule.

Other Comments

Some of the comments received expressed general support or opposition for the rule or the 2002 Farm Bill provisions, without offering specific suggestions for changes. FSA also received comments that are outside the scope of this rule but have been addressed elsewhere. The topics of the out of scope comments included financial support for outreach and updates to employee handbooks.

Executive Order 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this interim rule.

Clarity of the Regulations

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make it easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any

rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Therefore, FSA has not prepared a regulatory flexibility analysis.

The costs to comply with this rule are primarily borne by FSA, not the public. The costs of compliance with this rule for the public are expected to be minimal. No comments were received on the proposed rule regarding disparate economic impact on small entities. Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The following interim rule was determined to be Categorically Excluded. Therefore, no environmental assessment or environmental impact statement will be completed for this final rule.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State, and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State, and local processes for State, and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This interim rule is not retroactive and it does not preempt State, or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this interim rule impose substantial direct compliance costs on State, and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law.

FSA has been working closely with the USDA Office of Tribal Relations to ensure that the rule meets the concerns of Tribal leaders and to develop a plan to improve the rule implementation with FSA staff. USDA will also respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This interim rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Currently approved information collection activities are covered under OMB control number 0560–0229. This rule involves no change to the currently approved collection of information.

E-Government Act Compliance

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

List of Subjects for 7 CFR Part 7

Agriculture.

For the reasons discussed above, 7 CFR part 7 is revised to read as follows:

PART 7—SELECTION AND FUNCTIONS OF FARM SERVICE AGENCY STATE AND COUNTY COMMITTEES

Sec.

7.1 Administration.
7.2 General.
7.3 Definitions.
7.4 Selection of committee members.
7.5 Eligible voters.
7.6 Establishment of local administrative areas.
7.7 Calling of elections.
7.8 Nominations for county committee.
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7.29 Delegation of authority to Deputy Administrator.

7.30 Custody and use of books, records, and documents.
7.31 Administrative operations.
7.34 Retention of authority.

Authority: 7 U.S.C. 2279–1, 16 U.S.C. 590d and 590h.

§ 7.1 Administration.

(a) The regulations in this part apply to the election and functions of the Farm Service Agency (FSA) county committees and the functions of FSA State committees (''county committees'' and ''State committees,'' respectively). State and county committees will be under the general supervision of the FSA Administrator.

(b) State and county committees, and representatives and employees of those committees, do not have authority to modify or waive any of the provisions of this part.

(c) State committees will take any actions required by these regulations that have not been taken by a county committee. State committees will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part, or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will preclude the FSA Administrator, or designee, from determining any question arising under this part, or from reversing or modifying any determination made by a State or county committee.

(e) These regulations will be administered in accordance with the Uniform Guidelines for Conducting FSA County Committee Elections.

(f) Unless specifically provided in this part, the Deputy Administrator, Field Operations, FSA (Deputy Administrator), is authorized to issue the official instructions and procedures referred to in this part to implement the provisions of this part.

(g) This part applies to the United States, its territories, and Puerto Rico.

§ 7.2 General.

State and county committees will, as directed by the Secretary, or a designee of the Secretary, carry out the programs and functions of the Secretary.

§ 7.3 Definitions.

The following definitions apply to this part. The definitions in § 718.2 of this title also apply to this part, except where they conflict with the definitions in this section.

Cooperate means to enroll a farming operation or agricultural property with a county office.

Deputy Administrator means Deputy Administrator for Field Operations, Farm Service Agency, U.S. Department of Agriculture or the designee.

Local administrative area means an elective area for FSA committees in a single county or multi-county jurisdiction.

Participate means to receive assistance, services, or benefits directly from the United States Department of Agriculture (USDA), or from USDA indirectly through another governmental agency.

Socially disadvantaged farmer or rancher is an individual or entity who is a member of a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

State committee means the FSA State committee.

Uniform Guidelines means the Uniform Guidelines for Conducting Farm Service Agency County Committee Elections, which are available in FSA Handbook 15–AO.

§ 7.4 Selection of committee members.

(a) State committee members will be selected by the Secretary and will serve at the pleasure of the Secretary.

(b) County committee members will be elected as specified in § 7.11 of this part or appointed as specified in § 7.17 of this part.

§ 7.5 Eligible voters.

(a) Persons must meet the requirements of paragraphs (b) or (c) of this section to be eligible to vote in direct elections of county committee members.

(b) Farmers and ranchers who are of legal voting age in the State in which their farms or ranches are located, regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status, and any farmers or ranchers not of legal voting age who are in charge of the supervision and conduct of the farming operations on an entire farm, are eligible to vote for direct election of county committee members, if they:

(1) Participated in a program administered within a county, or area under the jurisdiction of the county committee, within 1 year of the date of the election; or

(2) Not later than the final date to return ballots, cooperate as evidenced in county office records.

(c) In any State having a community property law, the spouse of a person who is eligible to vote in accordance with paragraph (b) of this section is also eligible to vote.

(d) If an eligible voter is a legal entity, the eligible voter's vote may be cast by a duly authorized representative of such entity, as determined by the Deputy Administrator, Field Operations, FSA.

(e) Each county office will maintain a list of eligible voters for each local administrative area within the county. A county office must disclose a list containing the names of eligible voters to the public. A county office must disclose a list containing the names and addresses of eligible voters to a candidate for a county committee position at the request of the candidate.

(f) Farmers and ranchers who are not on the list of eligible voters who believe that they meet eligibility requirements may file a written challenge with the county committee and may appeal county committee voting ineligibility determinations to the State committee.

(g) Each eligible voter will be entitled to only one ballot in any election held in any one local administrative area. If the eligible voter has an interest in land located in more than one local administrative area in a single county, such voter will not be entitled to vote in more than one local administrative area in that county. There will be no voting by proxy.

§ 7.6 Establishment of local administrative areas.

(a) The Secretary, or the Secretary's designee, may designate local administrative areas within a county or a larger area under the jurisdiction of a county committee.

(1) There will be a minimum of three local administrative areas in each county. In counties that have been combined or consolidated into a multiple county office, there will be 3 to 11 local administrative areas. In single-county offices, there will be three to five local administrative areas. With respect to Alaska and Puerto Rico, the county will be the area so designated by the State committees. In Louisiana, the term ''county'' applies to parishes.

(2) Each local administrative area will have not more than one elected county committee member.

(3) The boundaries of the local administrative areas will be determined by the State committee after considering recommendations by the county committee in which the local administrative areas are located.

(4) The county committee must give public notice of the local administrative

area boundaries in advance of the election and nomination processes.

(b) [Reserved]

§ 7.7 Calling of elections.

(a) The Secretary will establish a county committee in each county or area under the jurisdiction of a multiple county office.

(b) Each election of county committee members must be held on a date, or within a specified period of time, determined by the Deputy Administrator. Each such election must be held in accordance with instructions issued by the Deputy Administrator, and the instructions must be available for public examination in each county office.

(c) If the number of eligible voters voting in any election of county committee members is so small that the State committee determines that the result of that election does not represent the views of a substantial number of eligible voters, the State committee may declare the election void and call a new election. If it is determined by the State committee that the election for any position on a county committee has not been held substantially in accordance with official instructions, the State committee will declare such election void and call a new election.

§ 7.8 Nominations for county committee.

(a) Nominations to the county committee will be publicly solicited with a closing date for nominations not less than 90 days prior to the election date.

(b) Each solicitation for nomination will include the nondiscrimination statement used by the Secretary.

(c) To be eligible for nomination for election in a single county jurisdiction in the local administrative area conducting the election, a person must be a farmer or rancher residing within that local administrative area under the jurisdiction of the county committee. In a multiple county jurisdiction, or in the case where an local administrative area or county boundary runs through a farm, a person will only be eligible for nomination in the jurisdiction and local administrative area in which the person's records are administered.

(d) To be eligible, nominees must be farmers or ranchers who:

(1) Participated in a program administered within an area under the jurisdiction of the county committee; or

(2) At the time of the deadline to submit nominations, cooperate as evidenced in county office records.

(e) Nominations of eligible farmers and ranchers will be solicited and accepted from organizations representing the interests of socially disadvantaged farmers and ranchers.

(f) Eligible farmers and ranchers may nominate themselves or other farmers and ranchers who meet the nomination criteria in paragraph (d) of this section, and who certify their willingness to serve on the county committee.

(g) If elected, nominees must meet all the eligibility requirements in § 7.18 to serve as county committee members.

§ 7.9 Slate of candidates.

(a) Except as provided in paragraph (b) of this section, a slate of candidates will consist of one or more eligible farmers and ranchers nominated through public solicitation of nominees as specified in § 7.8.

(b) If no nominations are received by the closing date for nominations, the county committee must develop a slate of candidates in accordance with the Uniform Guidelines.

(c) A slate developed by the county committee must include at least one individual representing the interests of socially disadvantaged farmers and ranchers.

(d) Candidates must certify their willingness to serve on the county committee if elected as a member or alternate.

(e) The county committee must accept write-in candidates on ballots.

(f) Write-in candidates, if elected as a member or an alternate, must meet the eligibility requirements of § 7.18 and must certify their willingness to serve on the county committee before they will be certified as a member or alternate.

§ 7.10 Conduct of county committee elections.

(a) The county committee serving at the time of the election will be responsible for the conduct of the county committee election in accordance with the Uniform Guidelines and with any instructions issued by the Deputy Administrator.

(b) County committee elections must not be associated with, or held in conjunction with, any other election or referendum conducted for any other purpose.

(c) The county committee must give advance public notice at least 30 calendar days prior to the election date of how, when, and where eligible voters may vote.

(d) The county committee must provide at least 10 calendar days of public notice of the date, time, and place at which election ballots will be opened and counted.

(e) The county committee must provide at least 10 calendar days of public notice that any person may observe the opening and counting of the election ballots.

(f) The county executive director must notify all nominees of the outcome of the election within 5 calendar days of the election date. The notification must be in writing.

§ 7.11 Election of county committee members.

(a) Where there are three local administrative areas as specified in § 7.6, there will be an election of a county committee member and, if available, any alternates, for a term of not more than 3 years, or until such person's successor is elected and qualified, in only one of the local administrative areas so that the term of office of one county committee member and any alternates within one of the local administrative areas will expire each year.

(b) Where there are more than three local administrative areas as specified in § 7.6, there will be an election in at least one of the local administrative areas each year, such that the term of office of the county committee member(s) and any alternates within at least one-third of the local administrative areas will expire each year.

(c) Every 3 years, the eligible voters in a local administrative area will elect a county committee member and may elect first and second alternates, as available, to serve. The alternates will serve, in the order of the number of votes received, as acting members of the county committee, in case of the temporary absence of a member, or to become a member of the county committee in that same order elected in case of the resignation, disqualification, removal, or death of a member. In other words, the candidate receiving the most votes will be elected as the committee member, and the candidates receiving the second and third most votes, if there are multiple candidates, will be elected as first and second alternates, respectively.

(d) An alternate serving as an acting member of the county committee will have the same duties, responsibilities, and authority as a regular member of such committee. In the event an alternate fills a permanent vacancy on the county committee, such person will assume the remainder of the unexpired term of the county committee member who was replaced.

(e) The election must be conducted in all counties by mail or other distribution of ballots in accordance with the Uniform Guidelines, except that the Deputy Administrator may authorize use of the meeting or polling place

method in any county where such exception is deemed justified.

(f) Elections will be by secret ballot with each eligible voter allowed to cast one vote and having the option of writing in the name of a candidate.

(g) Failure to elect alternates at the regular election will not invalidate such election or require a special election to elect alternates.

§ 7.12 Composition of a county committee.

(a) A committee established under this part will consist of not fewer than 3 nor more than 11 elected members.

(b) Committee members must be fairly representative of the farmers and ranchers within their respective LAA from which they are elected.

(c) The county committee must select a secretary who must be the county executive director or other employee of the county committee. The secretary cannot be a county committee member.

(d) The county committee must select a chairperson and vice-chairperson.

§ 7.13 Tie votes.

Tie votes in county committee elections will be settled by lot in a manner that is open to the public.

§ 7.14 Vacancies.

(a) In case of a vacancy in the office of chairperson of a county committee, the respective vice chairperson will become chairperson. In case of a vacancy in the office of vice chairperson of a three member committee, the respective third member will become vice chairperson. In case of a vacancy in the office of a member, a respective first alternate, if available, will become a member. In case of a vacancy in the office of vice chairperson of a four to five member county committee, the first alternate, if available, for the LAA of the vice chairperson will become a member and the county committee will conduct an organizational meeting to select a vice chairperson; and in case of a vacancy in the office of the first alternate, a respective second alternate, if available, will become the first alternate. When unanimously recommended by the members of the county committee, as constituted under this paragraph, and approved by the State committee, the offices of chairperson and vice chairperson of the county committee may be filled by any county committee member without regard to the order of succession specified in this paragraph.

(b) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the county committee and no alternate is available to fill the vacancy, a special election may be held to fill such vacancies as exist in the membership.

(c) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the county committee and no alternate is available to fill the vacancy, the State committee may designate a person to serve out the balance of the term of the vacant position on the county committee.

§ 7.15 Challenges and appeals.

(a) Challenges and appeals by nominees regarding voter eligibility or the results of a county committee election must be handled in accordance with the Uniform Guidelines.

(b) Any nominee has the right to challenge an election in writing, in person, or both within 15 calendar days after the results of the election are posted.

(c) Challenges to the election must be made to the county committee, which will provide a decision on the challenge to the appellant within 7 calendar days of the receipt of the challenge.

(d) The county committee's decision may be appealed to the State Committee within 15 calendar days of receipt of the notice of the decision if the appellant desires.

(e) In the event that an election is nullified as a result of a challenge or appeal, or an error in the election process, a special election must be conducted by the county office and closely monitored by the FSA State office.

§ 7.16 Report of election.

(a) The county committee must file an election report with the Secretary through the Deputy Administrator's office not later than 20 days after the date an election is held.

(b) The election report must include:

(1) The number of eligible voters in the local administrative area;

(2) The number of ballots cast in the election by eligible voters;

(3) The percentage of eligible voters that cast ballots;

(4) The number of ballots disqualified in the election;

(5) The percentage of ballots disqualified;

(6) The number of nominees for each seat up for election;

(7) The race, ethnicity, and gender of each nominee, as provided by the voluntary self identification of each nominee; and

(8) The final election results, including the number of ballots received by each nominee.

§ 7.17 Remedial measures.

(a) FSA will consider additional efforts to achieve the objective that county committees are fairly representative of farmers and ranchers within areas covered by the committees. Such efforts may include, but are not limited to, compliance reviews of selected counties, further centralization of the election process, and the appointment of socially disadvantaged farmers and ranchers to particular committees in accordance with a notice published in the **Federal Register** issued by the Secretary authorizing such appointments.

(b) The Secretary may ensure inclusion of socially disadvantaged farmers and ranchers by appointment of 1 additional voting member to a county committee when a significant population of socially disadvantaged farmers and ranchers exist in the committee jurisdiction and no member is elected from that socially disadvantaged population. The appointment of the socially disadvantaged voting member will be in accordance with standards and qualifications furnished by the State committee.

§ 7.18 Eligibility requirements of county committee members.

(a) To be eligible to hold office as a county committee member or an alternate to any county office, a person must meet the conditions specified in this section.

(b) Such person must:

(1) Meet the eligibility for nomination criteria specified in § 7.8;

(2) Reside in the local administrative area in which the election is held, in cases where a State line, a county line, or a local administrative area boundary runs through a farm, eligible farmers and ranchers residing on such farm may hold office in the county and local administrative area in which the farm has been determined to be located for program participation purposes;

(3) Not be ineligible based on prohibited political activities, as specified in the Uniform Guidelines;

(4) Not have been dishonorably discharged from any branch of the armed services; removed for cause from any public office; convicted of any fraud, larceny, embezzlement, or felony, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(5) Not have been removed as a county committee member, alternate to any county office, or as an employee for: Failure to perform the duties of the office; committing, attempting, or conspiring to commit fraud; incompetence; impeding the effectiveness of any program administered in the county; refusal to

carry out or failure to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfering with others in carrying out such policy; or for violation of official instructions, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(6) Not have been disqualified for future service because of a determination by a State committee that during previous service as a county committee member, alternate to any county office, or as an employee of the county committee, the person has: Failed to perform the duties of such office or employment; committed, attempted, or conspired to commit fraud; impeded the effectiveness of any program administered in the county; in the course of their official duties, refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfered with others in carrying out such policy; or violated official instructions, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(7) Not be an employee of the U.S. Department of Agriculture during the term of office;

(8) Not be a sales agent or employee of the Risk Management Agency or their affiliates during the term of office;

(9) Not be already serving as a county committee member with 1 or more years remaining in their current term of office; and

(10) Not have served more than 9 consecutive years (three consecutive terms as an elected member) as an elected or appointed county committee member just prior to the current election in which elected office is sought. After a break in service of at least 1 year, a member who has previously served 9 consecutive years may run for re-election or be re-appointed.

§ 7.19 Eligibility requirements of all other personnel.

(a) The county executive director and other employees of the county committee must not have been: Dishonorably discharged from any branch of the armed services; removed for cause from any public office; or convicted of any fraud, larceny, embezzlement, or any other felony, unless any such disqualification is waived by the State committee or the Deputy Administrator.

(b) The county executive director or any other employee of the county committee must not have been removed as a county committee member, alternate to any county office, county executive director, or other employee of the county committee for: Failure to perform the duties of the office; committing, attempting, or conspiring to commit fraud; incompetence; impeding the effectiveness of any program administered in the county; refusal to carry out or failure to comply with the Department's policy relating to equal opportunity and civil rights, including equal employment policy, or interfering with others in carrying out such policy; or for violation of official instructions, unless such disqualification is waived by the State committee or the Deputy Administrator.

(c) The county executive director or any other employee of the county committee must not have been disqualified for future employment because of a determination by a State committee that during previous service as a county committee member, alternate to any county office, or as an employee of the county committee, the person has: Failed to perform the duties of such office or employment; committed, attempted, or conspired to commit fraud; impeded the effectiveness of any program administered in the county; refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfered with others in carrying out such policy; or violated official instructions, unless such disqualification is waived by the State committee or the Deputy Administrator.

§ 7.20 Prohibition on dual office.

(a) A member of the county committee cannot, during the time they are a committee member, also serve as:

(1) The secretary to the county committee;

(2) A member of the State committee; or

(3) A county executive director or any other county office employee.

(b) [Reserved]

§ 7.21 Terms of office of county committee members.

(a) The term of office of county committee members and alternates to such office will begin on a date fixed by the Deputy Administrator, which will be after their election or appointment.

(b) Before any county committee member or alternate to the county committee may take office as a county committee member, such person must sign an oath of office to pledge that they will faithfully, fairly, and honestly perform to the best of their ability all of the duties devolving on them as committee members.

(c) A term of office will continue until a successor is elected and qualified as specified in §§ 7.8 and 7.9 or appointed as specified in § 7.17.

§ 7.22 State committee duties.

The State committee, subject to the general direction and supervision of the Deputy Administrator, will be generally responsible for carrying out all Farm Programs in the State or any other functions assigned by the Secretary or a designee of the Secretary.

§ 7.23 County committee duties.

(a) The county committee, subject to the general direction and supervision of the State committee, will be generally responsible for carrying out in the county Farm Programs and any other program or function assigned by the Secretary or a designee of the Secretary.

(b) The county committee will:

(1) Employ the county executive director, subject to standards and qualifications furnished by the State committee, except that incumbent directors must not be removed except as specified in § 7.28. There must be no employment discrimination due to race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. The county executive director may not be removed for advocating or carrying out the Department's policy on equal opportunity and civil rights, including the equal employment policy. In the event it is claimed that dismissal is for such reasons, the dismissal will not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reasons;

(2) Direct outreach activities to reach and inform socially disadvantaged farmers and ranchers of all programs and county committee election processes;

(3) Follow official instructions to review, approve, and certify forms, reports, and documents requiring such action;

(4) Recommend to the State committee needed changes in boundaries of local administrative areas;

(5) Make available to farmers, ranchers, and the public information concerning the objectives and operations of the programs administered through the county committee;

(6) Make available to agencies of the Federal Government and others information with respect to the county committee activities in accordance with official instructions issued;

(7) Give public notice of the designation and boundaries of each local administrative area within the county prior to the election of county committee members;

(8) Direct the giving of notices in accordance with applicable regulations and official instructions;

(9) Recommend to the State committee desirable changes in or additions to existing programs;

(10) Conduct such hearings and investigations as the State committee may request; and

(11) Perform such other duties as may be prescribed by the State committee.

§ 7.24 Chairperson of the county committee duties.

The chairperson of the county committee or the person acting as the chairperson will preside at meetings of the county committee, certify such documents as may require the chairperson's certification, and perform such other duties as may be prescribed by the State committee.

§ 7.25 County executive director duties.

(a) The county executive director will execute the policies established by the county committee and be responsible for the day-to-day operations of the county office.

(b) The county executive director will:

(1) In accordance with standards and qualifications furnished by the State committee, employ the personnel of the county office. There must be no employment discrimination due to race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. An employee may not be removed under this paragraph for advocating or carrying out the Department's policy on equal opportunity and civil rights, including the equal employment policy. In the event it is claimed that the dismissal is for such reason, the dismissal will not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reason;

(2) Receive, dispose of, and account for all funds, negotiable instruments, or property coming into the custody of the county committee.

§ 7.26 Private business activity and conflicts of interest.

(a) No county committee member, alternate to any such office, or county office employee, may at any time use such office or employment to promote any private business interest.

(b) County committee members, alternates, and any person employed in the county office will be subject to the official instructions issued with respect to conflicts of interest and proper conduct.

§ 7.27 Political activity.

Permitted and prohibited political activities, with respect to any State committee member, county committee member, county executive director, or any other county employee, will be determined in accordance with applicable policies specified in FSA handbooks and directives.

§ 7.28 Removal from office or employment for cause.

(a) Adverse personnel actions involving any county committee member or alternate member, county executive director, or other county office employee will be taken for failing to perform the duties of their office, impeding the effectiveness of any program administered in the county, violating official instructions, or for misconduct.

(b) Any person whom FSA proposes to suspend or remove from office or employment must be given advance written notice of the reason for such action and must be advised of the right to reply to such a proposal and any right of further review and appeal if the person is removed or suspended.

§ 7.29 Delegation of authority to Deputy Administrator.

(a) Notwithstanding the authority vested by this part to a State committee, a county committee, and the county executive director, the Deputy Administrator has the authority to take adverse personnel actions involving any county committee member or alternate member, county executive director, or other county office employee for failing to perform the duties of their office or for misconduct.

(b) Any person whom FSA proposes to suspend or remove from office or employment must be given advance written notice of the reason for such action and must be advised of the right to reply to such a proposal and any right of further review and appeal if the person is removed or suspended.

§ 7.30 Custody and use of books, records, and documents.

(a) All books, records, and documents of or used by the county committee in the administration of programs assigned to it, or in the conduct of elections, will be the property of FSA or the United States Department of Agriculture, as applicable, and must be maintained in good order in the county office.

(b) Voted ballots must be placed into and remain in sealed containers, such containers not being opened until the prescribed date and time for counting. Following the counting of ballots, the ballots must be placed in sealed containers and retained for 1 year unless otherwise determined by the Deputy Administrator.

(c) The books, records, and documents referred to in paragraph (a) of this section must be available for use and examination:

(1) At all times by authorized representatives of the Secretary, the Administrator, or a designee of the Administrator.

(2) By State and county committee members, and authorized employees of the State and county office in the performance of duties assigned to them under this part, subject to instructions issued by the Deputy Administrator;

(3) At any reasonable time to any program participant insofar as such person's interests under the programs administered by the county committee may be affected, subject to instructions issued by the Deputy Administrator; and

(4) To any other person only in accordance with instructions issued by the Deputy Administrator.

§ 7.31 Administrative operations.

The administrative operations of county committees including, but not limited to, the following, must be conducted, except as otherwise provided in this part, in accordance with official instructions issued: Annual, sick, and other types of employee leave; the calling and conduct of elections; and the maintenance of records of county committee meetings.

§ 7.34 Retention of authority.

(a) Nothing in this part will preclude the Secretary, the Administrator, or the Deputy Administrator from administering any or all programs, or exercising other functions delegated to the county committee, State committee, or any employee of such committees.

(b) In exercising this authority, the Secretary, the Administrator, or the Deputy Administrator may designate for such period of time as deemed necessary a person or persons of their choice to be in charge with full authority to carry out the programs or other functions without regard to the normal duties of such committees or employees.

Signed on April 25, 2012.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2012–13358 Filed 6–4–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–11–0088; FV12–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2012–2013 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which begins on June 1, 2012. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 782,413 pounds and 38 percent, respectively, and for Class 3 (Native) spearmint oil of 1,162,473 pounds and 50 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: *Effective Date:* This final rule becomes effective June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which begins on June 1, 2012.

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

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil, as well as input from spearmint oil handlers and producers regarding prospective marketing conditions. During the meeting, the Committee recommends to USDA any volume regulations deemed necessary to meet market requirements and to establish orderly marketing conditions for Far West spearmint oil. If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. Each producer is allotted a prorated share of the salable quantity by applying the allotment percentage to that producer's allotment base for each applicable class of spearmint oil. The producer allotment base is each producer's quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA. Salable quantities are established at levels intended to meet market requirements and to establish orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 12, 2011, and recommended salable quantities and allotment percentages for both classes of oil for the 2012–2013 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 782,413 pounds and 38 percent, respectively. For Native spearmint oil, the Committee, in a vote of seven members in favor and one member opposed, recommended the establishment of a salable quantity and allotment percentage of 1,162,473 pounds and 50 percent, respectively. The dissenting member favored recommending an undetermined higher salable quantity and allotment percentage for Native spearmint oil.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which begins on June 1, 2012. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, Oregon, and a portion of Nevada and Utah. Scotch type oil is also produced in seven other states: Indiana,

Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin. Additionally, Scotch spearmint oil is produced outside of the U.S., with China and India being the largest global competitors of domestic Scotch spearmint oil production.

The Far West's share of total global Scotch spearmint oil sales has varied considerably over the past several decades, from as high as 72 percent in 1988, and as low as 27 percent in 2002. More recently, sales of Far West Scotch spearmint oil have been approximately 49 percent of world sales, and are expected to hold steady, or increase slightly, in upcoming years.

Despite the Far West's growing share of the world market for Scotch spearmint oil, in recent years the U.S. industry has faced challenging marketing conditions. From 2004 to 2007 the Far West spearmint oil industry experienced relatively good economic conditions, which motivated producers to increase their production acreage. The Far West region, which produced 635,508 pounds of Scotch spearmint oil in 2004, gradually increased production over a five-year period to 1,050,700 pounds in 2009, an increase of 65 percent.

However, as the Far West spearmint oil production was increasing, demand for spearmint oil started to decline significantly due in part to a weakening global economy. Sales, which had peaked at 1,002,779 pounds in 2005, declined to 627,868 pounds in 2009. As production rose and sales dropped, excess inventory of uncommitted Scotch spearmint oil began to accumulate. Scotch spearmint oil carry-in (unsold salable quantity from prior years that is available for sale at the beginning of a new marketing year), which serves as a measure of oversupply in the market, grew from 23,141 pounds in 2007 to 431,028 pounds in 2010.

The Committee's response to the deteriorating marketing environment after 2008 was to recommend the tightening of volume control regulations. The Committee, which had recommended a Scotch spearmint oil salable quantity of 993,067 pounds for 2008–2009, dropped the recommendation to only 566,523 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage was reduced from 50 percent during 2008–2009 to just 28 percent during the 2010–2011 marketing year.

By 2011, production of Far West Scotch spearmint oil had declined to an estimated 753,947 pounds and was at levels considered more in line with demand. Salable carry-in on June 1, 2011, had also dropped to 227,241 pounds.

When the Committee met in October 2011 to consider volume regulation for the 2012–2013 marketing year, the outlook for Far West Scotch spearmint oil was slightly more optimistic than in previous years and an increase in salable quantity and allotment percentage was recommended.

Although the spearmint industry continues to have some concern over the strength of the U.S. economy, there have been recent incremental improvements in the marketing conditions for Scotch spearmint oil. Current inventories, steady production, and increases in projected demand are all positive indicators of improving marketing conditions for Scotch spearmint oil, and are approaching levels considered stable for the industry.

Certain factors may be contributing to the recent increase in demand for Far West Scotch spearmint oil. First, although China and India have been significant suppliers of spearmint oil for the past 15 years, they have started to replace some spearmint acreage with other mint varieties, such as *Mentha arvensis* (wild mint), and other non-mint competing crops. In addition, both countries are utilizing more of their domestically produced spearmint oil, removing oil that might otherwise have been exported. Finally, the Midwest region of the U.S. is experiencing a significant reduction in spearmint production. This decrease in regional production is partly due to unexpected disease and weather related factors and partly the result of competition from other alternate crops, such as corn and soybeans, which are currently experiencing higher than average returns.

The Committee estimates that the carry-in of Scotch spearmint oil on June 1, 2012, the primary measure of excess supply, will be approximately 161,154 pounds. This amount is down from the previous year's high of 227,241 pounds and is closer to a carry-in quantity that the Committee considers to be favorable.

As previously mentioned, production of Scotch spearmint oil has also been decreasing and is nearing a level that the Committee views as optimum. Production has declined from a high of 1,050,700 pounds in 2009 to 753,947 pounds in 2011 and is expected to remain comparatively the same during the 2012 season. The Committee considers this trend to be favorable because it has contributed relief to the industry's oversupply situation.

There are also reports that indicate consumer demand for mint flavored products is steady, providing some optimism for long-term increases in the demand for Far West spearmint oil. Spearmint oil handlers have indicated that demand for Scotch spearmint oil may be gaining strength. Handlers that had projected the 2011–2012 trade demand for Far West Scotch Spearmint oil to be in the range of 785,000 pounds to 1,000,000 pounds now expect it to increase to between 800,000 pounds to 1,100,000 pounds during the 2012–2013 marketing year.

However, this projected increase in demand, generally thought of as a positive indicator for the spearmint oil industry, is viewed cautiously by some industry participants. Due to the inelastic nature of demand for spearmint oil, the industry is aware that demand remains relatively consistent over time. Therefore, some handlers suspect that manufacturers of mint flavored products are currently increasing spearmint oil purchases just to rebuild inventories that were depleted during the worst of the recent U.S. economic recession. As such, those handlers believe that at least some of the recent increase in Scotch spearmint oil sales may not represent an actual increase in sustained demand, but instead a temporary response to fluctuations in the strategic inventories of spearmint product manufacturers.

Given the moderately improving economic indicators for the Far West Scotch spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

Therefore, at the October 12, 2011, meeting, the Committee recommended the 2012–2013 Scotch spearmint oil salable quantity of 782,413 pounds and allotment percentage of 38 percent. The Committee utilized sales estimates for 2012–2013 Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production and inventory statistics, to arrive at these recommendations. The volume control levels recommended by the Committee represent an increase of 48,500 pounds and 2 percentage points over the previous year's final salable quantity and allotment percentage, reflecting a more positive assessment of the industry's economic conditions.

The Committee estimates that about 825,000 pounds of Scotch spearmint oil may be sold during the 2012–2013 marketing year. When considered in conjunction with the estimated carry-in of 161,154 pounds of Scotch spearmint oil on June 1, 2012, the recommended salable quantity of 782,413 pounds

results in a total available supply of approximately 943,567 pounds of Scotch spearmint oil during the 2012–2013 marketing year. The Committee estimates that carry-in of Scotch spearmint oil into the 2013–2014 marketing year, which begins June 1, 2013, will be 118,567 pounds, a decrease of 42,587 pounds from the beginning of the 2012–2013 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation of Scotch spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2012—161,154 pounds.* This figure is the difference between the revised 2011–2012 marketing year total available supply of 961,154 pounds and the estimated 2011–2012 marketing year trade demand of 800,000 pounds.

(B) *Estimated trade demand for the 2012–2013 marketing year—825,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2011, as well as estimates provided by handlers and other meeting participants at the October 12, 2011, meeting. The average estimated trade demand provided at the six production area meetings is 859,444 pounds, which is 28,056 pounds less than the average of trade demand estimates submitted by handlers. The average of Far West Scotch spearmint oil sales over the last five years is 743,506 pounds.

(C) *Salable quantity required from the 2012–2013 marketing year production—663,846 pounds.* This figure is the difference between the estimated 2012–2013 marketing year trade demand (825,000 pounds) and the expected carry-in on June 1, 2012 (161,154 pounds). This amount represents the minimum salable quantity necessary to meet the estimated 2012–2013 Scotch spearmint oil trade demand.

(D) *Total estimated allotment base for the 2012–2013 marketing year—2,058,981 pounds.* This figure represents a one percent increase over the revised 2011–2012 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—32.2 percent.* This percentage is computed by dividing the minimum required salable quantity (663,846 pounds) by the total estimated allotment base (2,058,981 pounds).

(F) *Recommended allotment percentage—38 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (32.2 percent), the average of the computed allotment percentage figures from the six production area meetings (36.2 percent), and input from producers and handlers at the October 12, 2011, meeting. The actual recommendation of 38 percent is based on the Committee's determination that the computed percentage (32.2 percent) may not adequately supply the potential 2012–2013 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—782,413 pounds.* This figure is the product of the recommended allotment percentage (38 percent) and the total estimated allotment base (2,058,981 pounds).

(H) *Estimated available supply for the 2012–2013 marketing year—943,567 pounds.* This figure is the sum of the 2012–2013 recommended salable quantity (782,413 pounds) and the estimated carry-in on June 1, 2012 (161,154 pounds).

Class 3 (Native) Spearmint Oil

The Native spearmint oil industry is facing market conditions similar to those affecting the Scotch spearmint oil market, although not nearly as severe. Approximately 90 percent of U.S. production of Native spearmint oil is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. A minor amount of domestic Native spearmint oil is produced outside of the Far West region in the states of Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India has been producing an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of the global sales of Native or Native quality spearmint oil. By 2008, that share had declined to only 48 percent. Since then, the percentage has been increasing and Far West Native spearmint oil was estimated to be over 70 percent of global sales in 2011.

Despite the fact that Far West Native spearmint oil has been gaining world market share, the industry has endured challenging marketing conditions over the past several years. Overproduction, coupled with a decrease in demand, created a similar oversupply situation for Native spearmint oil as was previously discussed for Scotch spearmint oil. Production of Native spearmint oil in the Far West region was 701,372 pounds in 2004, but increased to 1,453,896 pounds in 2009, an increase of 107 percent in just five years.

In addition to oversupply issues during this period, demand for Native spearmint oil was moving in the opposite direction. Sales of Far West Native oil peaked in 2004 at 1,249,507 pounds and then steadily declined over the next five years, dropping to just 976,888 pounds in 2009. As production rose and sales dropped, excess inventory of uncommitted Native spearmint oil began to accumulate. Salable carry-in of Native oil measured at the beginning of each marketing year, which serves as a measure of oversupply in the market, increased from 83,417 pounds at the beginning of the 2007–2008 marketing year to 343,517 pounds at the beginning of the 2010–2011 marketing year.

The Committee's response to the changing marketing conditions of Native spearmint oil was similar to its response of the Scotch spearmint oil situation. In order to achieve more orderly marketing conditions and provide the optimal level of Native spearmint oil, the Committee recommended initial salable quantities and allotment percentages at the start of each marketing period and subsequently reassessed the market to determine if intra-seasonal increases were necessary. The approach proved successful in providing the market with adequate levels of Native spearmint oil.

By 2010, production of Far West Native spearmint oil had decreased and was more in line with market demand. The Committee, which recommended a Native spearmint oil salable quantity of 953,405 pounds in 2010–2011, increased the recommendation to 1,266,161 pounds in the 2011–2012 marketing period. Similarly, the recommended allotment percentage, which was 50 percent in 2010–2011, increased to 55 percent during the 2011–2012 marketing period. Salable carry-in on June 1, 2011, was estimated to be approximately 164,809 pounds.

When the Committee met on October 12, 2011, to consider volume regulations for the upcoming 2012–2013 marketing

year, the general consensus within the Native spearmint oil industry was that marketing conditions were improving marginally in comparison to recent years.

Although the problem of Native spearmint oil overproduction has improved significantly, this continues to be an issue of constant concern for the industry. Production of Far West Native spearmint oil, which has declined from a high of 1,453,896 pounds in 2009 to approximately 1,191,707 pounds in 2011, is expected to remain relatively the same, or increase slightly, during the 2012 season.

In addition to an improved supply situation, demand for Far West Native spearmint oil appears to have halted its downward movement, and there is even some optimism for modest improvements in demand during the coming year. Spearmint oil handlers, who previously projected the 2011–2012 trade demand for Far West Native spearmint oil in the range of 1,225,000 pounds to 1,400,000 pounds, have projected trade demand for the 2012–2013 marketing period to be in the range of 1,200,000 pounds to 1,500,000 pounds.

However, similar to Scotch spearmint oil, the slight increase in projected Native spearmint oil demand, generally thought of as a positive indicator for the industry, is viewed by some handlers with caution. As mentioned previously, consumer demand for mint flavored products is expected to be steady or increase slightly moving forward, which provides optimism for long-term improvement in the demand for Far West spearmint oil. Some handlers, though, have reported that the manufacturers of such products may just be temporarily increasing purchases of spearmint oil to rebuild inventories that were depleted during the worst of the current U.S. economic recession. As such, the handlers believe that at least some of the recent increase in purchases does not represent an actual increase in sustained demand but, rather, a short-term response to fluctuations in the strategic inventories of the manufacturers.

Given the economic indicators for the Far West Native spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

As such, at the October 12, 2011, meeting, the Committee recommended a 2012–2013 Native spearmint oil salable quantity of 1,162,473 pounds and an allotment percentage of 50 percent. The Committee utilized Native spearmint oil sales estimates for 2012–2013, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. These volume control levels represent a 103,688 pound and a 5 percentage point decrease over the previous year's final salable quantity and allotment percentage. However, the Committee maintains the option to recommend an intra-seasonal increase, as it has done in the past two marketing periods, if demand rises beyond expectations.

The Committee estimates that approximately 1,300,000 pounds of Native spearmint oil may be sold during the 2012–2013 marketing year. When considered in conjunction with the estimated carry-in of 180,970 pounds of Native spearmint oil on June 1, 2012, the recommended salable quantity of 1,162,473 pounds results in an estimated total available supply of 1,343,443 pounds of Native spearmint oil during the 2012–2013 marketing year. Thus, the Committee estimates that carry-in of Native spearmint oil at the beginning of the 2013–2104 marketing year will be approximately 43,443 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation of Native spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2012—180,970 pounds.* This figure is the difference between the revised 2011–2012 marketing year total available supply of 1,430,970 pounds and the estimated 2011–2012 marketing year trade demand of 1,250,000 pounds.

(B) *Estimated trade demand for the 2012–2013 marketing year—1,300,000 pounds.* This estimate is established by the Committee and is based on input from producers at the seven Native spearmint oil production area meetings held in late September and early October 2011, as well as estimates provided by handlers and other meeting participants at the October 12, 2011, meeting. The average estimated trade demand provided at the seven production area meetings was 1,300,833 pounds, whereas the handler estimate ranged from 1,200,000 pounds to 1,500,000 pounds.

(C) *Salable quantity required from the 2012–2013 marketing year production—1,119,030 pounds.* This figure is the difference between the estimated 2012–2013 marketing year trade demand (1,300,000 pounds) and the expected carry-in on June 1, 2012 (180,970 pounds). This amount represents the minimum salable quantity necessary to meet the estimated 2012–2013 Native spearmint oil trade demand.

(D) *Total estimated allotment base for the 2012–2013 marketing year—2,324,945 pounds.* This figure represents a one percent increase over the revised 2011–2012 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—48.1 percent.* This percentage is computed by dividing the required salable quantity (1,119,030 pounds) by the total estimated allotment base (2,324,945 pounds).

(F) *Recommended allotment percentage—50 percent.* This is the Committee's recommendation based on the computed allotment percentage (48.1 percent), the average of the computed allotment percentage figures from the seven production area meetings (51.3 percent), and input from producers and handlers at the October 12, 2011, meeting. The actual recommendation of 50 percent is based on the Committee's determination that the computed percentage (48.1 percent) may not adequately supply the potential 2012–2013 Native spearmint oil market.

(G) *The Committee's recommended salable quantity—1,162,473 pounds.* This figure is the product of the recommended allotment percentage (50 percent) and the total estimated allotment base (2,324,945 pounds).

(H) *Estimated available supply for the 2012–2013 marketing year—1,343,443 pounds.* This figure is the sum of the 2012–2013 recommended salable quantity (1,162,473 pounds) and the estimated carry-in on June 1, 2012 (180,970 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 782,413 pounds and 38 percent, and

1,162,473 pounds and 50 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee has determined that this goal will be achieved by matching the available supply to the estimated demand of each class of Spearmint oil, thus avoiding extreme fluctuations in inventories and prices.

The salable quantities established by this rule are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order provides for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions. In addition, producers who produce more than their annual allotments during the 2012–2013 marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment, or, up until November 1, 2012, place it into the reserve pool to be released in the future in accordance with market needs.

This regulation is similar to regulations issued in prior seasons. The average allotment percentage for the five most recent marketing years for Scotch spearmint oil is 36.5 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 49.3 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2012–2013 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2012–2013 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The salable quantities and allotment percentages established by this final rule take into consideration the projected market needs of the 2012–2013 marketing year. In determining projected market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced in the 2012–2013 season in order to meet the projected market demand.

Final Regulatory Flexibility Analysis

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

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

There are eight spearmint oil handlers subject to regulation under the order, and approximately 32 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 15 of the 32 Scotch spearmint oil producers and 26 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit small producers more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint

planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil subsector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Notwithstanding the recent global recession and the overall negative impact on demand for consumer goods that utilize spearmint oil, demand for spearmint oil tends to change slowly from year to year.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have virtually no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of relatively high production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil grower prices for the period 1980–2010 (when the marketing order was in effect) is 0.17 compared to 0.34 for the decade prior to the promulgation of the order (1970–79) and 0.48 for the prior 20-year period (1960–79). This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 48 percent of the 31-year average (1.89 million pounds from 1980 through 2010) and the largest crop was approximately 163 percent of the 31-year average. A key consequence is that, in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the order, can create liquidity problems for some producers. The order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of these provisions need to be exercised prior to November 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus carryover stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks, which are increased in large production years, are drawn down in years where the crop is short.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied. This could result in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated trade demand for the 2012–2013 marketing year for both classes of oil at 2,125,000 pounds, and that the expected combined carry-in will be 342,124 pounds. This results in a combined required salable quantity of 1,782,876 pounds. With volume control, sales by producers for the 2012–2013 marketing year will be limited to 1,944,886 pounds (the salable quantity for both classes of spearmint oil).

The allotment percentages, upon which 2012–2013 producer allotments are based, are 38 percent for Scotch and 50 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.19 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2012–2013 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is

believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that may occur without volume control.

After computing the initial 32.2 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Given the moderately improving marketing conditions, there was consensus that the allotment percentage for 2012–2013 should be more than the percentage established for the 2011–2012 marketing year (36 percent). After considerable discussion, the eight-member committee unanimously determined that a salable quantity of 782,413 pounds and an allotment percentage of 38 percent would be the most effective for the 2012–2013 marketing year.

The Committee also reached a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 48.1 percent, the Committee, in a vote of seven members in favor and one member opposed, recommended a salable quantity of 1,162,473 pounds and an allotment percentage of 50 percent for the 2012–2013 marketing year. The dissenting member favored recommending an undetermined higher salable quantity and allotment percentage for Native spearmint oil.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee determined that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry could return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2012–2013 could decline substantially below current levels.

According to the Committee, the established salable quantities and allotment percentages are expected to facilitate the goal of establishing orderly marketing conditions for Far West spearmint oil.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they will be submitted to OMB for approval.

This final rule establishes the salable quantities and allotment percentages of Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2012–2013 marketing year. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 12, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 5, 2012 (77 FR 13019). A copy of the rule was provided to Committee staff, who in turn made it available to all Far West spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 4, 2012, was provided to allow interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2012–2013 marketing year starts on June 1, 2012, and handlers will need to begin purchasing the spearmint oil allotted under this rulemaking. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.231 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.231 Salable quantities and allotment percentages—2012–2013 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2012, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 782,413 pounds and an allotment percentage of 38 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,162,473 pounds and an allotment percentage of 50 percent.

Dated: May 30, 2012.

Ruihong Guo,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–13522 Filed 6–4–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0578; Directorate Identifier 2012–CE–019–AD; Amendment 39–17071; AD 2012–11–08]

RIN 2120–AA64

Airworthiness Directives; WACO Classic Aircraft Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain WACO Classic Aircraft Corporation Models 2T–1A, 2T–1A–1, and 2T–1A–2 airplanes. This AD requires inspection of the front and rear horizontal stabilizer spar assemblies with replacement of parts as necessary. This AD was prompted by cracking of the horizontal stabilizer spars, which could lead to failure of the horizontal spars with consequent loss of control. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective June 20, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 20, 2012.

We must receive comments on this AD by July 20, 2012.

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

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

For service information identified in this AD, contact WACO Classic Aircraft Corporation; 15955 South Airport Rd., Battle Creek, Michigan 49015; telephone: (269) 565–1000; fax: (269) 565–1100; email: *flywaco@wacoclassic.com;* Internet: *http://www.wacoaircraft.com/great-lakes-support/.* You may review copies of the referenced service information at the FAA Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the 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: Steven J. Rosenfeld, Aerospace Engineer, Chicago Aircraft Certification Office (ACO), FAA, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; phone: (847) 294–7030; fax: (847) 294–7834; email: *steven.rosenfeld@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

In the last two years, there have been three incidents of horizontal stabilizer failure on WACO Classic Aircraft Corporation Models 2T–1A, 2T–1A–1, and 2T–1A–2 airplanes. Cracks originated from around the circumference of the right stabilizer front spar and, in one incident, the stabilizer separated from the aircraft. This condition, if not corrected, could result in failure of the horizontal stabilizer spars with consequent loss of control.

Relevant Service Information

We reviewed WACO Classic Aircraft Corporation, Great Lakes Aircraft, Service Bulletin No. SB–GL12–01R, Revision IR, dated January 25, 2012. The service information describes procedures for inspecting the front and rear horizontal stabilizer spar assemblies with replacement as necessary.

FAA's Determination

We are issuing 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 design.

AD Requirements

This AD requires inspecting the front and rear horizontal stabilizer spar assemblies with replacement of parts as necessary. The AD also requires sending the initial inspection results to the Chicago ACO.

Interim Action

We consider this AD interim action. After evaluating the inspection results, we may take further AD action.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the horizontal stabilizer spars could result in loss of control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–0578 and Directorate Identifier 2012–CE–019–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 134 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the front and rear horizontal stabilizer spar assemblies.	4 work-hours × $85 per hour = $340	Not applicable	$340	$45,560

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of the front and rear spar stabilizer assembly parts (accumulative cost for all four spar assemblies).	92 work-hours × $85 per hour = 7,820.	$2,200	$10,020

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–11–08 WACO Classic Aircraft Corporation: Amendment 39–17071 ; Docket No. FAA–2012–0578; Directorate Identifier 2012–CE–019–AD.

(a) Effective Date

This AD is effective June 20, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following WACO Classic Aircraft Corporation model airplanes listed in paragraphs (c)(1) through (c)(3) of this AD, certificated in any category:

(1) *2T–1A:* Serial numbers (S/Ns) 0501 through 0502,

(2) *2T–1A–1:* S/Ns 0503 through 0699, and

(3) *2T–1A–2:* S/Ns 0701 through 1012.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55, Horizontal Stabilizer Spar/Rib.

(e) Unsafe Condition

This AD was prompted by failure of the horizontal stabilizer spars, which could result in loss of control. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) Inspection

Before doing aerobatic flight maneuvers or at the next annual or 100-hour inspection after July 20, 2012, whichever occurs first, and repetitively thereafter at intervals not to exceed every 200 hours time-in-service (TIS), inspect the front and rear horizontal stabilizer spar assemblies for cracking following WACO Classic Aircraft Corporation, Great Lakes Aircraft, Service Bulletin No. SB–GL12–01R, Revision IR, dated January 25, 2012.

(h) Maintenance

If any cracking is found during any of the inspections required by paragraph (g) of this AD, before further flight, replace the cracked parts following WACO Classic Aircraft Corporation, Great Lakes Aircraft, Service Bulletin No. SB–GL12–01R, Revision IR, dated January 25, 2012.

(i) Reporting Requirement

Within 10 days after the initial inspection required in paragraph (g) of this AD, send a report of the inspection results to the Chicago Aircraft Certification Office (ACO) using the contact information found in the Related Information paragraph (l). Include in your report the following information:

(1) Date of inspection,

(2) Model of aircraft,

(3) N number of aircraft,

(4) Serial number of aircraft,

(5) Hours TIS of aircraft,

(6) Description of failure if applicable,

(7) Part(s) and part number of failed part(s) if applicable.

(j) Paperwork Reduction Act Burden Statement

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

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Chicago ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(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.

(l) Related Information

For more information about this AD, contact Steven J. Rosenfeld, Aerospace Engineer, Chicago Aircraft Certification Office (ACO), FAA, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; phone: (847) 294–7030; fax: (847) 294–7834; email: *steven.rosenfeld@faa.gov.*

(m) Material Incorporated by Reference

(1) You must use WACO Classic Aircraft Corporation, Great Lakes Aircraft, Service Bulletin No. SB–GL12–01R, Revision IR, dated January 25, 2012, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact WACO Classic Aircraft Corporation; 15955 South Airport Rd., Battle Creek, Michigan 49015; telephone: (269) 565–1000; fax: (269) 565–1100; email: *flywaco@wacoclassic.com;* Internet: *http://www.wacoaircraft.com/great-lakes-support/.*

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

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

Issued in Kansas City, Missouri, on May 25, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13355 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30845; Amdt. No. 3481]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 5, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 5, 2012.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420)Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on May 25, 2012.

John Duncan,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Jun–12 ...	IA	Des Moines	Des Moines Intl	2/6965	5/8/12	This NOTAM, published in TL 12–13, is hereby rescinded in its entirety.
28–Jun–12 ...	IA	Des Moines	Des Moines Intl	2/6967	5/8/12	This NOTAM, published in TL 12–13, is hereby rescinded in its entirety.
28–Jun–12 ...	TX	Dallas	Dallas Love Field	2/3938	5/11/12	ILS OR LOC RWY 31L, Amdt 21A.
28–Jun–12 ...	MS	Tupelo	Tupelo Rgnl	2/8355	5/11/12	RNAV (GPS) RWY 18, Orig–A.
28–Jun–12 ...	MS	Tupelo	Tupelo Rgnl	2/8356	5/11/12	RNAV (GPS) RWY 36, Orig–A.
28–Jun–12 ...	MO	Cape Girardeau	Cape Girardeau Rgnl	2/8438	5/9/12	Takeoff Minimums and Obstacle DP, Amdt 8.
28–Jun–12 ...	AZ	Fort Huachuca Sierra Vista.	Sierra Vista Muni—Libby AAF.	2/8587	5/11/12	RADAR–2, Orig.
28–Jun–12 ...	IL	Monmouth	Monmouth Muni	2/9096	5/9/12	Takeoff Minimums and Obstacle DP, Amdt 2.
28–Jun–12 ...	ND	Dickinson	Dickinson-Theodore Roosevelt Rgnl.	2/9700	5/11/12	Takeoff Minimums and Obstacle DP, Amdt 1.
28–Jun–12 ...	AR	Fayetteville/Springdale	Northwest Arkansas Rgnl	2/9984	5/11/12	RNAV (GPS) RWY 17, Orig.
28–Jun–12 ...	AR	Fayetteville/Springdale	Northwest Arkansas Rgnl	2/9985	5/11/12	RNAV (GPS) RWY 35, Orig.
28–Jun–12 ...	AR	Fayetteville/Springdale	Northwest Arkansas Rgnl	2/9986	5/11/12	ILS OR LOC/DME RWY 17, Orig.
28–Jun–12 ...	AR	Fayetteville/Springdale	Northwest Arkansas Rgnl	2/9987	5/11/12	ILS OR LOC/DME RWY 35, Orig.
28–Jun–12 ...	TX	Dallas	Dallas Love Field	2/9997	5/11/12	ILS OR LOC RWY 31R, Amdt 5.

[FR Doc. 2012–13443 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30844; Amdt. No. 3480]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 5, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 5, 2012.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on May 25, 2012.

John Duncan,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 28 June 2012

Quakertown, PA, Quakertown, Takeoff Minimums and Obstacle DP, Amdt 1

Effective 26 July 2012

Bethel, AK, Bethel, ILS OR LOC/DME Z RWY 19R, Amdt 7A
Fairbanks, AK, Fairbanks Intl, ILS OR LOC RWY 2L, ILS RWY 2L (SA CAT I), ILS RWY 2L (CAT II), ILS RWY 2L (CAT III), Amdt 9
Auburn, AL, Auburn University Rgnl, ILS OR LOC RWY 36, Amdt 2
Auburn, AL, Auburn University Rgnl, RNAV (GPS) RWY 11, Amdt 1
Auburn, AL, Auburn University Rgnl, RNAV (GPS) RWY 18, Amdt 1
Auburn, AL, Auburn University Rgnl, RNAV (GPS) RWY 29, Amdt 1
Auburn, AL, Auburn University Rgnl, RNAV (GPS) RWY 36, Amdt 2
Auburn, AL, Auburn University Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Auburn, AL, Auburn University Rgnl, VOR RWY 29, Amdt 11
Auburn, AL, Auburn University Rgnl, VOR/DME–A, Amdt 8
Carlsbad, CA, Mc Clellan-Palomar, RNAV (GPS) Y RWY 24, Amdt 2
Carlsbad, CA, Mc Clellan-Palomar, RNAV (RNP) Z RWY 24, Orig-A
Crescent City, CA, Jack Mc Namara Field, GPS RWY 35, Orig, CANCELLED
Crescent City, CA, Jack Mc Namara Field, ILS OR LOC/DME RWY 11, Amdt 8
Crescent City, CA, Jack Mc Namara Field, RNAV (GPS) RWY 11, Amdt 1
Crescent City, CA, Jack Mc Namara Field, RNAV (GPS) RWY 35, Orig
Crescent City, CA, Jack Mc Namara Field, Takeoff Minimums and Obstacle DP, Amdt 1
Crescent City, CA, Jack Mc Namara Field, VOR RWY 11, Amdt 11
Crescent City, CA, Jack Mc Namara Field, VOR/DME RWY 11, Amdt 13
Crescent City, CA, Jack Mc Namara Field, VOR/DME RWY 35, Amdt 11
El Monte, CA, El Monte, Takeoff Minimums and Obstacle DP, Amdt 5
Rio Vista, CA, Rio Vista Muni, RNAV (GPS) RWY 25, Amdt 3
Rio Vista, CA, Rio Vista Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Rio Vista, CA, Rio Vista Muni, VOR/DME–A, Amdt 2
Tracy, CA, Tracy Muni, NDB RWY 12, Amdt 1, CANCELLED
Washington, DC, Washington Dulles Intl, RNAV (RNP) Z RWY 1C, Orig-E
Sebastian, FL, Sebastian Muni, RNAV (GPS) RWY 4, Orig
Sebastian, FL, Sebastian Muni, RNAV (GPS) RWY 22, Orig
Sebastian, FL, Sebastian Muni, Takeoff Minimums and Obstacle DP, Orig
St Petersburg-Clearwater, FL, St Petersburg-Clearwater Intl, ILS OR LOC RWY 18L, ILS RWY 18L (SA CAT I), ILS RWY 18L (CAT II), Amdt 22
St Petersburg-Clearwater, FL, St Petersburg-Clearwater Intl, ILS OR LOC RWY 36R, Amdt 3
Reidsville, GA, Swinton Smith Fld at Reidsville Muni, NDB RWY 11, Amdt 8
Reidsville, GA, Swinton Smith Fld at Reidsville Muni, RNAV (GPS) RWY 11, Amdt 1
Reidsville, GA, Swinton Smith Fld at Reidsville Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV (GPS) RWY 9, Amdt 1
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV (GPS) RWY 18, Amdt 1
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV (GPS) RWY 27, Amdt 1
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV (GPS) RWY 36, Amdt 1
Lawrenceville, IL, Lawrenceville-Vincennes Intl, VOR RWY 27, Amdt 7B, CANCELLED
Alexandria, IN, Alexandria, Takeoff Minimums and Obstacle DP, Orig
Connersville, IN, Mettel Field, ILS OR LOC RWY 18, Orig-B
Connersville, IN, Mettel Field, RNAV (GPS) RWY 36, Amdt 2
Hazard, KY, Wendell H Ford, LOC/DME RWY 14, Orig-A
Hazard, KY, Wendell H Ford, RNAV (GPS) RWY 14, Amdt 1A
Hazard, KY, Wendell H Ford, RNAV (GPS) RWY 32, Orig-A
Hazard, KY, Wendell H Ford, VOR/DME RWY 14, Amdt 1B
Lake Charles, LA, Lake Charles Rgnl, ILS OR LOC RWY 15, Amdt 21
Lake Charles, LA, Lake Charles Rgnl, RNAV (GPS) RWY 15, Amdt 1
Lake Charles, LA, Lake Charles Rgnl, RNAV (GPS) RWY 33, Amdt 2
Augusta, ME, Augusta State, ILS OR LOC RWY 17, Amdt 3
Augusta, ME, Augusta State, RNAV (GPS) RWY 8, Amdt 1
Cloquet, MN, Cloquet Carlton County, NDB RWY 17, Amdt 4
Cloquet, MN, Cloquet Carlton County, NDB RWY 35, Amdt 5
Cloquet, MN, Cloquet Carlton County, RNAV (GPS) RWY 17, Orig
Cloquet, MN, Cloquet Carlton County, RNAV (GPS) RWY 35, Amdt 1
Cloquet, MN, Cloquet Carlton County, Takeoff Minimums and Obstacle DP, Amdt 2
Preston, MN, Fillmore County, RNAV (GPS) RWY 11, Orig
Preston, MN, Fillmore County, RNAV (GPS) RWY 29, Amdt 1
Kansas City, MO, Charles B. Wheeler Downtown, ILS OR LOC RWY 3, Amdt 4
Kansas City, MO, Charles B. Wheeler Downtown, ILS OR LOC RWY 19, Amdt 23
Kansas City, MO, Charles B. Wheeler Downtown, NDB RWY 19, Amdt 18
Kansas City, MO, Charles B. Wheeler Downtown, RNAV (GPS) RWY 3, Amdt 2
Kansas City, MO, Charles B. Wheeler Downtown, VOR RWY 3, Amdt 19
Kansas City, MO, Charles B. Wheeler Downtown, VOR RWY 19, Amdt 20
Pender, NE, Pender Muni, RNAV (GPS) RWY 15, Orig
Pender, NE, Pender Muni, RNAV (GPS) RWY 33, Orig
Pender, NE, Pender Muni, Takeoff Minimums and Obstacle DP, Orig
Red Cloud, NE, Red Cloud Muni, RNAV (GPS) RWY 16, Orig
Red Cloud, NE, Red Cloud Muni, RNAV (GPS) RWY 34, Orig
East Hampton, NY, East Hampton, RNAV (GPS) X RWY 10, Orig
Pisceo, NY, Piseco, RNAV (GPS) RWY 4, Orig
Pisceo, NY, Piseco, Takeoff Minimums and Obstacle DP, Orig
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 28, Amdt 24A
Cleveland, OH, Cuyahoga County, ILS OR LOC RWY 24, Amdt 15
Cleveland, OH, Cuyahoga County, LOC/DME BC RWY 6, Amdt 12
Cleveland, OH, Cuyahoga County, RNAV (GPS) RWY 6, Amdt 1
Cleveland, OH, Cuyahoga County, RNAV (GPS) RWY 24, Amdt 1
Fostoria, OH, Fostoria Metropolitan, RNAV (GPS) RWY 9, Orig
Grants Pass, OR, Grants Pass, Takeoff Minimums and Obstacle DP, Amdt 1
Butler, PA, Butler County/K W Scholter Field, ILS OR LOC RWY 8, Amdt 8
Butler, PA, Butler County/K W Scholter Field, RNAV (GPS) RWY 8, Amdt 1
Butler, PA, Butler County/K W Scholter Field, RNAV (GPS) RWY 26, Amdt 1
Wilkes-Barre, PA, Wilkes-Barre Wyoming Valley, RNAV (GPS) RWY 7, Orig
Wilkes-Barre, PA, Wilkes-Barre Wyoming Valley, RNAV (GPS) RWY 25, Orig
Wilkes-Barre, PA, Wilkes-Barre Wyoming Valley, Takeoff Minimums and Obstacle DP, Orig
Beaufort, SC, Beaufort County, RNAV (GPS) RWY 7, Amdt 1A
Hilton Head Island, SC, Hilton Head, LOC/DME RWY 21, Amdt 5
Belle Fourche, SD, Belle Fourche Muni, RNAV (GPS) RWY 32, Amdt 1
Hot Springs, SD, Hot Springs Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Pine Ridge, SD, Pine Ridge, Takeoff Minimums and Obstacle DP, Amdt 1
Alice, TX, Alice Intl, RNAV (GPS) RWY 13, Amdt 1
Alice, TX, Alice Intl, RNAV (GPS) RWY 31, Amdt 1D

Alpine, TX, Alpine-Casparis Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Breckenridge, TX, Stephens County, GPS RWY 35, Orig, CANCELLED
Breckenridge, TX, Stephens County, RNAV (GPS) RWY 17, Orig
Breckenridge, TX, Stephens County, RNAV (GPS) RWY 35, Orig
Breckenridge, TX, Stephens County, Takeoff Minimums and Obstacle DP, Orig
Jacksonville, TX, Cherokee County, RNAV (GPS) RWY 14, Amdt 1
Jacksonville, TX, Cherokee County, RNAV (GPS) RWY 32, Orig
Midland, TX, Midland Airpark, RNAV (GPS) RWY 34, Orig
Odessa, TX, Odessa-Schlemeyer Field, Takeoff Minimums and Obstacle DP, Amdt 3
Marion/Wytheville, VA, Mountain Empire, Takeoff Minimums and Obstacle DP, Amdt 2
Moses Lake, WA, Grant Co Intl, RNAV (GPS) Y RWY 4, Amdt 1A
Moses Lake, WA, Grant Co Intl, RNAV (GPS) Y RWY 14L, Amdt 1A
Moses Lake, WA, Grant Co Intl, RNAV (GPS) Y RWY 22, Amdt 1A
Moses Lake, WA, Grant Co Intl, RNAV (GPS) Y RWY 32R, Amdt 3
Williamson, WV, Appalachian Rgnl, RNAV (GPS) RWY 8, Orig-A
Williamson, WV, Appalachian Rgnl, RNAV (GPS) RWY 26, Orig-A
Williamson, WV, Appalachian Rgnl, Takeoff Minimums and Obstacle DP, Orig-A
Cheyenne, WY, Cheyenne Rgnl/Jerry Olson Field, NDB RWY 27, Amdt 15

[FR Doc. 2012–13446 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 120, 123, 124, 126, 127, and 129

RIN 1400–AC95

[Public Notice 7913]

Announcement of Entry Into Force of the Defense Trade Cooperation Treaty Between the United States and the United Kingdom

ACTION: Final rule; announcement of effective date.

SUMMARY: On April 13, 2012, the United States and the United Kingdom exchanged diplomatic notes bringing the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110–7) into force. This document announces the entry into force of the Treaty and announces April 13, 2012, as the effective date of the rule published on March 21, 2012, implementing the Treaty and making other updates to the International Traffic in Arms Regulations (ITAR).

DATES: This document announces the entry into force of the Treaty and announces April 13, 2012 as the effective date of the rule published on March 21, 2012 (77 FR 16592) implementing the Treaty and making other updates to the ITAR.

FOR FURTHER INFORMATION CONTACT: Sarah J. Heidema, Office of Defense Trade Controls Policy, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, telephone (202) 663–2809, email *heidemasj@state.gov.*

SUPPLEMENTARY INFORMATION: On March 21, 2012, the Department of State published a rule (77 FR 16592) amending the ITAR to implement the Treaty, and identify via a supplement the defense articles and defense services that may not be exported pursuant to the Treaty. The rule also amended the ITAR section pertaining to the Canadian exemption and added Israel to the list of countries and entities that have a shorter Congressional notification certification time period and a higher dollar value reporting threshold. This rule indicated it would become effective upon the entry into force of the Treaty and that the Department of State would publish a rule document in the **Federal Register** announcing the effective date of this rule. This document is being published to make such announcement.

Dated: May 30, 2012.

Beth M. McCormick,

Deputy Assistant Secretary, Defense Trade and Regional Security, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2012–13583 Filed 6–4–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2012–0174]

RIN 1625–AA00, AA08, AA11

OPSAIL 2012 Virginia, Port of Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations in the Port of Hampton Roads, Virginia for Operation Sail (OPSAIL) 2012 Virginia activities. This regulation is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2012 Virginia events. This action is intended to restrict vessel traffic movement in portions of Chesapeake Bay, Hampton Roads, the James River and Elizabeth River.

DATES: This rule is effective from June 6, 2012 to June 12, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0174]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Dennis Sens, Prevention Division, Fifth Coast Guard District; (757) 398–6204, email *Dennis.M.Sens@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

On April 3, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''OPSAIL 2012 Virginia, Port of Hampton Roads, VA'' in the **Federal Register** (77 FR 19957). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the regulations intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish

special local regulations, regulated navigation areas, and other limited access areas: 33 U.S.C. 1231; 33 U.S.C. 1233; 46 U.S.C. chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Operation Sail, Inc. is sponsoring OPSAIL 2012 Virginia in the Port of Hampton Roads. Planned events include the scheduled arrival of U.S. and foreign naval vessels, public vessels, tall ships and other vessels on June 6, 2012 and June 8, 2012; the scheduled departure of those vessels on June 12, 2012; and three fireworks displays on June 9, 2012 with a rain date of June 10, 2012.

The Coast Guard anticipates a large spectator fleet for these events. Vessel operators should expect significant congestion along the OPSAIL parade route and viewing areas for fireworks displays.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Hampton Roads immediately prior to, during, and after the scheduled events. The regulations provide clear passage and a safety buffer around participating vessels along the parade route while they are in transit, enhancing safety of participant and spectator vessels. The regulations also establish areas where vessels shall proceed at the minimum speed necessary that minimizes wake along the parade route and temporarily modifies use of existing anchorages for the benefit of participants and spectators. These regulations provide a safety buffer around the planned fireworks displays. The regulations will impact the movement of all vessels operating in the specified areas of the Port of Hampton Roads.

The Coast Guard will establish safety zones as a part of these regulations to safeguard dignitaries and certain vessels participating in the event. The Coast Guard will implement and enforce safety zones as specified in this regulation. The details of the safety zones outlined in this regulation will be announced separately via Local Notice to Mariners, Safety Voice Broadcasts, and by other public media outlets.

Vessel operators are reminded that Norfolk Naval Base will be strictly enforcing the existing restricted area defined at 33 CFR 334.300 during all OPSAIL events.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term ''passenger for hire'' is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term ''passenger'' is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $40,000 or face criminal prosecution.

We recommend that vessel operators visiting the Port of Hampton Roads for this event obtain up to date editions of the following charts of the area: NOS. 12222, 12245, 12253, and 12254 to avoid anchoring within a charted cable or pipeline area. With the arrival of OPSAIL 2012 Virginia participants and spectator vessels in the Port of Hampton Roads for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing special local regulations and safety zones on the specified navigable waters listed in this regulation.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The primary impact of these regulations will be on vessels desiring to transit the affected waterways during OPSAIL 2012 Virginia vessels arrival beginning on June 6, 2012, June 8, 2012, their departure ending on June 12, 2012 and during the fireworks display on June 9, 2012. Although these regulations prevent traffic from transiting a portion of the Chesapeake Bay, Thimble Shoals Channel, Hampton Roads, James River and Elizabeth River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will limit or prevent transit of the waterway. These regulations are designed to ensure such transit is conducted in a safe and orderly manner.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of the Chesapeake Bay, Thimble Shoals Channel, Hampton Roads, James River and Elizabeth River, in Virginia during various time periods on June 6, June 8, June 9 and June 12, 2012. The regulations would not have a significant impact on a substantial number of small entities for the

following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas.

(2) The special local regulations, regulated navigation areas and safety zones specified in this regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. The regulated areas would be activated, and thus subject to enforcement, for only the minimum time necessary to provide clear passage and a safety buffer around participating vessels along the parade route while they are in transit, enhancing safety of participant and spectator vessels. Although the safety zone would apply to the entire width of the river, traffic may be allowed to pass through the zone with the permission of the Captain of the Port. Before the activation of regulated areas or safety zones, we would issue maritime advisories widely available to users of the affected waterway.

3. Assistance for Small Entities

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

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations at 33 CFR part 100 and part 165 that apply to organized marine events on the navigable waters of the United States that may impact on the safety or other interest of waterway users and shore side activities in the event area. These regulations are necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. This rule involves establishing special local regulations and safety zones issued in conjunction with a OPSAIL 2012 Virginia a marine event.

This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing temporary safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

Additionally, this rule involves establishing special local regulations issued in conjunction with a marine event, as described in figure 2–1, paragraph (34)(h), of the Instruction. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and categorical exclusion determination are not required for this rule.

We seek any comments or information that may lead to the discovery of a

significant environmental impact from this rule.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T–05–0174 to read as follows:

§ 100.35T–05–0174 Special Local Regulations; OPSAIL 2012 Virginia, Port of Hampton Roads, VA.

(a) *Definitions.* (1) *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on their behalf.

(2) *Official Patrol Vessel* includes all U.S. Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by the Captain of the Port, Hampton Roads, Virginia.

(3) *Parades of Sail Vessel* include all vessels participating in OPSAIL 2012 Virginia under the auspices of the U.S. Department of Homeland Security Application for Marine Event, Form CG–4423, for OPSAIL 2012 Virginia activities in the Port of Hampton Roads, Virginia approved by the Captain of the Port, Hampton Roads.

(4) *Parade of Sail arrivals* is the movement of Parades of Sail vessels in orderly succession as they navigate designated routes in the Port of Hampton Roads, Virginia while inbound to the Port of Hampton Roads, Virginia on June 6, 2012 and June 8, 2012.

(5) *Parade of Sail departure* is the movement of Parades of Sail vessels in orderly succession as they navigate designated departure routes from the Port of Hampton Roads, Virginia to Baltimore, Maryland on June 12, 2012.

(6) *Spectator Vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passenger that is in the Port of Hampton Roads to observe part or all of the OPSAIL 2012 Virginia events.

(7) *Large Spectator Vessel* includes any spectator vessel 60 feet or greater in length with a passenger capacity of 50 persons or greater.

(8) *Vessel Traffic Control Point* means a designated point which vessel traffic may not proceed past in either inbound or outbound direction without permission of the Captain of the Port.

(b) *Regulated Areas.* The following Vessel Traffic Control Points are established as special local regulations during OPSAIL 2012 Virginia in the Port of Hampton Roads, Virginia. All coordinates reference Datum NAS 1983:

(1) Elizabeth River, Western Branch along a line drawn across the Elizabeth River, Western Branch, at the West Norfolk Bridge, located at 36°51′31″ N 076°20′54″ W thence to 36°51′16″ N 076°20′38″ W.

(2) Elizabeth River, Eastern Branch along a line drawn across the Elizabeth River, Eastern Branch, at the Berkley Bridge, located at 36°50′33″ N 076°17′11″ W thence to 36°50′27″ N 076°17′12″ W.

(3) Elizabeth River, Southern Branch along a line drawn across the Elizabeth River, Southern Branch, at the Jordan Bridge, located at 36°48′29″ N 076°17′30″ W thence to 36°48′32″ N 076°17′17″ W.

(4) James River along a line drawn across the James River at the Monitor-Merrimac Bridge/Tunnel, located at 36°57′32″ N 076°24′36″ W thence to 36°56′54″ N 076°24′18″ W.

(5) Chesapeake Bay, Hampton Roads, Hampton Bar, along a line drawn from the Old Point Comfort Light (LLNR 9380) to Fort Wool Light (LLNR 9385), located at 37°00′03″ N 076°18′24″ W thence to 36°59′14″ N 076°18′10″ W.

(6) Elizabeth River along a line drawn from Elizabeth River Channel Lighted Buoy 20 (LLNR 9620) to Lafayette River Channel Light 2 (LLNR 10660), located at 36°53′33″ N 076°20′15″ W thence to 36°53′36″ N 076°19′27″ W.

(7) Elizabeth River along a line drawn from Elizabeth River Channel Lighted Buoy 29 (LLNR 9715) to Elizabeth River Channel Lighted Buoy 30 (LLNR 9735), located at 36°52′13″ N 076°19′44″ W thence to 36°52′02″ N 076°19′41″ W.

(8) Elizabeth River along a line drawn from Elizabeth River Channel Lighted Buoy 36 (LLNR 9900), located at 36°50′49.7″ N 076°17′58.7″ W thence to the southeast corner of Hospital Point, approximate position latitude 36°50′51″ N, longitude 076°18′09″ W.

(9) Elizabeth River, Southern Branch along a line drawn across the Elizabeth River, Southern Branch, at the Downtown Tunnel, located at 36°49′57.3″ N 076°17′44.5″ W thence to 36°50′00.3″ N 076°17′35.4″ W.

(c) *Notification.* (1) Coast Guard Captain of the Port will notify the public of the enforcement of these safety zones by all appropriate means to affect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(2) Contact Information. Questions about safety zones and related events should be addressed to the Coast Guard Captain of the Port. Contact Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(d) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by an Official Patrol.

(ii) Proceed as directed by any official patrol.

(iii) The operator of any vessel shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake in or near the regulated area.

(e) *Enforcement Period.* This regulation will be enforced on June 6, 8, 9, and 12, 2012.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 4. Add a temporary § 165.T05–0174 to read as follows:

§ 165.T05–0174 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area.

(a) *Regulations* in this temporary section are supplemental to the regulations in 33 CFR 165.501. All coordinates listed reference Datum NAD 1983.

(b) *Definitions.* In this section:

(1) *Official Patrol Vessel* includes all U.S. Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by the Captain of the Port, Hampton Roads, Virginia.

(2) *Parade of Sail Vessel* includes all vessels participating in OPSAIL 2012 Virginia under the auspices of the U.S. Department of Homeland Security Application for Marine Event, CG–4423, for the OPSAIL 2012 Virginia activities in the Port of Hampton Roads, Virginia approved by the Captain of the Port, Hampton Roads.

(3) *Parade of Sail Arrivals* is the movement of Parades of Sail vessels in orderly succession as they navigate designated routes in the Port of Hampton Roads, Virginia while inbound to the Port of Hampton Roads, Virginia on June 6, 2012 and June 8, 2012.

(4) *Parade of Sail Departure* is the movement of Parades of Sail vessels in orderly succession as they navigate designated departure routes from the Port of Hampton Roads, Virginia to Baltimore, Maryland on June 12, 2012.

(5) *Spectator Vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passenger that is in the Port of Hampton Roads to observe part or all of the OPSAIL 2012 Virginia events.

(6) *Large Spectator Vessel* includes any Spectator Vessel 60 feet or greater in length with a passenger capacity of 50 persons or greater.

(7) *Vessel Traffic Control Point* means a designated point which vessel traffic may not proceed past in either inbound or outbound direction without permission of the Captain of the Port.

(c) *Vessels participating in OPSAIL 2012* Virginia Parades of Sail are exempt from the regulations of § 165.501(d)(4).

(d) *Regulated Navigation Area* for OPSAIL 2012 Virginia. During parades of sail, after firework displays, and any other time deemed necessary for safety and security by the Captain of the Port, Hampton Roads, vessels shall operate at the minimum speed required to maintain steerage and shall avoid creating a wake when operating within the Regulated Navigation Area, as defined in this regulation. During the enforcement period a regulated navigation area will be established for spectator vessel anchorage. Spectator vessel anchoring will preempt use of these areas by other vessels.

(1) Chesapeake Bay near Thimble Shoals channel, all waters bounded by a line connecting the following points latitude 36°59′59.2″ N Longitude 76°13′45.8″ W, thence to latitude 36°59′08.7″ N longitude 76°10′32.6″ W, thence to 36°58′13.5″ longitude N 76°10′50.6″ W, thence to latitude 36°59′02.5″ N longitude 76°14′08.9″ W, thence to point of origin.

(2) Hampton Roads, Hampton Bar, all waters bounded by a line connecting the following points latitude 36°59′25.5″ N longitude 76°20′05.8″ W, thence to latitude 36°59′52.1″ N longitude 76°19′10.8″ W, thence to latitude 36°59′25.7″ N longitude 76°18′47.3″ W, thence to latitude 36°58′49.6″ N longitude 76°19′32.6″ W, thence to point of origin.

(3) Newport News Middle Ground, all waters bounded by a line connecting the following points latitude 36°57′56.4″ N longitude 76°20′30.5″ W, thence to latitude 36°57′08.5″ N longitude 76°20′31.0″ W, thence to latitude 36°56′48.8″ N longitude 76°20′22.5″ W, thence to latitude 36°56′45.0″ N longitude 76°20′32.0″ W, thence to latitude 36°56′45.0″ N longitude 76°21′37.7″ W, thence to latitude 36°57′14.1″ N longitude 76°23′29.1″ W, thence to latitude 36°57′28.1″ N longitude 76°21′11.7″ W, thence to point of origin.

(e) *Regulated areas.* The following locations are a moving safety zone:

(1) All waters within 500 yards of any OPSAIL 2012 vessel which is greater than 100 feet in length, while operating in the navigable waters of the Chesapeake Bay or its tributaries, south of the Maryland-Virginia border and north of latitude 36°55′00″ N. Vessels must operate at minimum speed within 100 yards of any OPSAIL 2012 vessel and proceed as directed by the official patrol commander.

(2) All waters within 100 yards of any OPSAIL 2012 vessel which is greater than 100 feet in length overall, while operating in the navigable waters of the Chesapeake Bay or its tributaries, south of the Maryland-Virginia border and north of latitude 36°55′00″ N. Vessels shall not approach within 100 yards of any OPSAIL vessel. If a vessel needs to pass within 100 yards of an OPSAIL 2012 vessel in order to ensure safe passage in accordance with the Navigation Rules, the vessel must contact the Coast Guard patrol commander on VHF–FM marine band radio channel 13 (165.65MHz) or channel 16 (156.8 MHz).

(f) *Safety Zone.* The following areas are safety zones. OPSAIL Parade of Sail Route Segments. Regulated waters enclosed by the following lines:

(1) Segment One. All waters bounded by a line connecting the Chesapeake Bay Entrance Lighted Whistle Buoy CH (LLNR 405) to Thimble Shoal Channel Lighted Bell Buoy 1TS (LLNR 9205), thence to Thimble Shoal Channel Lighted Bell Buoy 9 (LLNR 9255), thence to Thimble Shoal Channel Lighted Bell Buoy 10 (LLNR 9260), thence to Thimble Shoal Channel Lighted Buoy 2 (LLNR 9210), thence to the beginning.

(2) Segment Two. All waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 9 (LLNR 9255), thence to Thimble Shoal Channel Lighted Gong Buoy 17 (LLNR 9295), thence to Fort Wool Light (LLNR 9385), thence to Old Point Comfort Light (LLNR 9380), thence to Thimble Shoal Channel Lighted Buoy 22 (LLNR 9320), thence to Thimble Shoal Channel Lighted Buoy 18 (LLNR 9300), thence to Thimble Shoal Channel Lighted Buoy 10 (LLNR 9260), thence to the beginning.

(3) Segment Three. All waters bounded by a line connecting Fort Wool Light (LLNR 9385), thence to Elizabeth River Channel Lighted Buoy 1ER (LLNR 9445), thence to Elizabeth River Channel Lighted Bell Buoy 3 (LLNR 9465), thence to Elizabeth River Channel Lighted Gong Buoy 5 (LLNR 9470), thence to Elizabeth River Channel Lighted Buoy 7 (LLNR 9475), thence to Elizabeth River Channel Lighted Buoy 9 (LLNR 9515), thence to Elizabeth River Channel Lighted Buoy 11 (LLNR 9525), thence to Elizabeth River Channel Lighted Buoy 15 (LLNR 9545), thence to Elizabeth River Channel Lighted Gong Buoy 17 (LLNR 9595), thence to Elizabeth River Channel Lighted Buoy 19 (LLNR 9605), thence to Lafayette River Channel Light 2 (LLNR 10660), thence to Elizabeth River Channel Lighted Buoy 20 (LLNR 9620), thence to Elizabeth River Channel Lighted Buoy 18 (LLNR 9600), thence to Elizabeth River Channel Lighted Buoy 14 (LLNR 9540), thence to Elizabeth River Channel Lighted Buoy 12 (LLNR 9530), thence to Elizabeth River Channel Lighted Bell Buoy 10 (LLNR 9520), thence to Elizabeth River Channel Lighted Buoy 8 (LLNR 9500), thence to Newport News Channel Lighted Buoy 2 (LLNR 10840), thence to Old Point Comfort Light (LLNR 9380), thence to the beginning.

(4) Segment Four. All waters bounded by a line connecting Elizabeth River Channel Lighted Buoy 20 (LLNR 9620), thence to Elizabeth River U.S. Navy Deperming Range Sound Signal (LLNR 9725), thence to Elizabeth River Channel Lighted Buoy 30 (LLNR 9735), thence to Elizabeth River Channel Lighted Buoy 32 (LLNR 9840), thence to Elizabeth River Channel Lighted Buoy 36 (LLNR 9900), thence following the shoreline to the western terminus of the Jordan Bridge, thence to the eastern terminus of the Jordan Bridge shoreline, thence following the shoreline to the southern terminus of the Berkley Bridge, thence to the northern terminus of the Berkley Bridge, thence following the shoreline to Elizabeth River Channel Lighted Buoy 33 (LLNR 9850), thence to

Elizabeth River Channel Buoy 31 (LLNR 9835), thence to Elizabeth River Channel Lighted Buoy 29 (LLNR 9715), thence to Elizabeth River Channel Lighted Buoy 25 (LLNR 9710), thence to Elizabeth River Channel Lighted Buoy 21 (LLNR 9625), thence to Lafayette River Channel Light 2 (LLNR 10660), thence to the beginning.

(g) *Regulated Area.* The following area is a safety zone. Fireworks Display Safety Zone: Regulated waters enclosed by the following lines: All waters bounded by a line connecting Elizabeth River Channel Lighted Buoy 20 (LLNR 9620), thence to Elizabeth River U.S. Navy Deperming Range Sound Signal (LLNR 9725), thence to Elizabeth River Channel Lighted Buoy 30 (LLNR 9735), thence to Elizabeth River Channel Lighted Buoy 32 (LLNR 9840), thence to Elizabeth River Channel Lighted Buoy 36 (LLNR 9900), thence following the shoreline to the western terminus of the Jordan Bridge, thence to the eastern terminus of the Jordan Bridge shoreline, thence following the shoreline to the southern terminus of the Berkley Bridge, thence to the northern terminus of the Berkley Bridge, thence following the shoreline to Elizabeth River Channel Lighted Buoy 33 (LLNR 9850), thence to Elizabeth River Channel Buoy 31 (LLNR 9835), thence to Elizabeth River Channel Lighted Buoy 29 (LLNR 9715), thence to Elizabeth River Channel Lighted Buoy 25 (LLNR 9710), thence to Elizabeth River Channel Lighted Buoy 21 (LLNR 9625), thence to Lafayette River Channel Light 2 (LLNR 10660), thence to the beginning.

(h) *Notification.* (1) Coast Guard Captain of the Port will notify the public of the enforcement of these safety zones by all appropriate means to affect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(2) Contact Information. Questions about safety zones and related events should be addressed to the Coast Guard Captain of the Port. Contact Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(i) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65MHz) or channel 16 (156.8 MHz).

(j) *Enforcement Period.* This regulation will be enforced June 6, 8, 9, and 12, 2012.

Dated: May 17, 2012.

Steven H. Ratti,

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

[FR Doc. 2012–13404 Filed 6–4–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0200]

RIN 1625–AA00

Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the specified waters of Captain of the Port Sault Sainte Marie zone. This safety zone is intended to restrict vessels from certain portions of water areas within Sector Sault Sainte Marie Captain of the Port zone, as defined by 33 CFR 3–45.45. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 10 p.m. until 12 a.m. on June 28, 2012.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0200 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0200 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 email MST3 Kevin Moe, U.S. Coast Guard, Sector Sault Sainte Marie, telephone 906–253–2429, email at *Kevin.D.Moe@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (77 FR 21893). We received 1 public submission commenting on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

On the evening of 28 June 2012, The International Bridge Administration will be celebrating the International Bridge 50th Anniversary. As part of that celebration, fireworks will be launched from the northeast pier of the U.S. Army Corp of Engineers Soo Locks. The Captain of the Port Sault Sainte Marie has determined that the fireworks event poses various hazards to the public, including explosive dangers associated with fireworks, and debris falling into the water.

Discussion of Comments and Changes

The Coast Guard received 1 public submission from an anonymous source commenting on the benefits of promoting safety in firework displays, but not commenting on the specifics of this rule.

Discussion of Rule

This rule and its associated safety zone are necessary to ensure the safety of vessels and people during the aforementioned fireworks event. The temporary safety zone will encompass all waters within a 750-foot radius around the eastern portion of the U.S. Army Corps of Engineers Soo Locks North East Pier, centered on position:

46°30′19.66″ N, 084°20′31.61″ W [DATUM: NAD 83].

In accordance with 33 CFR 165.7(a), the Captain of the Port Sault Sainte Marie will use all appropriate means to notify the affected segments of the public when the safety zone will be enforced.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or his or her designated representative. All persons and vessels permitted to enter the safety zone established by this rule shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. The Captain of the Port or his or her designated 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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone will be relatively small and will exist for only a minimal time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by proper authority.

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 might be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of U.S. Army Corps of Engineers Soo Locks North East Pier between 10 p.m. and 12 a.m. on June 28, 2012.

This temporary safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for a short period of time. Vessels may safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Sault Sainte Marie, to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (76 FR 22064). We received 1 public submission commenting on the proposed rule.

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. On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (76 FR 22064). We received 1 public submission commenting on the proposed rule.

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. On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (76 FR 22064). We received 1 public submission commenting on the proposed rule.

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. On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (76 FR 22064). We received 1 public submission commenting on the proposed rule.

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. On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th

Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (76 FR 22064). We received 1 public submission commenting on the proposed rule.

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. On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (76 FR 22064). We received 1 public submission commenting on the proposed rule.

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. On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (76 FR 22064). We received 1 public submission commenting on the proposed rule.

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. On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI; in the **Federal Register** (76 FR 22064). We received 1 public submission commenting on the proposed rule.

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 because it involves the establishment of a safety zone. A final environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0200 to read as follows:

§ 165.T09–0200 Safety Zone International Bridge 50th Anniversary Celebration Fireworks, St. Mary's River, U.S. Army Corps of Engineers Locks, Sault Sainte Marie, MI.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of the St. Mary's River within a 750-foot radius around the eastern portion of the U.S. Army Corp of Engineers Soo Locks North East Pier, centered on position: 46°30′19.66″ N, 084°20′31.61″ W [DATUM: NAD 83].

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 10 p.m. until 12 a.m. on June 28, 2012.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

Dated: May 21, 2012.

J.C. McGuiness,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2012–13518 Filed 6–4–12; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket No. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; and WT Docket No. 10–208; FCC 11–161 and DA 12–147]

Application To Participate in an Auction for Mobility Fund Phase I Support and Application for Mobility Fund Phase I Support

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with certain of the provisions of the rules adopted as part of the Connect America Fund & Intercarrier Compensation Reform Order (*Order*), FCC 11–161 and a Bureau Order, DA 12–147. This notice is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: *Effective date:* Section 1.21001(b) through (d); 1.21002(c) and (d); 1.21004(a); and Section 54.1003; 54.1004(a), (c), and (d); 54.1005(a) and (b); 54.1006(a) through (e); 54.1007(a) and (b); 54.1008(a) and (e), published at 76 FR 78921, December 20, 2011, are effective June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Rita Cookmeyer, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at (202) 418–0434, or email: *rita.cookmeyer@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces OMB approval of two information collection requirements contained in the Commission's *Order,* FCC 11–161, published at 76 FR 78921, December 20, 2011, and *Bureau Order* published at 77 FR 14297, March 9, 2012. On April 16, 2012, OMB approved the Application to Participate in an Auction for Mobility Fund Phase I Support, FCC Form 180, for a period of three years and on April 27, 2012, OMB approved the Application for Mobility Fund Phase I Support, FCC Form 680, for a period of three years. The OMB Control Number for the FCC Form 180 is 3060–1166 and the OMB Control Number for the FCC Form 680 is 3060–1168. The Commission publishes this notice as an announcement of the effective date of the rules requiring OMB approval. If you have any comments on the burden estimates or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1166 or 3060–1168, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on April 16, 2012 for FCC Form 180, the Application to Participate in an Auction for Mobility Fund Phase I Support (OMB Control Number 3060–1166), and on April 27, 2012 for FCC Form 680, the Application for Mobility Fund Phase I Support (OMB Control Number 3060–1168). These two information collections are contained in the modifications to the Commission's rules in 47 CFR 1.21001(b) through (d); 1.21002(c) and (d); 1.21004(a); and 54.1003; 54.1004(a), (c), and (d); 54.1005(a) and (b); 54.1006(a) through (e); 54.1007(a) and (b); 54.1008(a) and (e) as adopted in the *Order.*

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers are 3060–1166 and 3060–1168.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1166.

OMB Approval Date: April 16, 2012.

OMB Expiration Date: April 30, 2015.

Title: Application To Participate in an Auction for Mobility Fund Phase I Support, FCC Form 180.

Form Number: SF–180.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents and Responses: 250 respondents; 250 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 375 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: There is no need for confidentiality. The information to be collected will be made available for public inspection. Applicants may request materials or information submitted to the Commission be given confidential treatment under 47 CFR 0.459.

Needs and Uses: The Commission will use the information collected to determine whether applicants are eligible to participate in the Mobility Fund Phase I auction. On November 18, 2011, the Federal Communications Commission released the *Order,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161 and on February 3, 2012, released a *Bureau Order,* DA 12–147, which adopted rules to govern the Mobility Fund Phase I, implemented as part of the Connect America Fund. In adopting the rules, the Commission provided for one-time support to immediately accelerate deployment of networks for mobile broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction. The information collection process for the Mobility Fund Phase I auction is similar to that used in spectrum license auctions. This approach provides an appropriate screen to ensure serious participation without being unduly burdensome.

OMB Control Number: 3060–1168.

OMB Approval Date: April 27, 2012.

OMB Expiration Date: April 30, 2015.

Title: Application for Mobility Fund Phase I Support, FCC Form 680.

Form Number: SF–680.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents and Responses: 250 respondents; 250 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 375 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: There is no need for confidentiality. The information to be collected will be made available for public inspection. Applicants may request materials or information submitted to the Commission be given confidential treatment under 47 CFR 0.459.

Needs and Uses: The Commission will use the information collected from winning bidders in the Mobility Fund Phase I auction to evaluate applications for Mobility Fund Phase I support. On November 18, 2011, the Federal Communications Commission released the *Order,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161 and on February 3, 2012, released a *Bureau Order,* DA 12–147, which adopted rules to govern the Mobility Fund Phase I, implemented as part of the Connect America Fund. In adopting the rules, the Commission provided for one-time support to immediately accelerate deployment of networks for mobile broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction. Applicants with winning bids will provide this information to obtain the Mobility Fund Phase I support.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–13491 Filed 6–4–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 04–186 and 02–380; FCC 12–36]

Unlicensed Operation in the TV Broadcast Band

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: On May 17, 2012, the Commission released a Third Memorandum Opinion and Order, in the matter of ''Unlicensed Operation in the TV Broadcast Band Approval.'' This document contains corrections to the final regulations that appeared in the **Federal Register** of May 17, 2012 (77 FR 29246).

DATES: Effective June 18, 2012.

FOR FURTHER INFORMATION CONTACT: Nancy J. Brooks, Office of Engineering and Technology, (202) 418–2454.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction relate to ''Unlicensed Operation in the TV Broadcast Band Approval'' under § 15.712(h) of the rules.

Need for Correction

As published May 17, 2012, in FR Doc. No. 2012–11906, beginning on page 29236, the amendatory instructions in the final regulations contain an error, which requires immediate correction.

On page 29246, in the third column, amendatory instruction 4 is revised to read as follows:

''4. Section 15.712 is amended by revising paragraph (a)(2), adding paragraph (a)(3) and revising paragraphs (h)(1), (2), and (3) to read as follows:''

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–13496 Filed 6–4–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2012–0183]

Hours of Service of Drivers of Commercial Motor Vehicles; Regulatory Guidance for Oilfield Exception

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance; request for public comment.

SUMMARY: FMCSA announces its revision of regulatory guidance to clarify the applicability of the ''Oilfield operations'' exceptions in 49 CFR 395.1(d) to the ''Hours of Service of Drivers'' regulations, and requests comments on the revision. The regulatory guidance is being revised to ensure consistent understanding and application of the regulatory exceptions.

DATES: This regulatory guidance is effective June 5, 2012. Comments must be received on or before August 6, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2012–0183 by any of the following methods:

- *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W–12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on December 29, 2010 (75 FR 82133), or you may visit *www.regulations.gov.*

Public Participation: The *www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the *www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200

New Jersey Avenue SE., Washington, DC 20590, phone (202) 366–4325, email *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 provides that ''The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 31502(b)].

The Motor Carrier Safety Act of 1984 (MCSA) confers on the Secretary the authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to prescribe safety standards for commercial motor vehicles (CMVs). At a minimum, the regulations must ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and, after the national registry maintained by the Department of Transportation under section 31149(d) is established, are listed on such registry; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operator [49 U.S.C. 31136(a)]. The Act also grants the Secretary broad power to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' [49 U.S.C. 31133(a)(8) and (10)].

The Administrator of FMCSA has been delegated the authority to carry out the functions vested in the Secretary by the Motor Carrier Act of 1935 [49 CFR 1.73(l)] and the MCSA [§ 1.73(g)]. The provisions affected by this Notice of Regulatory Guidance are based on these statutes.

Background

The Interstate Commerce Commission (ICC), which originally had jurisdiction over CMV highway safety, first heard requests for an oilfield exemption when the earliest HOS rules were issued in 1939. The Commission declined to grant the request, however, stating that ''* * * important as these considerations are, they do not overcome our primary duty to prescribe maximum hours which will be reasonably safe'' (Ex Parte No. MC–2, 11 M.C.C. 206, January 27, 1939).

In 1962, the ICC revisited the HOS rules. The Commission considered testimony from oilfield equipment operators in a discussion of specialized oilfield equipment requiring special training, and approved a 24-hour restart provision for operators of these vehicles. The record indicates that this same restart provision was intended to apply to operators employed exclusively in the transportation of equipment for use in servicing the well operations. In other words, both descriptive clauses were intended to apply to the same group of drivers [Ex Parte No. MC–40 (Sub-No.1), 89 M.C.C. 28, March 29, 1962]. This restart provision was codified on April 13, 1962 (27 FR 3553) as § 195.3(d), and later recodified as § 395.1(d)(1). Neither the original nor the recodified text mentioned specially designed vehicles or specially trained drivers.

Approximately 5 months following the March 29, 1962, decision to grant the 24-hour restart, the ICC also granted without any comment the ''waiting time'' exception as it now stands, using the ''specially constructed'' and ''specially trained'' phrases (27 FR 8119; August 15, 1962). There was no discussion in the notice, but 27 FR 8119 includes a long list of petitions from industry and equipment manufacturers that were filed after the March 29 decision. The duties and functions of the ICC were terminated in December 1995 (see the ICC Termination Act of 1995); the petitions themselves, filed nearly 50 years ago, are not readily available.

In the August 15, 1962, **Federal Register** notice, the oilfield ''waiting time'' exception (referring to specially constructed vehicles and specially trained drivers) was part of the definition of ''on duty time'' in (then) 49 CFR 195.2(a)(9). The 24-hour restart exception, referring to the broader group servicing the oilfield sites, was placed under the section regarding duty time.

In a ''technical amendment'' published in the **Federal Register** as part of a broader final rule, the 24-hour restart and waiting-time provisions were merged to become today's § 395.1(d)(1) and (2) [57 FR 33638; July 30, 1992].

Reason for This Notice of Regulatory Guidance

This notice revises regulatory guidance to clarify which CMV drivers are subject to the HOS exceptions in 49 CFR 395.1(d), ''Oilfield operations.'' A significant increase in oil and gas drilling operations in many States has resulted in a major increase in CMV traffic to move the oilfield equipment, and to transport large quantities of supplies, such as water and sand, to the sites. The operators of many of these vehicles have raised questions about the applicability of § 395.1(d) to them.

Section 395.1(d) provides two separate exceptions to the HOS rules, with the two exceptions applying to different operators. Section 395.1(d)(1) states that for drivers of CMVs used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. This is commonly referred to as a ''24-hour restart'' of the 70 hours in 8 days total on-duty time limit in § 395.3(b).

Section 395.1(d)(2) states, in part, that in the case of specially trained drivers of CMVs that are specially constructed to service oil wells, ''on-duty time shall not include waiting time at a natural gas or oil well site.'' Under the definition of ''On duty time'' in § 395.2, drivers who are standing by at an oil well site until their services are needed would normally be considered on-duty, thereby constraining the hours that they would have available to legally drive a CMV within the HOS-rule limits. This exception is often referred to as the ''oilfield waiting time'' provision.

Request for Comments

Refer to the **ADDRESSES** section above for instructions on submitting comments to the public docket concerning this regulatory guidance. The FMCSA will consider comments received by the closing date of the comment period to determine whether any further clarification of these regulatory provisions is necessary.

For the reasons explained above, FMCSA revises Regulatory Guidance, Questions 6 and 8 to 49 CFR 395.1 (62 FR 16420, April 4, 1997) as follows:

PART 395—HOURS OF SERVICE OF DRIVERS

Section 395.1(d), ''Oilfield operations.''

''*Question 6:* What does ''servicing'' of the field operations of the natural gas and oil industry cover?

Guidance: The ''24-hour restart'' provision of § 395.1(d)(1) is available to drivers of the broad range of commercial motor vehicles (CMVs) that are being used for *direct support* of the operation

of oil and gas well sites, to include transporting equipment and supplies (including water) to the site and waste or product away from the site, and moving equipment to, from, or between oil and gas well sites. These CMVs do not have to be specially designed for well site use, nor do the drivers require any special training other than in operating the CMV.

Question 8: What kinds of oilfield equipment may drivers operate while taking advantage of the special ''waiting time'' rule in § 395.1(d)(2)?

Guidance: The ''waiting time'' provision in § 395.1(d)(2) is available only to operators of those commercial motor vehicles (CMVs) that are (1) specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle. In many instances, the operators spend little time driving these CMVs because ''leased drivers'' from driveaway services are brought in to move the heavy equipment from one site to another. These operators typically may have long waiting periods at well sites, with few or no functions to perform until their services are needed at an unpredictable point in the drilling process. Because they are not free to leave the site and may be responsible for the equipment, they would normally be considered ''on duty'' under the definition of that term in § 395.2. Recognizing that these operators, their employers, and the well-site managers do not have the ability to readily schedule or control these driver's periods of inactivity, § 395.1(d)(2) provides that the ''waiting time'' shall not be considered on-duty (i.e., it is off-duty time). During this ''waiting time,'' the operators may not perform any work-related activity. To do so would place them on duty.

Examples of equipment that may qualify the operator/driver for the ''waiting time exception'' in § 395.1(d)(2) are vehicles commonly known in oilfield operations as heavy-coil vehicles, missile trailers, nitrogen pumps, wire-line trucks, sand storage trailers, cement pumps, ''frac'' pumps, blenders, hydration pumps, and separators. This list should only be considered examples and not all-inclusive. Individual equipment must be evaluated against the criteria stated above: (1) Specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle infrequently.

Operators of CMVs that are used to transport supplies, equipment, and materials such as sand and water to and from the well sites do not qualify for the ''waiting time exception'' even if there have been some modifications to the vehicle to transport, load, or unload the materials, and the driver required some minimal additional training in the operation of the vehicle, such as running pumps or controlling the unloading and loading processes. It is recognized that these operators may encounter delays caused by logistical or operational situations, just as other motor carriers experience delays at shipping and receiving facilities. Other methods may be used to mitigate these types of delays, which are not the same types of waiting periods experienced by the CMV operators who do qualify for the waiting time exception.''

Issued on: May 30, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–13584 Filed 6–1–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2011–0095; MO 92210–0–0010 B6]

RIN 1018–AY31

Endangered and Threatened Wildlife and Plants; Technical Correction for African Wild Ass

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the revised taxonomy of *Equus asinus* (African wild ass) under the Endangered Species Act of 1973, as amended (Act). We are revising the List of Endangered and Threatened Wildlife to reflect the current scientifically accepted taxonomy and nomenclature of this species. We revise the scientific name of this species as follows: *Equus africanus* (formerly *E. asinus*).

DATES: This rule will become effective on August 6, 2012, without further action, unless significant adverse comments are received by July 5, 2012. If adverse comment is received, we will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–ES–2011–0095; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Branch Chief, Foreign Species Branch, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

(1) Purpose of the Regulatory Action

We are revising the List of Endangered and Threatened Wildlife to reflect the current scientifically accepted taxonomy and nomenclature of the African wild ass. We revise the scientific name of this species as follows: *Equus africanus* (formerly *E. asinus*).

(2) Major Provision of the Regulatory Action

This action is authorized by the Endangered Species Act of 1973 (Act), as amended. We are revising the entry for ''Ass, African wild'' under MAMMALS by, in the Scientific name column, removing the words ''Equus asinus'' and adding in their place the words ''Equus africanus''.

(3) Costs and Benefits

This is a revised taxonomy action, and the Office of Management and Budget (OMB) has designated it as not significant. Therefore, we have not analyzed the costs or benefits of this rulemaking action.

Purpose of Direct Final Rule

The purpose of this direct final rule is to notify the public that we are revising the List of Endangered and Threatened Wildlife to reflect the scientifically accepted taxonomy and nomenclature of the African wild ass listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*). This change to the List of Endangered and Threatened

Wildlife (at 50 CFR 17.11(h)) reflects the most recently accepted scientific name in accordance with 50 CFR 17.11(b) and the *International Code of Zoological Nomenclature.*

We are publishing this direct final rule without a prior proposal because this is a noncontroversial action that does not alter the regulatory protections afforded to this species. Rather, it will differentiate the taxonomy of the African wild ass and the domesticated burro and/or donkey. Therefore, in the best interest of the public, we are taking this action in as timely a manner as possible, unless we receive significant adverse comments on or before the comment due date specified in the **DATES** section of this document. Significant adverse comments are comments that provide strong justification as to why this rule should not be adopted or why it should be changed. If we receive significant adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date, and we will engage in the normal rulemaking process to promulgate these changes to 50 CFR 17.11.

Public Comments

You may submit your comments and materials regarding this direct final rule by one of the methods listed in the **ADDRESSES** section. Please include sufficient information with your comments that allows us to verify any scientific or commercial information you include. We will not consider comments sent by email or fax, or to an address not listed in the **ADDRESSES** section.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information that you provide to us. Before including your address, phone number, email address, or other personal 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on the Internet at *http://www.regulations.gov* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arlington, Virginia (see **FOR FURTHER INFORMATION CONTACT**). Please note that comments posted to *http://www.regulations.gov* are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

Previous Federal Actions

The Endangered Species Preservation Act was passed in 1966 (the 1966 Act) and was limited in scope to ''native'' or resident species of fish or wildlife threatened with extinction (Pub. L. 89–669, 80 Stat. 926). Section 1(c) of the 1966 Act stated that native species of fish or wildlife could be regarded as endangered if the Secretary of the Interior found, after consultation with the affected States, that their existence was threatened because of certain enumerated factors. The Secretary was directed to publish in the **Federal Register** a list of those native species determined by the Secretary to be endangered. Such a list was published on March 8, 1969, at 34 FR 5034, without reference to foreign species, such as the African wild ass.

The Endangered Species Conservation Act of 1969 (ESCA, Pub. L. 91–135, 83 Stat. 275) expanded the 1966 Act by authorizing the listing of foreign species of fish and wildlife that were threatened with worldwide extinction. In a proposed rule published in the **Federal Register** on April 14, 1970 (35 FR 6069), the Secretary of the Interior set forth the original list of endangered foreign species entitled, ''Appendix A: Secretary of the Interior's List of Species and Subspecies Threatened with Extinction in Other Countries,'' which contained the following entries:

Common name	Scientific name	Where found
Somali wild ass	*Equus asinus somalicus*	Ethiopia, Somalia.
Nubian wild ass	*Equus asinus africanus*	Ethiopia.

When the final rule setting forth the list of endangered foreign species was published on June 2, 1970, at 35 FR 8491, Appendix A was retitled to read, ''Appendix A: United States' List of Endangered Foreign Fish and Wildlife.'' The above entries were condensed into one:

Common name	Scientific name	Where found
African wild ass	*Equus asinus*	Ethiopia, Somalia, Sudan.

Except in very limited circumstances, the Act (1973) retained the lists published under the ESCA. At that time, the domesticated burro and donkey shared the same scientific name as the African wild ass (*Equus asinus*). The Act also abandoned the distinction between native and foreign lists, and a combined list was eventually published on September 26, 1975, at 40 FR 44412.

The present listing at 50 CFR 17.11(h), in the List of Endangered and Threatened Wildlife, for the African wild ass reads as follows:

Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Species rules
Ass, African wild	*Equus asinus*	Somalia, Sudan, Ethiopia.	Entire	E[1]	[2] 3, 22	[3] NA	[3] NA

[1] E means endangered.
[2] 3 is the code for 35 FR 8495; June 2, 1970. 22 is the code for 42 FR 15973; March 24, 1977.
[3] NA means not applicable.

In a ''Notice of Clarification of Status of Wild Burros'' (March 24, 1977; 42 FR 15973), the Service stipulated that ''the western wild burro has never been considered for designation as an endangered species. *Equus asinus* has always been treated administratively as a foreign species and was never included on a native list of endangered species. Furthermore, the procedural requirements for consultation with affected States during the listing of a native species were never complied with. An undesignated native population of a listed foreign species cannot be bootstrapped into coverage under the 1973 Act because of a clerical ambiguity with the list'' (42 FR 15974). It is clear that the Service intended to list the African wild ass in its entirety, but not to list feral populations of once-domesticated burros and donkeys. However, the March 24, 1977, document failed to clarify the status of domesticated burros and donkeys.

Taxonomic Classification

Equus africanus

Gentry *et al.* (1996), in their recommendations to the International Commission on Zoological Nomenclature, addressed the concern that many domesticated species share the same scientific name with their wild ancestors: ''The use of taxonomic names for wild species first described [for] domesticated forms is a retrograde step that will confuse not only biologists, paleontologists, archaeologists and those in applied fields of ecology, conservation, behavior studies and physiological resources, but also [enforcement] officials who have the job of sorting out endangered species'' (Gentry *et al.* 1996, p. 32). They highlighted 15 species of mammals in which the domestic name precedes or are contemporary with their wild counterparts, one of which was *Equus asinus.* The group recommended that the Commission adopt the specific name for wild populations for several taxa, including *E. africanus* (formerly *E. asinus*). The scientific name change of *Equus africanus,* Heuglin & Fitzinger (1866) from *Equus asinus* Linnaeus (1758) was adopted in March 2003 by the International Commission on Zoological Nomenclature (Commission, Opinion 2027 (Case 3010)). Based on the same opinion, the use of the *E. africanus* was also adopted by the IUCN *Red List of Threatened Animals* in 2008.

CITES

The Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) adopted the mammal reference Wilson & Reeder's *Mammal Species of the World, A Taxonomic and Geographic Reference,* 3rd Edition (2005), which recognizes the African wild ass as *Equus asinus* (CITES Resolution Conf. 12.11 (Rev. CoP15), *Standard nomenclature*). However, because of the wild and domestic taxonomy issue previously raised by the Commission and the problems it created for enforcement officials, the Parties agreed to deviate from Wilson and Reeder by adopting the name *Equus africanus* for the wild form of the African wild ass (listed in CITES Appendix I) and retaining the name *Equus asinus* for the domesticated form, which is not listed under CITES (CoP 15 Document 12, 2010).

The Service's objective is to provide the protections of the Act to endangered and threatened species, in this case the endangered African wild ass (*Equus africanus*) wherever found, and not the common domesticated or feral burro and donkey (*Equus asinus*). Pursuant to 50 CFR 17.11(b), ''the Services shall use the most recently accepted scientific name. * * * The Services shall rely to the extent practicable on the *International Code of Zoological Nomenclature.''* Because the *International Code of Zoological Nomenclature,* as well as the IUCN and CITES, has accepted *Equus africanus* as the appropriate taxonomy for the African wild ass, and because this taxonomic change best reflects the scope of the Service's listing for this species, the Service is hereby adopting the scientific name *E. africanus* for the African wild ass. The Service will use the scientific name *E. asinus* for the domesticated donkey or burro.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule; your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of the references used to develop this rule is available upon request from the Foreign Species Branch (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by amending the entry for ''Ass, African wild'' under MAMMALS by, in the Scientific name column, removing the words ''*Equus asinus*'' and adding in their place the words ''*Equus africanus*''.

Dated: May 17, 2012.

Gregory E. Siekaniec,

Director, Fish and Wildlife Service.

[FR Doc. 2012–13421 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC056

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in 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 species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 31, 2012, through 1200 hrs, A.l.t., July 1, 2012.

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.

The second seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 100 metric tons as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012), for the period 1200 hrs, A.l.t., April 1, 2012, through 1200 hrs, A.l.t., July 1, 2012.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, squids, sharks, octopuses, and sculpins. This prohibition does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock and vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Program for the Central 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 Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in 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 May 29, 2012.

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

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

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

Dated: May 31, 2012.

James P. Burgess,

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

[FR Doc. 2012–13559 Filed 5–31–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 108
Tuesday, June 5, 2012

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–FV–11–0093; FV12–932–1 PR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Olive Committee (Committee) for the 2012 and subsequent fiscal years from $16.61 to $31.32 per assessable ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal year begins January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 5, 2012.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable olives beginning on January 1, 2012, and continue until amended, suspended, or terminated.

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

This rule would increase the assessment rate established for the Committee for the 2012 and subsequent fiscal years from $16.61 to $31.32 per ton of assessable olives.

The California olive marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 15, 2011, and unanimously recommended 2012 expenditures of $1,197,291 and an assessment rate of $31.32 per ton of assessable olives. Olives are an alternate year bearing crop. Olive growers and handlers are accustomed to wide swings in crop yields and assessments from year to year. In comparison, last year's budgeted expenditures were $2,203,909. The assessment rate of $31.32 is $14.71 higher than the rate currently in effect.

The Committee recommended the higher assessment rate because of a substantial decrease in assessable olive volume for the 2012 fiscal year. The olive volume available for fiscal year 2011 as reported by the California Agricultural Statistics Service (CASS) is

26,944 tons, which compares to 167,000 tons reported for the 2010 fiscal year. The reduced crop is due to olives being an alternate year bearing fruit. The Committee also plans to use available reserve funds to help meet its 2012 expenses.

The major expenditures recommended by the Committee for the 2012 fiscal year include $333,791 for research, $480,000 for marketing activities, $50,000 for inspection equipment development, and $333,500 for administration. Budgeted expenses for these items in 2011 were $1,093,009, $700,000, $75,000 and $335,900, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2011 crop year, and additional pertinent factors. Actual assessable tonnage for the 2012 fiscal year is expected to be lower than the 2011 crop receipts of 167,000 tons reported by the CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve would be adequate to cover budgeted expenses. Funds in the reserve would be kept within the maximum permitted by the order of approximately one fiscal year's expenses (§ 932.40).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2012 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1000 producers of olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

Based upon information from the industry and CASS, the average grower price for 2011 was approximately $798 per ton and total grower production was around 26,944 tons. Based on production, producer prices, and the total number of California olive producers, the average annual producer revenue is less than $750,000. Thus, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2012 and subsequent fiscal years from $16.61 to $31.32 per ton of assessable olives. The Committee unanimously recommended 2012 expenditures of $1,197,291 and an assessment rate of $31.32 per ton. The higher assessment rate is necessary because assessable olive receipts for the 2012 fiscal year were reported by the CASS to be 26,944 tons, compared to 167,000 tons for the 2011 fiscal year. Actual assessable tonnage for the 2012 fiscal year is expected to be lower because some of the receipts may be diverted by handlers to exempt outlets on which assessments are not paid. Income derived from the $31.32 per ton assessment rate along with funds from the authorized reserve and interest income should be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2012 fiscal year include $333,791 for research, $480,000 for marketing activities, $50,000 for inspection equipment development, and $333,500 for administration. Budgeted expenses for these items in 2011 were $1,093,009, $700,000, $75,000 and $335,900, respectively. The Committee recommended decreases in all major expense categories due to the huge decrease in assessable crop volume as reported by the CASS.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive, Marketing, Inspection, and Research Subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry and the reduced olive production. The assessment rate of $31.32 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, and additional pertinent factors.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that grower price could range between approximately $1000 per ton and $1,200 per ton. Therefore, the estimated assessment revenue for the 2012 fiscal year as a percentage of total grower revenue could range between 2.6 and 3.1 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California's olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 15, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of

Management and Budget (OMB) and assigned OMB No. 0581–0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2012 fiscal year began on January 1, 2012, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 932

Olives, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2012, an assessment rate of $31.32 per ton is established for California olives.

Dated: May 30, 2012.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–13526 Filed 6–4–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–TP–0023]

RIN 1904–AC26

Energy Conservation Program: Test Procedure for Microwave Ovens

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

ACTION: Notice of data availability; request for comment.

SUMMARY: The U.S. Department of Energy (DOE) initiated a test procedure rulemaking to develop active mode testing methodologies for residential microwave ovens. DOE conducted testing to evaluate potential test procedure amendments to provide methods of measuring energy use for microwave ovens, including both microwave-only ovens and convection microwave cooking ovens. In today's notice, DOE presents the results from these testing investigations and requests comment and additional information on these results and potential amendments to the microwave oven test procedure.

DATES: DOE will accept comments, data, and information regarding this notice submitted no later than July 5, 2012.

ADDRESSES: Any comments submitted must identify the Notice of Data Availability for Microwave Ovens, and provide docket number EERE–2010–BT–TP–0023 and/or RIN 1904–AC26. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: MWO-2010-TP-0023@ee.doe.gov.* Include docket EERE–2010–BT–TP–0023 and/or RIN 1904–AC26 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EERE-2010-BT-TP-0023.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Wes Anderson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: 202–586–7335. Email: *Wes.Anderson@ee.doe.gov.*

In the Office of the General Counsel, contact Mr. Ari Altman, U.S. Department of Energy, 1000 Independence Ave. SW., Room 6B–159, Washington, DC 20585. Telephone: 202–287–6307; Email: *Ari.Altman@hq.doe.gov.*

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I. Background

On July 22, 2010, DOE published in the **Federal Register** a final rule for the microwave oven test procedure rulemaking (July 2010 TP Repeal Final Rule), in which it repealed the regulatory provisions for establishing the cooking efficiency test procedure for microwave ovens under the Energy Policy and Conservation Act (EPCA). 75 FR 42579. In the July 2010 TP Repeal Final Rule, DOE determined that the existing microwave oven test procedure to measure the cooking efficiency, which was based on the International Electrotechnical Commission (IEC) Standard 705–1998 and Amendment 2–1993, ''Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes'' (IEC Standard 705), did not produce representative and repeatable test results. DOE stated that it was unaware of any test procedures that had been developed that addressed the concerns with the microwave oven cooking efficiency test procedure. DOE was also unaware of any research or data on consumer usage indicating what a representative food load would be, or any data showing the repeatability of test results. 75 FR 42579, 42581. In addition, in comments received in response to a separate test procedure notice of proposed rulemaking (NOPR) published in the **Federal Register** on October 17, 2008, which addressed provisions for measuring standby mode and off mode energy use for microwave ovens (73 FR 62134), interested parties commented that pure water has relatively low specific resistivity, and actual food items that might be cooked in a microwave oven would have more salts and thus absorb microwave energy more efficiently than pure water. Interested parties stated that, as a result, testing with a water load would likely result in lower efficiency measurements than would be expected from using actual food products.

On July 22, 2010, DOE also published in the **Federal Register** a notice of public meeting to initiate a separate rulemaking process to consider new provisions for measuring microwave oven energy efficiency in active (cooking) mode. 75 FR 42611. DOE held the public meeting on September 16, 2010 to discuss and receive comments on several issues related to active mode test procedures for microwave ovens to consider in developing a new test procedure. DOE received no data or comments at or after the September 16, 2010 public meeting suggesting potential methodologies for test procedures for microwave oven active mode.

On October 24, 2011, DOE published a Request for Information (RFI) notice to announce that it has initiated a test procedure rulemaking to develop active mode testing methodologies for microwave ovens. 76 FR 65631. DOE specifically sought information, data, and comments regarding representative and repeatable methods for measuring the energy use of microwave ovens, in particular for the microwave-only and convection microwave cooking (*i.e.,* microwave plus convection and any other means of cooking) functions. In particular, DOE sought comment on the following: (1) The characteristics of food loads representative of consumer use, (2) the repeatability of energy use measurements using different food loads, and (3) consumer usage data on the hours of operation in active mode, standby mode, and off mode for the development of an integrated energy use metric. In response to the August 2011 RFI, DOE received comments from the Association of Home Appliance Manufacturers (AHAM) and Whirlpool Corporation (Whirlpool) on a number of these test procedure issues. These comments are summarized below.

Food Load Repeatability and Reproducibility. AHAM and Whirlpool commented that the repeatability (test-to-test within one laboratory) and reproducibility (lab-to-lab) must be considered in developing an active mode test procedure for microwave ovens. AHAM and Whirlpool are both unaware of any existing test procedures that have successfully incorporated actual food loads, noting that the European Committee for Electrotechnical Standardization (CENELEC) has conducted testing with different food loads, including real and artificial food as well as salt water, and concluded that food loads cannot meet CENELEC's requirements of repeatability and reproducibility. (AHAM, No. 11 at p. 2, Whirlpool, No. 10 at pp. 1, 3) According to Whirlpool, the most commonly microwaved foods are hot cereal, bacon, pre-made baked goods, and frozen vegetables. However, Whirlpool stated the following about the lack of reproducibility of various foods:

- The nature and behavior of fresh foods varies over the year and by geographical region;
- Prefabricated foods change formulation over time and without notice. Various items are routinely added to and removed from the market;
- The composition of meats such as chicken, beef, and pork vary from not only by region, but also within each meat category, for example in the amount of fat or the size of granulation. (Whirlpool, No. 10 at p. 3)

AHAM and Whirlpool also commented that the IEC evaluated gels, but they were abandoned due to poor repeatability and excessive preparation time. (AHAM, No. 11 at p. 2, Whirlpool, No. 10 at p. 3) Whirlpool added that IEC Standard 60705 Edition 4.0, 2010–04, ''Household microwave ovens—Methods for measuring performance,'' (IEC Standard 60705 Fourth Edition) contains food loads, but that those are used for performance testing only and are not reproducible as is stated in the test standard. (Whirlpool, No. 10 at p. 2)

Whirlpool stated that the final temperature of the load must be correlated to normal usage (*i.e.,* heating food to ''eating temperature''). AHAM and Whirlpool commented that a well-defined final temperature of food loads cannot be determined with sufficient accuracy to attain an acceptable level of repeatability. According to Whirlpool, infrared measurements will only detect surface temperature and thermocouples will just measure temperature in a few spots and as a result, cold/hot spots inside the food may not be found. (AHAM, No. 11 at p. 2, Whirlpool, No. 10 at pp. 2, 3)

Convection Microwave Ovens. Whirlpool noted that convection microwave ovens represent less than 4 percent of U.S. shipments and that qualitative data suggests that even when consumers own a convection microwave oven, the use of the convection microwave cooking function is very limited. Whirlpool commented that the European Commission established a mandate to define a test method for the microwave-only cooking function and that the convection microwave cooking function has not been on the agenda. However, Whirlpool noted that CENELEC tested convection microwave ovens but was unsuccessful at developing repeatable and reproducible test loads and testing procedures for the reasons discussed above. (Whirlpool, No. 10 at p. 1, 2)

Test Methods for DOE Test Procedure. Whirlpool commented that DOE should not attempt to develop a test procedure for both microwave-only and convection microwave ovens at this time because the challenge to develop just a microwave-only test procedure is significant. (Whirlpool, No. 10 at p. 1) AHAM commented that the issues associated with the test procedure are not unique to the United States because microwave ovens do not vary

significantly across countries. AHAM noted that microwave ovens do not represent a large amount of energy consumption as compared to other products, and that DOE should not direct its limited resources to duplicate what another group has adequately done. (AHAM, No. 11 at p. 2)

AHAM and Whirlpool commented that if DOE proceeds with a test procedure, it should develop a test procedure for microwave-only ovens that is harmonized with IEC Standard 60705, which is currently being updated based on extensive testing. AHAM and Whirlpool noted that the draft revised IEC Standard 60705, which uses varying water loads (1000 grams (g), 350 g, and 275 g), was evaluated in a round robin testing program completed in July 2011 and the results verified that the testing procedures have acceptable repeatability and reproducibility. Whirlpool also commented that the three amounts of water defined in the test procedure give good correlation to ''normal usage'' and the water temperature rise of 50 degrees Celsius (°C) achieves eating temperature. (AHAM, No. 11 at p. 2, Whirlpool, No. 10 at pp. 3–4)

Based on DOE's determination to initiate a microwave oven active mode test procedure rulemaking and comments received on the October 2011 RFI discussed above, DOE conducted testing to evaluate potential amendments to its microwave oven test procedure to provide methods for measuring the active mode energy use for these products. The sections below present DOE's tests results and the analytical approaches that it is considering for potential amendments to the microwave oven test procedure to measure active mode energy use.

II. Discussion

A. Test Units

In order to evaluate potential amendments to the microwave oven test procedure, DOE selected a number of test units representative of products currently available on the U.S. market. DOE considered features such as installation configuration, cooking functions (*i.e.,* microwave cooking, convection microwave cooking), rated output power, and rated cavity volume. The test units and key features are presented below in Table 1. Unless otherwise noted, the test unit numbers presented in Table 1 correspond to the test units in the tables presenting test results in today's notice.

TABLE 1—MICROWAVE OVEN TEST UNITS AND FEATURES

Product type	Test unit	Rated microwave power output (*W*)	Rated cavity volume (ft^3)
Microwave-Only, Countertop	1	700	0.7
	2	1200	2.0
	3	1000	1.5
	4	1200	1.2
	5	1200	1.5
Microwave-Only, Over-the-Range	6	1000	1.7
	7	950	1.5
	8	1000	2.0
	9	1200	2.0
	10	1100	2.0
Convection Microwave, Countertop	11	1000	1.2
	12	1100	1.5
	13	1000	1.0
	14	900	1.5
Convection Microwave, Over-the-Range	15	1050	1.7
	16	1100	1.8
	17	950	1.7
	18	950	1.7

B. Water Load Microwave-Only Testing

As discussed in section 0, DOE's previous active mode test procedure incorporated portions of IEC Standard 705. These test methods measured the amount of energy required to raise the temperature of 1 kilogram of water by 10 °C under controlled conditions. The ratio of usable output power over input power described the energy factor (EF), a measure of the cooking efficiency.[1] DOE noted that IEC is in the process of revising its current test standard for microwave ovens, IEC Standard 60705 Fourth Edition. In addition to the 10 °C temperature rise water load test from IEC Standard 705, the draft revised IEC Standard 60705 includes a new test method that continues to use water as the cooking load. The draft revised test method involves measuring the energy consumption required to heat water loads of 275 g, 350 g, and 1000 g, in 400 milliliter (ml), 900 ml, and 2000 ml borosilicate glass test containers, respectively, by 45–50 °C and 50–55 °C. The results from the two different temperature rise tests are used to linearly interpolate the energy consumption required to heat each load by 50 °C. The cooking cycle energy consumption for each water load size is then weighted based on consumer usage to calculate the weighted per-cycle cooking energy consumption. In addition to the cooking cycle energy consumption, the low power energy consumption while the microwave is cooling down after the completion of the cooking cycle is also measured for a 15-minute period. This energy consumption is then added to the cooking energy consumption to calculate an overall weighted per-cycle energy consumption. DOE recognizes that these draft revised IEC Standard 60705 testing methods may be subject to changes during the IEC review process, however DOE decided to consider this latest available draft revised test method for potential amendments to the DOE test procedure. Table 2 presents the key differences between IEC Standard 705 and the draft revised IEC Standard 60705.

[1] The previous DOE microwave oven test procedure also provided for the calculation of several other measures of energy consumption, including cooking efficiency and annual energy consumption.

TABLE 2—KEY DIFFERENCES BETWEEN IEC STANDARD 705 AND DRAFT REVISED IEC STANDARD 60705

Test condition	IEC standard 705	Draft revised IEC standard 60705
Test Load Type	Water	Water.
Test Load Size	1000 g	275 g, 375 g, 1000 g.
Test Container Size	2000 ml	400 ml, 900 ml, 2000 ml.
Temperature Requirements	Ambient Temp., $T_0 = 20 \pm 2$ °C	Ambient Temp., $T_0 = 23 \pm 2$ °C.
	Starting Water Temp., $T_1 = T_0 - (10 \pm 1$ °C)	Starting Water Temp., $T_1 = 10 \pm 0.5$ °C.
	Final Water Temp., $T_2 = T_0 \pm 1$ °C	Final Water Temp., $T_2 = 55$–60 °C; 60–65 °C
Test Load Preparation	Prior to the test, water load and test container are not allowed to equilibrate.	Prior to the test, water load and test container are allowed to equilibrate.
Time Limit to Measure Final Temperature.	60 seconds	20 seconds.
Measurement Equipment Accuracy.	Mass ± 1 g	Mass ± 1 g.
	Watt-hour ± 1.5 percent	Watt-hour ± 1.0 percent.
	Temperature ± 0.25 °C over the range of 7–23 °C for all temperature measurements. Also specifies linearity of better than 1 percent.	Ambient temperature ± 1 Kelvin (K). Water temperature ± 1.5 K.
	Time ± 0.25 seconds	Time ± 1 seconds.
Number of Repeat Tests	Test is carried out three times unless the power output value resulting from second measurement is within 1.5 percent of the value obtained from the first measurement.	No additional repeat tests specified.
Cooling Down Energy Use Measured?	No	Yes.

For over-the-range microwave ovens, DOE reviewed installation instructions for products available on the market. All products equipped with a venting fan offer two installation conditions for the venting fan: (1) Exhaust air to the outside and (2) recirculating air back into the room. DOE noted that for the majority of products, the default installation configuration for the venting fan was for air recirculation. As a result, DOE conducted testing with the venting fan installed in the air recirculation configuration and did not conduct testing using the exhaust configuration with additional requirements for venting.

DOE selected 15 microwave ovens in its test sample and conducted testing according to the draft revised IEC Standard 60705 to evaluate the repeatability of test results and the suitability for incorporating such methods into the DOE microwave oven test procedure.[2] For each test unit, DOE conducted two to three identical repeat tests. Table 3 through Table 5 present the cooking cycle energy consumption test results for each water load size. DOE noted that for the 275 g and 350 g water load sizes, the test-to-test variation expressed in terms of standard error ranged from roughly 0.1 percent to 2.5 percent, with averages of approximately 1.1 percent. For the 1000 g water load size, the test-to-test variation ranged from approximately 0.1 percent to 0.8 percent, with an average of 0.44 percent.

TABLE 3—DRAFT REVISED IEC STANDARD 60705 275 G WATER LOAD TEST RESULTS

Product type	Test unit	Cooking cycle energy use (*Wh*)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Microwave-Only, Countertop	1	34.27	34.28	34.47	34.34	0.34
	2	36.13	36.76	36.58	36.49	0.88
	3	37.97	36.95	.....	37.46	1.93
	4	33.03	32.05	.....	32.54	2.12
	5	34.52	35.66	.....	35.09	2.31
Microwave-Only, Over-the-Range	6	35.27	34.92	.....	35.09	0.71
	7	35.18	36.00	.....	35.59	1.63
	9	40.14	39.19	.....	39.67	1.70
	10	33.96	34.63	34.54	34.38	1.05
Convection Microwave, Countertop	11	46.53	46.69	.....	46.61	0.25
	12	45.50	46.14	45.94	45.86	0.70
	13	41.75	41.47	.....	41.61	0.48
Convection Microwave, Over-the-Range	15	36.07	36.15	.....	36.11	0.17
	16	38.29	37.41	38.86	38.18	1.91
	17	40.83	40.80	40.83	40.82	0.05
Average	.....	.....	.....	.....	37.99	1.08

[2] Although the draft revised IEC Standard 60705 specifies that the accuracy of ambient temperature and water temperature measurements to be ± 1 K and ± 1.5 K, respectively, testing conducted by DOE used thermocouples for temperature measurements with an accuracy of ± 0.2 °C, which meets the requirements of IEC Standard 705.

TABLE 4—DRAFT REVISED IEC STANDARD 60705 350 G WATER LOAD TEST RESULTS

Product type	Test unit	Cooking cycle energy use (*Wh*)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Microwave-Only, Countertop	1	39.50	39.50	39.43	39.48	0.10
	2	42.81	42.87	41.26	42.31	2.16
	3	44.46	42.86	.....	43.66	2.59
	4	39.65	39.29	.....	39.47	0.65
	5	39.11	39.17	.....	39.14	0.11
Microwave-Only, Over-the-Range	6	43.35	43.63	.....	43.49	0.46
	7	42.74	43.76	.....	43.25	1.68
	9	43.96	44.35	.....	44.15	0.62
	10	40.25	39.64	40.60	40.16	1.20
Convection Microwave, Countertop	11	55.05	54.31	.....	54.68	0.95
	12	53.85	52.36	53.07	53.10	1.41
	13	47.43	47.64	.....	47.54	0.31
Convection Microwave, Over-the-Range	15	42.71	42.91	.....	42.81	0.32
	16	45.21	43.89	45.19	44.77	1.69
	17	47.59	46.28	47.63	47.17	1.62
Average	.....	.....	.....	.....	44.34	1.06

TABLE 5—DRAFT REVISED IEC STANDARD 60705 1000 G WATER LOAD TEST RESULTS

Product type	Test unit	Cooking cycle energy use (*Wh*)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Microwave-Only, Countertop	1	116.06	115.08	115.42	115.52	0.43
	2	106.02	105.48	105.38	105.63	0.33
	3	107.59	108.72	.....	108.16	0.74
	4	104.93	104.8	.....	104.86	0.09
	5	106.54	106.18	.....	106.36	0.24
Microwave-Only, Over-the-Range	6	115.69	116.74	.....	116.22	0.64
	7	113.91	114.53	.....	114.22	0.38
	9	117.14	117.80	.....	117.47	0.40
	10	107.44	107.85	107.04	107.44	0.38
Convection Microwave, Countertop	11	128.77	127.35	.....	128.06	0.78
	12	131.95	130.17	130.5	130.87	0.72
	13	114.97	115.11	.....	115.04	0.09
Convection Microwave, Over-the-Range	15	112.54	111.69	.....	112.12	0.54
	16	120.83	120.18	119.56	120.19	0.53
	17	121.71	120.95	121.2	121.29	0.32
Average	.....	.....	.....	.....	114.90	0.44

Table 6 presents the calculated overall weighted average cooking cycle energy consumption results for each test unit. The following weighting factors provided in the draft revised IEC Standard 60705 are applied to the measured energy use for each test load size to calculate the weighted energy consumption: 1000 g = 2/11; 350 g = 6/11; 275 g = 3/11. DOE noted that values for the overall weighted average cooking cycle energy consumption ranged from approximately 50.4 Watt-hours (Wh) to 66.5 Wh (a 32.2 percent difference). DOE compared the range of values from testing according to the draft revised IEC Standard 60705 to the testing conducted for the most recent energy conservation standards rulemaking for microwave ovens. For that testing, DOE conducted testing on 32 microwave ovens and AHAM conducted tests on 21 separate microwave ovens according to the previous DOE microwave oven test procedure that was based on IEC Standard 705, with the results expressed in EF (i.e., the ratio of usable output power over input power). The DOE test units for the most recent energy conservation standards rulemaking testing are different from the test units tested for today's notice listed in Table 1. The results from this testing, presented in Table 7, showed a much smaller range in the efficiency metric, with EF values ranging from 54.8 percent to 61.8 percent (12.8 percent difference). Based on these results, DOE believes that the draft revised IEC Standard 60705 may provide the opportunity to better differentiate products available on the market based on efficiency and their associated design options for the purposes of energy conservation standards rulemakings.

TABLE 6—DRAFT REVISED IEC STANDARD 60705 OVERALL WEIGHTED ENERGY CONSUMPTION TEST RESULTS

Product type	Test unit	Overall weighted energy use (*Wh*)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Microwave-Only, Countertop	1	51.99	51.82	51.90	51.90	0.17
	2	53.27	53.37	51.60	52.75	0.98
	3	54.41	53.46	.....	53.93	1.25
	4	50.60	50.11	.....	50.35	0.68
	5	50.51	50.79	.....	50.65	0.39
Microwave-Only, Over-the-Range	6	55.11	55.36	.....	55.23	0.32
	7	54.04	54.93	.....	54.48	1.16
	9	57.31	57.38	.....	57.34	0.09
	10	51.50	51.44	51.79	51.57	0.36
Convection Microwave, Countertop	11	66.85	66.24	.....	66.54	0.65
	12	66.72	65.75	66.14	66.20	0.74
	13	58.47	58.54	.....	58.51	0.08
Convection Microwave, Over-the-Range	15	54.58	54.55	.....	54.57	0.03
	16	58.15	57.07	58.06	57.76	1.04
	17	59.89	59.03	59.82	59.58	0.80
Average	.....	.....	.....	.....	56.11	0.58

TABLE 7—DOE AND AHAM IEC STANDARD 705 TESTING RESULTS

DOE Testing		AHAM Testing	
Test unit [1]	EF (%)	Test unit [1]	EF (%)
1	57.5	33	57.6
2	58.0	34	61.1
3	55.9	35	58.9
4	59.6	36	57.4
5	59.5	37	60.7
6	58.4	38	61.8
7	57.6	39	55.2
8	57.3	40	59.1
9	60.2	41	57.2
10	56.9	42	57.8
11	59.4	43	58.7
12	59.2	44	61.4
13	59.0	45	56.4
14	60.8	46	61.4
15	58.9	47	57.3
16	60.6	48	55.7
17	57.2	49	54.8
18	59.2	50	55.8
19	58.2	51	59.1
20	60.4	52	56.8
21	61.2	53	58.1
22	56.9	.....	.....
23	59.4	.....	.....
24	58.7	.....	.....
25	61.3	.....	.....
26	58.0	.....	.....
27	61.5	.....	.....
28	60.4	.....	.....
29	59.7	.....	.....
30	57.6	.....	.....

TABLE 7—DOE AND AHAM IEC STANDARD 705 TESTING RESULTS—Continued

DOE Testing		AHAM Testing	
Test unit [1]	EF (%)	Test unit [1]	EF (%)
31	58.5	.....	.....
32	58.0	.....	.....

Minimum Efficiency = 54.8%
Maximum Efficiency = 61.8%

[1] Test units listed in this table are different models than the models from DOE's latest testing.

DOE also noted that CENELEC conducted a round-robin testing program to evaluate the repeatability and reproducibility of the draft revised IEC Standard 60705. A total of 5 manufacturer test labs and 5 independent test labs in Europe conducted testing according to the draft revised IEC Standard 60705 on 4 microwave oven models. In terms of repeatability of the measured weighted cooking cycle energy consumption, the results showed that the test-to-test variation expressed as standard error within each laboratory was on average 0.56 percent. The lab-to-lab reproducibility of the measured weighted cooking cycle energy consumption showed a variation of 2.30 percent on average. CENELEC determined these to be acceptable levels of repeatability and reproducibility.

DOE also conducted testing to evaluate the testing methodology for measuring the low power energy consumption of the cooling down period. The draft revised IEC Standard 60705 requires that the cooking cycle test be run to achieve a 50 °C temperature rise. When the cooking cycle has finished, the load is removed from the microwave oven and the door is closed, at which point the cooling down energy consumption is measured for a period of 15 minutes. This test is conducted for each of the three test load sizes, and the weighted cooling down energy consumption is calculated using the same weighting factors used for the cooking cycle weighted energy consumption. The weighted cooling down energy consumption is then added to the weighted cooking cycle energy consumption to calculate the overall weighted energy consumption. For the 1000 g load size, DOE conducted two identical repeat tests. For the 275 g and 350 g load sizes, DOE conducted one test each. The results of this testing are presented below in Table 8.

TABLE 8—DRAFT REVISED IEC STANDARD 60705 COOLING DOWN ENERGY CONSUMPTION TEST RESULTS

Product type	Test unit	Cooling down energy use (*Wh*)			
		1000 g Test 1	1000 g Test 2	350 g Test	275 g Test
Microwave-Only, Countertop	1	0.00	0.00	0.00	0.00
	2	0.81	0.80	0.79	0.78
	3	0.23	.....	0.23	0.25
	4	0.88	0.89	0.88	0.88
	5	0.39	0.39	0.40	0.39

TABLE 8—DRAFT REVISED IEC STANDARD 60705 COOLING DOWN ENERGY CONSUMPTION TEST RESULTS—Continued

Product type	Test unit	Cooling down energy use (*Wh*)			
		1000 g Test 1	1000 g Test 2	350 g Test	275 g Test
Microwave-Only, Over-the-Range	6	0.80	.....	0.81	0.81
	7	0.41	0.41	0.43	0.41
	9	1.09	1.10	1.08	1.09
	10	0.72	0.78	0.77	0.72
Convection Microwave, Countertop	11	0.72	0.72	0.73	0.73
	12	0.92	0.89	0.89	1.07
	13	0.31	0.32	0.32	0.31
Convection Microwave, Over-the-Range	15	0.99	0.99	0.97	1.00
	16	1.08	1.07	1.07	1.07
	17	0.69	0.67	0.67	0.66

DOE observed minimal variation in the measured cooling down energy consumption from test to test and also between the different load sizes. DOE noted that for all of the units in its test sample, none contained a fan that operated at the end of the microwave-only cooking cycle to cool the appliance down. DOE also noted that when the door was closed after the load was removed at the end of the cooking cycle, the microwave ovens reverted back to the standby mode. Table 9 presents the average measured power for the cooling down mode as compared to the average measured standby mode power for each test unit.

TABLE 9—DRAFT REVISED IEC STANDARD 60705 COOLING DOWN MODE POWER

Product type	Test unit	Average cooling down power (*W*)			Average standby power (*W*)
		1000 g Tests	350 g Test	275 g Test	
Microwave-Only, Countertop	1	0.00	0.00	0.00	[1] 0.00
	2	3.24	3.15	3.10	3.18
	3	0.90	0.92	1.00	1.06
	4	3.55	3.54	3.54	3.52
	5	1.56	1.59	1.55	1.63
Microwave-Only, Over-the-Range	6	3.23	3.25	3.25	3.24
	7	1.64	1.72	1.64	1.71
	9	4.41	4.40	4.38	4.29
	10	3.00	3.11	2.90	3.16
Convection Microwave, Countertop	11	2.88	2.91	2.91	2.93
	12	3.66	3.58	4.29	3.54
	13	1.26	1.26	1.27	1.19
Convection Microwave, Over-the-Range	15	3.98	3.90	3.99	3.98
	16	4.29	4.30	4.29	4.32
	17	2.72	2.69	2.66	2.73

[1] Test unit 1 had electromechanical controls and operated in off mode, consuming 0 W. This unit was not capable of operating in standby mode.

The repeatability and reproducibility of the cooling down energy consumption measurement method from the draft revised IEC Standard 60705 was also evaluated as part of the CENELEC round-robin testing program. In terms of repeatability of the measured weighted cooling down energy consumption, the results showed that the test-to-test variation expressed as standard error within each laboratory was on average 0.24 percent. The lab-to-lab reproducibility of the measured weighted cooling down energy consumption showed a variation of 6.14 percent on average. CENELEC determined these to be acceptable levels of repeatability and reproducibility.

DOE may consider incorporating the draft revised IEC Standard 60705 test method into the DOE microwave oven test procedure for measuring the energy consumption of the microwave-only cooking function. As a result DOE is seeking comment on the following issues:

1. DOE seeks comment on the suitability of the testing methodologies provided in the draft revised IEC Standard 60705 for incorporation into the DOE microwave oven test procedure. In particular, DOE requests comment on the repeatability and reproducibility of the test results from both DOE and CENELEC testing. DOE also welcomes comment on whether the test procedure should require multiple test runs with the results averaged.

2. DOE requests comment on the accuracy requirements for measuring equipment specified in the draft revised IEC Standard 60705. In particular, DOE requests comment on the less stringent requirements for the accuracy of the temperature measurements as compared to IEC Standard 705.

3. DOE welcomes comment on the testing burden associated with testing according to the draft revised IEC Standard 60705. When providing comments, please quantify and describe the associated testing burdens.

4. DOE requests consumer usage data on the number of annual active mode cooking cycles and annual hours spent in active mode for microwave-only ovens.

5. DOE welcomes comment on the determination to conduct testing for over-the-range microwave ovens with

the airflow exhaust/recirculation fan installed in the default air recirculation configuration. DOE welcomes comment on whether there are any other installation conditions for over-the-range or built-in microwave ovens that it should consider for the DOE microwave oven test procedure.

C. Reheat Food Simulation Mixture Testing

DOE notes that water may not be representative of actual food loads cooked by consumers in microwave ovens. As a result, DOE conducted testing on 7 microwave ovens using the microwave-only cooking function to evaluate mixtures that would simulate food load that may be reheated in a microwave. The mixtures were composed of water and basic food ingredients (*i.e.,* fats, sugars, salt, fiber, proteins, etc.) with a total combined mass of 350 g. DOE selected the 350 g load size (using the 900 ml borosilicate glass container) based on the draft revised IEC Standard 60705 weighting factors for the load size with the highest frequency of use. DOE also conducted testing on an actual food load, chicken noodle soup, to serve as a comparison to the food simulations. The mixtures and food load were tested using the same basic testing methodology as the draft revised IEC Standard 60705 (*i.e.,* microwave-only cooking function, temperature rise from 10 °C to 60 °C). The measured cooking cycle energy consumption was then used to calculate the energy consumption required to heat one gram of the mixture by one degree Celsius, an effective heat capacity. For each test unit, three identical tests were conducted for each mixture to evaluate the repeatability of such a testing procedure.

The results from this testing, presented in Table 10 and Table 11, show a higher range and average test-to-test variation, expressed as a standard error, compared to the water-only load and compared to the results using the draft revised IEC Standard 60705 test method presented in 0.0. DOE also noted that the same brands were used for each ingredient in the mixtures. Therefore, additional variation in test results may be observed from lab to lab due to the use of different brands of the ingredients.

TABLE 10—FOOD SIMULATION MIXTURE TEST RESULTS—PART 1

Test unit	Water		Water + fat		Water + glucose		Water + fat + glucose	
	Average heat capacity (*J/g·°C*)	Test-to-test variation (%)	Average heat capacity (*J/g·°C*)	Test-to-test variation (%)	Average heat capacity (*J/g·°C*)	Test-to-test variation (%)	Average heat capacity (*J/g·°C*)	Test-to-test variation (%)
1	8.570	0.39	8.284	3.57	7.514	1.50	7.672	1.54
2	8.635	0.99	8.759	7.20	7.259	1.85	7.416	5.95
8	*	*	8.952	1.67	8.332	1.06	8.241	4.04
9	8.363	0.64	8.561	2.39	7.559	2.61	7.293	2.16
11	11.419	1.42	10.941	0.87	10.203	1.65	9.704	3.00
15	9.356	0.68	8.922	0.11	8.152	0.49	8.028	2.55
16	9.833	0.27	9.774	0.41	8.769	1.55	8.790	2.35
Average	9.363	0.73	9.170	2.32	8.255	1.53	8.163	3.08

* Not tested.

TABLE 11—FOOD SIMULATION MIXTURE TEST RESULTS—PART 2

Test unit	Pizza simulation		Chicken noodle soup simulation		Chicken noodle soup	
	Average heat capacity (*J/g·°C*)	Test-to-test variation (%)	Average heat capacity (*J/g·°C*)	Test-to-test variation (%)	Average heat capacity (*J/g·°C*)	Test-to-test variation (%)
1	6.975	2.42	8.618	1.09	8.941	2.01
2	6.486	1.24	8.811	3.77	9.210	1.26
8	7.715	1.93	8.952	0.69	9.754	2.67
9	6.453	0.61	8.406	0.73	8.995	3.29
11	9.036	0.90	11.108	0.81	11.662	1.39
15	7.164	1.28	8.909	0.56	9.236	1.04
16	7.715	1.15	9.624	0.88	10.012	1.43
Average	7.363	1.36	9.204	1.22	9.687	1.87

6. DOE welcomes comment on suitability of using food simulation mixtures for the microwave oven test procedure for microwave-only cooking. In particular, DOE requests comment on the repeatability and reproducibility of the food simulation mixture tests results presented in Table 10 and Table 11.

D. Convection Microwave Cooking Testing

As discussed above in section 0, according to Whirlpool, convection microwave ovens (*i.e.,* microwave ovens that incorporate convection features and any other means of cooking in a single compartment) represent less than 4 percent of U.S. shipments. Based on shipments data from *Appliance Magazine* showing 11.340 million microwave oven shipments in 2008,[3] convection microwave ovens represent approximately 450,000 annual shipments.

[3] ''U.S. Appliance Industry: Market Share, Life Expectancy & Replacement Market, and Saturation Levels.'' *Appliance Market Research Report, Appliance Magazine,* January 2010.

DOE's review of product literature indicated that convection microwave ovens can be operated using the microwave-only cooking function, convection-only cooking function, and convection microwave cooking function. DOE also noted based on a review of the cooking manuals and recipe books supplied with convection microwave ovens that a significant portion of the recipes included cooking procedures that used the convection microwave cooking function. As a result, DOE first investigated whether testing procedures could be developed to evaluate the convection microwave cooking function of convection microwave ovens. As discussed in section 0, AHAM and Whirlpool both noted a number of concerns with the repeatability and reproducibility of test results using actual food loads. DOE therefore decided to conduct limited testing to evaluate the repeatability of real food loads when heated using the convection microwave cooking function. DOE tested three different food loads: shortening, potatoes, and chicken. For each food load, the same brand of products was used for all tests to specifically evaluate repeatability of test results. DOE then conducted testing to assess food simulation cooking loads to determine whether such loads are representative of actual food loads and improve the repeatability of test results.

As part of this testing DOE noted that for the majority of microwave ovens in its test sample, the default program setting for convection microwave cooking allowed the user to set the overall cooking time and cycled between microwave-only cooking and convection-only cooking, where microwave-only cooking accounted for 30 percent of the cooking time and convection-only cooking accounted for the remaining 70 percent of total cooking time. DOE used this default convection microwave cooking program setting that used 30 percent microwave-only cooking and 70 percent convection-only cooking for testing. DOE also noted that for the majority of the convection microwave ovens in its test sample, the user is required to program the temperature setting for the convection portion of the convection microwave cooking cycle. Based on a review of the cooking manuals and recipe books supplied with convection microwave ovens, DOE noted that a majority of the recipes that used convection microwave cooking specified convection temperature settings between 300 degrees Fahrenheit (°F) and 375 °F. DOE also noted that its current test procedure for conventional ovens found in 10 Code of Federal Regulations (CFR) part 430, subpart B, appendix I specifies a convection temperature setting 325 ± 5 °F higher than the room ambient air temperature, which would result in a temperature setting close to 400 °F. However, based on DOE's survey of convection microwave ovens available on the market, not all products are equipped with a 400 °F temperature setting, but all convection microwave ovens DOE surveyed had a 375 °F setting. As a result, DOE selected a convection temperature setting of 375 °F for the convection microwave cooking function for its testing of convection microwave ovens.

For convection microwave cooking testing, DOE noted that the temperatures of the test loads had to be measured before and after the cooking cycle, as is done for IEC Standard 60705, due to safety concerns with arcing inside the microwave oven cavity from the metal thermocouples and the microwave energy. The following sections discuss these testing investigations to evaluate the convection microwave cooking function.

Food Load Testing

For shortening, DOE conducted limited testing on two convection microwave oven models. For each test, DOE prepared a 350 g load of shortening in the 900 ml borosilicate glass container with a starting load temperature of 10 ± 1 °C. DOE used three thermocouples to measure the average temperature of the load, with one thermocouple placed in the center of the load, and the other two placed approximately one inch from the edge of the container on either side. All of the thermocouples were placed at an equal distance from the top and bottom of the load. The shortening load was then heated using the default convection microwave cooking function to achieve a target average final temperature of 60 ± 5 °C. As for the reheat food simulation mixture testing, the measured cooking cycle energy consumption was then used to calculate the effective heat capacity. For each test unit, DOE conducted three identical tests to evaluate repeatability. DOE also conducted an additional set of testing with target average final temperatures of 70 ± 5 °C for one test unit and 80 ± 5 °C for the other test unit. DOE was unable to establish a target final average temperature range tighter than ± 5 °C due to the test-to-test variation in the final average temperature of the test load even when using the same cooking time. DOE noted that using tighter ranges such as ± 2 °C or ± 1 °C for this food load would require a significant number of retests to achieve the specified final average temperatures.

The test results for the shortening tests are presented below in Table 12. For the tests using an average final temperature of 60 ± 5 °C, the test-to-test variation ranged from 5.18 percent to 7.42 percent. DOE observed that the shortening, which was all solid at the starting temperature of 10 ± 1 °C, was only partly liquefied at the final temperature of approximately 60 °C, with the middle still being partly solid, and the outer portion being liquid. Unlike the tests using an average final temperature of 60 °C, DOE observed that the shortening was all liquid at the end of the cooking cycle for the 70 °C and 80 °C average final temperature tests. However, the test results for these tests continued to show significant test-to-test variation.

For all shortening tests, DOE noted that when it measured the final temperature of the load after the completion of the cooking cycle, the temperature continued to rise for 30–90 seconds before finally leveling off. DOE believes that this may be attributable to continued heat transfer from the hotter outer edges of the test container and/or food load after the completion of the cycle. DOE waited until the temperature leveled off and used that measurement for the calculation of the effective heat capacity. DOE recognizes that this may contribute to additional test-to-test variation depending on the time needed for the temperature of the load to stabilize for each test. DOE also noted that it had to conduct a number of additional retests in cases where the final temperature was not within the specified range. DOE recognizes that specifying a tighter final temperature range than ± 5 °C may represent a testing burden due to the difficulties of achieving a consistent final load temperature from test to test.

TABLE 12—FOOD LOAD TEST RESULTS: SHORTENING

Product type	Test unit	Target final avg. temp range of load (°C)	Test 1		Test 2		Test 3		Test-to-test variation (%)
			Avg. heat capacity (J/g·°C)	Avg. final temp (°C)	Avg. heat capacity (J/g·°C)	Avg. final temp (°C)	Avg. heat capacity (J/g·°C)	Avg. final temp (°C)	
Combination, Countertop	14	60 ± 5	44.290	57.3	39.977	58.3	42.843	56.1	5.18
		80 ± 5	33.115	83.7	35.924	79.1	31.932	75.9	6.09
Combination, Over-the-Range	17	60 ± 5	30.413	60.1	26.471	56.8	27.282	64.6	7.42
		70 ± 5	25.688	69.1	25.081	68.0	26.199	67.5	2.18

DOE next conducted testing to evaluate the repeatability of Russet Burbank potatoes as a test food load using the convection microwave cooking function. DOE selected potatoes as a test load based on a review of commonly found foods contained in the cooking manuals and recipe books supplied with convection microwave ovens. Based on discussions with a food scientist specializing in potato production and storage management as well as potato seed quality and performance, DOE specifically selected Russet Burbank potatoes based on their consistent water content. In addition, Russet potatoes were identified to be the most likely to be available year round and are grown with standardized approaches. For each test DOE selected 3 potatoes with similar weights, with no greater than an 80 g difference between the largest and smallest potato for a batch of 3 potatoes. The potatoes were then placed in an equidistant triangle pattern directly on the turntable dish at approximately 7 centimeters from the center of the dish. DOE noted that it was unable to keep a tight tolerance on the total combined mass due to the variability in size and shape of the potatoes. The temperature of each potato was measured using single thermocouples placed approximately at the center of each potato. The potato loads were heated from 10 ± 1 °C to about 60 ± 5 °C using the convection microwave cooking function. DOE selected the target final temperature of 60 °C based on a review of the cooking instructions for potatoes found in the cooking manuals and recipe books. As was done for the shortening tests, the measured cooking cycle energy consumption was then used to calculate the effective heat capacity. For each test unit, DOE conducted three identical tests to evaluate repeatability. DOE noted that Russet Burbank potatoes are grown in multiple geographical regions in North America, the majority of which are grown in Idaho and Canada. DOE decided to conduct testing to determine whether Russet Burbank potatoes grown in certain regions produce more repeatable test results. As a result, DOE tested batches of potatoes from the two areas where the majority of Russet Burbank potatoes are grown, Idaho and Canada.

The Russet Burbank potato testing results are presented below in Table 13 and Table 14. The results showed test-to-test variation for the calculated effective heat capacity ranging from 2.89 percent to 8.50 percent for both types of Russet Burbank potatoes. DOE noted that, in addition to the varying masses of each of the three test potatoes, the varying shape of each potato may also affect the time required to heat the center of each potato to the target final temperature. DOE also noted that it was difficult to achieve a consistent final average temperature from test to test due to the different masses and shapes of the potatoes. DOE observed, similar to the tests for shortening, that when it measured the final temperature of the load after the completion of the cooking cycle, the temperature continued to rise for 80–160 seconds in some cases before finally leveling off. DOE waited until the temperature leveled off and used that measurement for the calculation of the effective heat capacity. DOE recognizes that this may contribute to additional test-to-test variation depending on the time needed for the temperature of the load to stabilize for each test. As with the shortening tests, DOE noted that it had to conduct a number of additional retests in cases in which the final temperature was not within the specified range. DOE similarly recognizes that specifying a tighter final temperature range than ± 5 °C for potatoes may represent a testing burden due to the difficulties of achieving a consistent final load temperature from test to test.

DOE recognizes that in addition to issues with test-to-test repeatability, the lab-to-lab reproducibility will also be difficult to maintain if the potatoes are grown under different conditions, including climate and growing conditions (*i.e.,* soil conditions, watering frequency, harvesting time, etc.) that may vary throughout the growing seasons even within specific geographical regions.

TABLE 13—FOOD LOAD TEST RESULTS: IDAHO RUSSET POTATO

Product type	Test unit	Average heat capacity (J/g·°C)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Convection Microwave, Countertop	12	29.541	32.359	31.366	31.089	4.60
	14	33.972	39.277	39.732	37.660	8.50
Average	.....	.....	.....	.....	34.375	6.55

TABLE 14—FOOD LOAD TEST RESULTS: CANADIAN RUSSET POTATO

Product type	Test unit	Average heat capacity (*J/g·°C*)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Convection Microwave, Countertop	13	20.230	22.081	19.741	20.684	5.97
Convection Microwave, Over-the-Range	17	29.145	29.722	30.845	29.904	2.89
	18	29.155	27.766	27.300	28.074	3.44
Average	.....	.....	.....	.....	26.220	4.10

DOE also conducted testing with USDA grade A boneless chicken breasts using the same basic procedure described for the testing with potatoes, but with the different starting and final test load temperatures. DOE noted that chicken is generally stored frozen, and then allowed to thaw before cooking. To determine an appropriate starting temperature, DOE used the programmed defrost cycle settings for chicken on a microwave oven in its test sample and measured the temperature of the chicken breasts after the defrost cycle. The temperature of the thawed chicken after the defrost cycle ranged between 2 to 5 °C. However, at 2 °C, DOE noted that the chicken breast still had some localized frozen sections not found at 5 °C. Therefore, DOE used a starting temperature of 5 ± 1 °C. A target final temperature of 90 ± 5 °C was used based on review of cooking instructions for chicken found in cooking manuals and recipe books supplied with convection microwave ovens. For this testing, DOE selected 3 chicken breasts for each test with similar weights with no greater than a 170 g difference between the largest and smallest chicken breast. For each test unit, DOE conducted up to four identical tests to evaluate repeatability.

The results from testing, presented below in Table 15, showed test-to-test variation for the calculated effective heat capacity ranging from 1.09 percent to 12.57 percent, with an average of 7.20 percent. DOE noted that this variability may be due to the varying masses and shapes of each chicken breast. DOE also observed, similar to the tests for shortening and potatoes, that when it measured the final temperature of the load after the completion of the cooking cycle, the temperature continued to rise for 60–150 seconds in some cases before finally leveling off. DOE waited until the temperature leveled off and used that measurement for the calculation of the effective heat capacity. DOE recognizes that this may contribute to additional test-to-test variation depending on the time needed for the temperature of the load to stabilize for each test. As with the other food load tests, DOE noted that it had to conduct a number of additional retests in cases in which the final temperature was not within the specified range. DOE similarly recognizes that specifying a tighter final temperature range than ± 5 °C for chicken may represent a testing burden due to the difficulties of achieving a consistent final load temperature from test to test.

DOE recognizes that the following factors may contribute to variation from chicken to chicken, and thus test to test, as well as contribute to variation in reproducibility for chicken breasts from different suppliers:

- Individual chicken's diet;
- Individual chicken's physical activity;
- Genetics; and
- Methods of breeding and raising chickens from farm to farm

TABLE 15—FOOD LOAD TEST RESULTS: USDA GRADE A BONELESS CHICKEN BREAST

Product type	Test unit	Range of total masses (*g*)	Average heat capacity (*J/g·°C*)					Test-to-test variation—standard error (%)
			Test 1	Test 2	Test 3	Test 4	Average	
Convection Microwave, Countertop	12	700–781	37.449	37.533	36.867	(1)	37.283	0.97
	14	687–804	34.674	32.619	35.469		34.254	4.29
Convection Microwave, Over-the-Range	17	708–794	32.751	44.727	39.019	39.373	38.967	12.57
Average	.....	.....	.....	.....	.....	.....	36.835	5.95

[1] For test units 12 and 14, DOE conducted only 3 repeat tests.

7. DOE requests comment on the suitability of real food loads for incorporation into the DOE microwave oven test procedure for testing convection microwave ovens. DOE also welcomes comments specifically on the test methodologies (*i.e.,* load temperature measurement methods, starting and final temperatures, mass of test load) described in this section and the repeatability of test results using shortening, Russet Burbank potatoes, and USDA grade A boneless chicken breasts as well as the reproducibility of such food loads.

Food Load Simulation Testing

As part of the convection microwave cooking testing, DOE also evaluated loads that would simulate actual foods. As discussed in the October 2011 RFI, DOE noted that one consumer product review organization in the UK uses the solidifying powder TX–151, which when combined with water creates a gel, to simulate a food load (in their case lasagna).[4] DOE decided to conduct testing using the TX–151 solidifying powder to evaluate the repeatability of test results using the convection microwave cooking function. DOE prepared three different water-solidifying powder mixtures using ratios recommended by the manufacturer of TX–151 to create medium, medium-hard, and hard firmness gels, using ratios of powder to water of 1:10, 1:7,

[4] For more information, visit *http://www.which.co.uk/home-and-garden/kitchen/guides/how-we-test-microwaves/.*

and 1:5, respectively. DOE noted that when mixing each powder-to-water ratio, the temperature of the water and mixing speed/time directly influenced the mixture's homogeneity. As a result, DOE determined, based on experimentation, the water temperatures and mixing speeds/times for each powder-to-water ratio that produced the most homogenous mixtures. DOE also covered the mixtures and allowed them to set for two different lengths of time (2 hours and 6 hours) and at two different temperatures (20–25 °C and 7–10 °C) to evaluate whether setting time and temperature affected the consistency of the gel. DOE observed that the allowing the gels to set for 6 hours did not noticeably change the hardness or consistency as compared to the gels that were allowed to set for 2 hours. In addition, DOE observed in most cases a 0.1 g to 0.3 g loss in water prior to the cooking cycle for both the 2 hour and 6 hour setting times due to evaporation, and that the water loss was not noticeably higher for the 6 hour setting time. DOE noted that this was likely because the mixtures were covered while being allowed to set. Based on these observations, DOE selected the 2 hour setting time for testing. In addition, DOE noted that the two different setting temperatures did not result in a noticeably different hardness or consistency after a given setting time. As a result, DOE selected the 7–10 °C setting temperature so that the temperature of the test load at the start of the test cycle would be more representative of food load temperatures at the start of cooking.

DOE tested each convection microwave oven in its test sample using each of the three power-to-water ratio gels (*i.e.,* 1:10, 1:7, and 1:5) prepared as described above. For each test, DOE prepared 350 g of the gel mixtures in the 900 ml borosilicate glass containers. Similar to the method discussed above for shortening, DOE used three thermocouples to measure the temperature of the load, with one thermocouple placed in the center of the load, and the other two placed approximately one inch from the edge of the container on either side, and each thermocouple placed at an equal distance from the top and bottom of the load. The test loads were heated from 10 ± 1 °C until the center temperature was 60 ± 5 °C using the convection microwave cooking function. DOE chose to use a target final temperature for the center thermocouple probe because it noted that the temperatures of two outer thermocouple probes were much more variable and difficult to repeat. In addition, the temperature at the center of the food load is generally used to determine whether food is cooked completely. DOE noted that the target final temperature of 60 ± 5 °C resulted in an overall average final temperature of approximately 70 ± 5 °C for all three thermocouple probes in most cases.

The results from this testing are presented below in Table 16 through Table 18. For the 1:10 powder-to-water ratio gel, the test-to-test variation ranged from 1.89 percent to 5.89 percent, with an average of 4.02 percent. For the 1:7 and 1:5 powder-to-water ratio gel tests the range in test-to-test variation was greater than the 1:10 powder-to-water ratio gel tests. DOE noted that this may be due to the 1:10 powder-to-water ratio gel being the most homogenous mixture. DOE also observed that the outer edge on the surface of the gel was slightly evaporated at the completion of the cooking cycle. In particular, the gels with a powder-to-water ratio of 1:10 had more evaporation on the edges than the 1:7 and 1:5 ratio gels, which was likely due to the larger amount of water making up the 1:10 ratio gels.

DOE also observed, similar to the tests for real food loads, that when it measured the final temperature of the load after the completion of the cooking cycle, the temperature continued to rise for 30–90 seconds in most cases before finally leveling off. DOE waited until the temperature leveled off and used that measurement for the calculation of the effective heat capacity. DOE recognizes that this may contribute to additional test-to-test variation depending on the time needed for the temperature of the load to stabilize for each test. As with the real food load tests, DOE also noted that it had to conduct a number of additional retests in cases in which the final temperature was not within the specified range. DOE similarly recognizes that specifying a tighter final temperature range than ± 5 °C for the TX–151 gels may represent a testing burden due to the difficulties of achieving a consistent final load temperature from test to test.

TABLE 16—TX–151 1:10 RATIO GEL TESTS

Product type	Test unit	Average heat capacity (*J/g·°C*)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Convection Microwave, Countertop	11	33.828	32.448	36.422	34.233	5.89
	12	43.748	40.932	39.665	41.448	5.04
	13	27.655	29.565	28.127	28.449	3.50
	14	54.402	51.997	53.212	53.203	2.26
Convection Microwave, Over-the-Range	15	31.301	32.376	29.910	31.196	3.96
	17	34.785	33.503	34.035	34.108	1.89
	18	49.865	45.797	44.999	46.887	5.57
Average	.....	.....	.....	.....	38.503	4.02

TABLE 17—TX–151 1:7 RATIO GEL TESTS

Product type	Test unit	Average heat capacity (*J/g·°C*)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Convection Microwave, Countertop	11	34.378	34.588	32.836	33.934	2.82
	12	44.150	43.724	42.968	43.614	1.37
	13	28.102	28.068	28.381	28.183	0.61
	14	48.668	57.097	56.416	54.060	8.66
Convection Microwave, Over-the-Range	15	34.109	27.204	33.126	31.480	11.87

TABLE 17—TX–151 1:7 RATIO GEL TESTS—Continued

Product type	Test unit	Average heat capacity (J/g·°C)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
	17	34.850	34.699	34.307	34.618	0.81
	18	44.813	43.801	44.559	44.391	1.19
Average	.....	.....	.....	.....	38.612	3.90

TABLE 18—TX–151 1:5 RATIO GEL TESTS

Product type	Test unit	Average heat capacity (J/g·°C)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Convection Microwave, Countertop	11	32.798	34.219	31.778	32.932	3.72
	12	45.869	45.375	44.995	45.413	0.97
	13	30.061	28.882	28.484	29.142	2.81
	14	55.433	59.854	48.900	54.729	10.07
Convection Microwave, Over-the-Range	15	27.940	33.899	32.653	31.497	9.98
	17	35.116	36.735	36.633	36.162	2.51
	18	54.040	46.450	47.023	49.171	8.60
Average	.....	.....	.....	.....	39.864	5.52

DOE may consider amendments to the microwave oven test procedure for measuring the convection microwave cooking function for convection microwave ovens. If DOE determines such test procedure amendments are warranted, it may consider developing an integrated metric that incorporates the convection microwave cooking function energy use along with other active mode and standby mode energy use. As a result, DOE would require consumer usage data on the number of annual convection microwave cooking cycles and annual hours spent in convection microwave cooking mode for convection microwave ovens. However, DOE is currently unaware of any such data. DOE is seeking comment on the following issues related to convection microwave cooking.

8. DOE requests comment on the suitability of the various powder-to-water ratio gels and testing methods (*i.e.,* load temperature measurement methods, starting and final temperatures, and mass of test load) described in this section for incorporation into the DOE microwave oven test procedure for testing convection microwave ovens. DOE also welcomes comments specifically on the repeatability of test results presented in this section as well as comments on the reproducibility of test measurements. In addition, DOE requests comment on the testing burden associated with these testing methods. When providing comments, please quantify and describe the associated testing burdens.

9. DOE requests comment on whether there are any other food load simulations and testing methods that it should consider for measuring the energy use of convection microwave ovens. In particular, DOE requests data and information on the repeatability of such loads and testing methods.

10. DOE requests consumer usage data on the number of annual active mode cycles and annual hours spent in microwave-only cooking mode and convection microwave cooking mode for convection microwave ovens.

E. Convection Microwave Oven Convection-Only Cooking Testing

As discussed above, DOE noted that convection microwave ovens can also be operated using the convection-only cooking function. DOE investigated whether a testing procedure could be developed to evaluate the convection-only cooking function of a convection microwave oven. DOE developed a testing method based on the DOE conventional cooking products test procedure for conventional ovens at 10 CFR part 430, subpart B, appendix I, to measure the energy consumption of the convection cooking function for convection microwave ovens. The DOE conventional oven test procedure involves setting the convection cooking cycle such that the temperature inside the oven is 325 ± 5 °F higher than the room ambient air temperature. An 8.5 ± 0.1 pound cylindrical aluminum test block is then heated from ambient room air temperature ± 4 °F until the test block temperature has increased 234 °F above its initial temperature. The temperature of the aluminum test block is measured using a single thermocouple placed at the center of the block in a 0.08 inch diameter hole 0.8 inches from the top of the block. Because this test uses only convection heating and is not subject to safety concerns with arcing from microwave energy, thermocouples can be used to measure the test load temperature inside the microwave oven cavity during the test cycle. The measured energy consumption is used to calculate the cooking efficiency and energy factor.

As discussed above, DOE noted that the convection temperature setting requirement of 325 ± 5 °F higher than the room ambient air temperature would result in a temperature setting close to 400 °F. Based on DOE's review of products currently available on the U.S. market, a number of convection microwave ovens did not have a 400 °F temperature setting, but all convection microwave ovens that DOE surveyed had a 375 °F temperature setting. As a result, DOE modified the test method to conduct this testing using a temperature control setting of 375 °F to heat the aluminum test block to 234 °F above its initial temperature. In addition, DOE also specified that the aluminum test block be placed on the metal cooking rack provided by the manufacturer. For each convection microwave oven, DOE conducted three identical tests to evaluate repeatability of results. The results from testing, presented in Table 19, showed test-to-test variation ranging

from 0.68 percent to 2.11 percent, with an average of 1.30 percent.

TABLE 19—CONVECTION-ONLY COOKING TEST RESULTS

Product type	Test unit	Cooking efficiency (%)				Test-to-test variation—standard error (%)
		Test 1	Test 2	Test 3	Average	
Convection Microwave, Countertop	11	7.37	7.24	7.07	7.23	2.11
	12	12.48	12.53	12.25	12.42	1.19
	13	8.29	8.49	8.32	8.37	1.28
	14	10.12	10.06	10.31	10.16	1.32
Convection Microwave, Over-the-Range	15	6.62	6.49	6.43	6.51	1.51
	17	11.19	11.05	11.08	11.11	0.68
	18	7.60	7.66	7.51	7.59	1.00
Average	.....	.....	.....	.....	9.06	1.30

If DOE determines that actual and simulation food loads do not produce repeatable results using the convection microwave cooking function, DOE may consider developing a test procedure using a single metric that accounts for the energy use of the different cooking functions (*i.e.,* microwave-only, convection-only, and convection microwave cooking) using the microwave-only cooking test method and the convection-only cooking test method. As discussed above, DOE noted that the convection microwave cooking cycle for microwave ovens in DOE's test sample consisted of cycling between microwave-only cooking for 30 percent of the time and convection-only cooking for the remaining 70 percent of the time. DOE may use this mix of microwave and convection cooking to apportion the energy use measured using the individual test procedures for microwave-only and convection-only cooking to calculate the per-cycle energy use for a convection microwave cooking cycle. However, DOE is not aware of consumer usage data regarding representative cooking cycle lengths, number of annual cooking cycles, or annual usage hours for each of the cooking functions for convection microwave ovens.

11. DOE requests comment on the suitability of incorporating the convection-only cooking method presented above into the DOE test procedure for convection microwave ovens. DOE also requests comment on the potential approach of using the microwave-only and convection-only cooking tests to calculate the energy use for the convection microwave cooking function. DOE seeks comment on the repeatability of the convection microwave oven convection-only cooking function test results presented in this section. DOE welcomes additional data and inputs on the repeatability and reproducibility of this convection-only cooking test method.

12. DOE requests comment on the testing burden associated with these testing methods. When providing comments, please quantify and describe the associated testing burdens.

13. DOE seeks comment on the temperature setting of 375 °F and target final temperature of 234 °F above the initial test block temperature and whether such settings would be appropriate for the DOE test procedure for convection microwave ovens.

14. DOE seeks consumer usage data on the representative cooking cycle lengths, number of annual cooking cycles, and annual usage hours for each of the cooking functions for convection microwave ovens (*i.e.,* microwave-only, convection-only, and convection microwave cooking). DOE also welcomes comment on whether a split of 30 percent microwave and 70 percent convection would be appropriate for apportioning energy use for the convection microwave cooking function.

F. Cooling Down Energy Use

As discussed above in section 0.0, DOE noted that for all of the units in its test sample, none contained a fan that operated at the end of the microwave-only cooking cycle to cool the appliance down. However, DOE noted that a number of the convection microwave ovens in its sample had a fan that operated after the completion of the convection microwave cooking cycle and convection-only cooking cycle in order to cool the microwave oven. DOE observed during testing that the cooling down power ranged from approximately 19 watts (W) to 63 W. Table 20 shows the measured cooling down energy consumption and amount of time the cooling fan ran after the completion of the convection-only cooking cycle for the convection microwave ovens in DOE's test sample that operated a cooling fan after the cooking cycle. These measurements showed that the convection microwave ovens in DOE's test sample that operated a cooling fan after the completion of the cooking cycle consumed between 1.0 Wh and 7.2 Wh. DOE also noted that the amount of time that the cooling fan operated varied from product to product, and also from test to test.

TABLE 20—CONVECTION-ONLY COOLING DOWN ENERGY USE

Product type	Test unit	Test 1		Test 2		Test 3	
		Cool down energy use (*Wh*)	Cool down duration (*min*)	Cool down energy use (*Wh*)	Cool down duration (*min*)	Cool down energy use (*Wh*)	Cool down duration (*min*)
Convection Microwave, Countertop	11	.....	.....	.....	.....	.....	.....
	12	1.2	3.22	1.1	2.95	1.0	2.80
	13	.....	.....	.....	.....	.....	.....
	14	1.2	3.68	1.3	3.83	1.1	3.48
Convection Microwave, Over-the-Range	15	.....	.....	.....	.....	.....	.....

TABLE 20—CONVECTION-ONLY COOLING DOWN ENERGY USE—Continued

Product type	Test unit	Test 1		Test 2		Test 3	
		Cool down energy use (*Wh*)	Cool down duration (*min*)	Cool down energy use (*Wh*)	Cool down duration (*min*)	Cool down energy use (*Wh*)	Cool down duration (*min*)
	17	6.7	6.52	6.6	6.28	7.2	6.90
	18	2.5	3.13	2.6	3.25	2.6	3.27

Note: Test units for which no values are listed indicate that no cooling fan ran after the completion of the combination or convection-only cooking cycles.

DOE may consider test procedure amendments to include the cooling fan energy consumption as part of the energy efficiency metric for convection microwave ovens. If DOE determines that such amendments are appropriate, it may also consider adjustments to the annual standby mode hours to account for the additional time that the product operates the cooling fan at the end of the cooking cycle. The total annual cooling fan hours would be calculated by multiplying the amount of time that the cooling fan operates per cycle by the number of total annual convection microwave cooking and convection-only cooking cycles. These hours would then be subtracted from the total number of standby mode hours. However, DOE is unaware of consumer usage data regarding the total annual convection microwave and convection-only cooking cycles for convection microwave ovens.

15. DOE welcomes comment on whether the cooling fan energy consumption should be included in the efficiency metric for convection microwave ovens.

G. Additional Issues on Which DOE Seeks Comment

DOE may consider amendments to the microwave oven test procedure for both microwave-only and convection microwave ovens based on the testing discussed in the sections above. In addition to the specific issues for each testing method on which DOE is seeking comment, DOE is seeking comment on the following:

16. DOE welcomes general comments about the potential testing methodologies to measure microwave oven active mode energy use presented in this notice. DOE also welcomes comment on any alternative testing methodologies appropriate for inclusion in the DOE microwave oven test procedure. DOE requests data on the repeatability and reproducibility of such testing methods. DOE also welcomes additional data on the repeatability and reproducibility of testing results using the test methods presented in this notice.

The purpose of this NODA is to solicit feedback from industry, manufacturers, academia, consumer groups, efficiency advocates, government agencies, and other stakeholders on issues related to the DOE microwave oven test procedure. DOE is specifically interested in information and additional data on the potential amendments to the microwave oven test procedure for measuring active mode energy use presented in today's notice. Respondents are advised that DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this NODA. Responses to this NODA do not bind DOE to any further actions related to this topic.

Issued in Washington, DC, on May 29, 2012.

Kathleen B. Hogan,

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

[FR Doc. 2012–13609 Filed 6–4–12; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2012–0022]

RIN 3170–AA17

Truth in Lending (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of reopening of comment period and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is reopening the comment period for the proposed rule published by the Board of Governors of the Federal Reserve System (Board) in the **Federal Register** on May 11, 2011 (76 FR 27390). On May 11, 2011, the Board published for notice and comment a proposed rule amending Regulation Z (Truth in Lending) to implement amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed rule addressed new ability-to-repay requirements that generally will apply to consumer credit transactions secured by a dwelling and the definition of a ''qualified mortgage.'' Among other consumer financial protection laws, the Dodd-Frank Act transferred the Board's rulemaking authority for TILA to the Bureau as of July 21, 2011. The original comment period to the proposed rule closed on July 22, 2011. The Bureau is reopening the comment period until July 9, 2012 to seek comment specifically on certain new data and information submitted during or obtained after the close of the original comment period.

DATES: Comments must be received on or before July 9, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2012–0022* or *RIN 3170–AA17,* by any of the following methods:

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

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

All comments, including attachments and other supporting materials, will become part of the record and subject to

public disclosure. You should not include sensitive personal information, such as account numbers or social security numbers. The Bureau will not edit comments to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Paul Mondor or Stephen Shin, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1411, 1412, and 1414 of the Dodd-Frank Act create new TILA section 129C, which, among other things, establishes new ability-to-pay requirements and provides a presumption of compliance with those requirements if the mortgage loan is a ''qualified mortgage.'' On May 11, 2011, the Board published for notice and comment a proposed rule amending Regulation Z to implement new TILA section 129C. 76 FR 27390. The comment period closed on July 22, 2011.

As of July 21, 2011, the Dodd-Frank Act transferred the Board's rulemaking authority for TILA, among other consumer financial protection laws, to the Bureau. See sections 1061 and 1100A of the Dodd-Frank Act. Accordingly, all comment letters on the proposed rule were also transferred to the Bureau. In response to the proposed rule, approximately 1800 comment letters were received from numerous commenters, including members of Congress, lenders, consumer groups, trade associations, mortgage and real estate market participants, and individual consumers.

In addition, after the close of the original comment period, various interested parties, including industry and consumer group commenters, submitted to the Bureau oral and written ex parte presentations on the proposed rule.[1] Materials pertaining to these presentations are filed in the record and are publicly available at *http://www.regulations.gov.*

Through various comment letters, ex parte communications, and the Bureau's own collection of data, the Bureau has received additional information and new data pertaining to the proposed rule. The Bureau is interested in providing opportunity for additional public comment on these materials. Accordingly, the Bureau is issuing this notice to reopen the comment period until July 9, 2012 in order to request comment specifically on certain additional information or new data, as discussed in detail below. The Bureau is not soliciting comment on other aspects of the proposed rule. Therefore, the Bureau encourages commenters to limit their submissions accordingly.

II. Discussion and Request for Comment

A. Federal Housing Finance Agency Mortgage Loan Data

The Bureau seeks comment on mortgage loan data that the Bureau has received from the Federal Housing Finance Agency (FHFA).[2] To date, the Bureau has received a sample drawn from the FHFA's Historical Loan Performance (HLP) dataset along with tabulations from the entire file. The data include a one percent random sample of all mortgage loans in the HLP dataset from 1997 through 2011; and tabulations of the HLP dataset by FHFA showing the number of loans and performance of those loans by year and debt-to-income (DTI) range.

The HLP dataset consists of all mortgage loans purchased or guaranteed by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (jointly with Fannie Mae, the ''Enterprises''), but does not include loans backing private-label mortgage-backed securities (MBS) bought by the Enterprises.[3] The dataset contains loan-level information on characteristics and performance of all single-family mortgages purchased or guaranteed by the Enterprises. FHFA updates the HLP dataset quarterly with information from each Enterprise. Among other elements, the dataset includes product type; payment-to-income and debt-to-income (PTI/DTI) ratios at origination; initial loan-to-value (LTV) ratios based on the purchase price or appraised property value and the first-lien balance; and credit score(s) for the borrower(s).

The Bureau notes that in the context of the multi-agency 2011 Qualified Residential Mortgage Proposal (2011 QRM Proposal)[4] and in the Mortgage Market Note 11–02, FHFA has discussed or released historical loan performance data. In particular, the Bureau notes FHFA's discussion of the HLP dataset generally, including the limitations of the data, and the FHFA's release of historical data on loan volumes and delinquency rates, including any tabulations or data based on the HLP dataset, as provided in Mortgage Market Note 11–02.[5]

FHFA's HLP dataset contains certain loan-level variables that can be used for a variety of data modeling and analysis. The Bureau proposes to use these data to tabulate volumes and performance of loans with varying characteristics and to perform other statistical analyses that may assist the Bureau in defining loans with characteristics that make it appropriate to presume that the lender complied with the ability-to-pay requirements or assist the Bureau in assessing the benefits and costs to consumers, including access to credit, and covered persons of, as well as the market share covered by, alternative definitions of a ''qualified mortgage.'' For example, the Bureau is examining various measures of delinquency and their relationship to other variables such as a consumer's total DTI ratio.

The tables below show the volume of loans and the percentage that were ever 60 days or more delinquent, tabulated by the total DTI on the loans and year of origination. The Bureau believes that loan performance, as measured by delinquency rate such as 60 days or more delinquent, is an appropriate metric to evaluate whether consumers had the ability to repay those loans at the time made. The Bureau notes that these specific tabulations include first-lien mortgages for first or second homes, that have fully documented income and that are fully amortizing with a maturity that does not exceed 30 years. The Bureau further notes that the tabulations do not include the following types of loans: loans for investor-owned properties, low- or no-document mortgages; interest-only (IO) mortgages; negatively-amortizing mortgages such as payment option-ARMs; or mortgages with a balloon payment feature.[6]

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[1] *See* CFPB Bulletin 11–3, CFPB Policy on Ex Parte Presentations in Rulemaking Proceedings, August 16, 2011.

[2] The Bureau notes that the data received by the Bureau are confidential supervisory data and subject to a confidentiality agreement between the Bureau and the FHFA. Therefore, the Bureau is seeking comment on aggregate or otherwise non-confidential aspects of the dataset.

[3] *See* Mortgage Market Note 11–02 (Apr. 11, 2011), available at: *http://www.fhfa.gov/webfiles/20686/QRM_FINAL_ALL.pdf*

[4] 76 FR 24030 (Apr. 29, 2011).

[5] *See, e.g.,* Appendix A of 2011 QRM Proposal and Appendix A of Mortgage Market Note 11–02.

[6] Some of the loans included in these tables are non-conventional loans insured by government agencies.

Table 1: Dollar Volume of Loans that Meet each DTI Restriction

Year	All DTI	DTI < 32	DTI < 34	DTI < 36
1997	$ 260,198,032,894	$ 127,136,221,292	$ 149,056,073,778	$ 171,780,180,391
1998	$ 639,906,884,983	$ 350,833,483,614	$ 396,862,034,867	$ 442,321,138,787
1999	$ 432,236,356,143	$ 207,593,289,596	$ 236,622,077,610	$ 266,063,557,436
2000	$ 312,867,626,073	$ 120,857,281,851	$ 141,316,687,790	$ 162,566,908,237
2001	$ 915,016,294,482	$ 425,529,679,716	$ 483,101,334,742	$ 539,923,938,760
2002	$ 1,188,870,345,528	$ 575,656,853,373	$ 646,146,085,211	$ 714,299,678,212
2003	$ 1,671,469,823,043	$ 837,248,554,392	$ 931,101,740,148	$ 1,021,349,845,418
2004	$ 784,012,125,845	$ 311,954,047,553	$ 356,832,888,920	$ 401,951,873,103
2005	$ 729,810,139,068	$ 246,796,327,740	$ 289,952,101,490	$ 334,764,768,022
2006	$ 618,414,458,846	$ 181,558,772,982	$ 216,612,273,605	$ 253,534,336,150
2007	$ 759,869,110,755	$ 210,157,575,459	$ 250,763,121,929	$ 293,559,091,053
2008	$ 696,311,471,701	$ 236,338,315,411	$ 275,378,745,137	$ 314,471,745,201
2009	$ 1,135,525,868,303	$ 558,215,648,015	$ 624,281,072,494	$ 688,084,046,574

Year	DTI < 38	DTI < 40	DTI < 42	DTI < 44
1997	$ 194,354,582,032	$ 214,421,756,823	$ 229,217,364,780	$ 239,389,379,963
1998	$ 485,481,538,457	$ 523,845,533,765	$ 554,011,558,453	$ 576,537,115,090
1999	$ 294,517,112,274	$ 320,797,156,065	$ 343,139,783,251	$ 361,645,455,213
2000	$ 183,995,816,042	$ 204,758,904,260	$ 223,666,370,708	$ 240,551,419,177
2001	$ 595,059,075,818	$ 646,924,009,714	$ 693,666,319,544	$ 734,846,305,440
2002	$ 779,827,644,827	$ 841,694,595,386	$ 898,196,594,958	$ 948,732,913,999
2003	$ 1,108,803,322,834	$ 1,191,663,233,946	$ 1,266,487,329,806	$ 1,333,983,737,760
2004	$ 447,202,130,671	$ 491,849,595,699	$ 534,138,292,486	$ 573,397,326,065
2005	$ 380,675,797,326	$ 426,601,312,512	$ 470,613,924,188	$ 511,910,697,445
2006	$ 292,411,287,385	$ 332,270,061,602	$ 371,506,619,804	$ 409,748,726,871
2007	$ 338,910,008,925	$ 386,213,217,160	$ 433,621,571,981	$ 480,516,570,852
2008	$ 354,373,480,560	$ 394,808,487,944	$ 434,752,914,268	$ 474,269,139,382
2009	$ 749,801,941,593	$ 809,020,689,897	$ 864,301,178,813	$ 914,925,885,278

Year	DTI < 46	Missing*
1997	$ 245,859,500,051	$ 8,954,875,452
1998	$ 592,523,816,366	$ 27,113,426,791
1999	$ 376,420,985,267	$ 23,001,221,508
2000	$ 255,196,661,650	$ 8,072,486,249
2001	$ 770,533,439,443	$ 15,761,137,694
2002	$ 993,007,860,561	$ 23,689,516,450
2003	$ 1,393,645,363,356	$ 49,393,954,569
2004	$ 608,745,225,882	$ 10,713,758,490
2005	$ 549,683,685,076	$ 6,217,624,663
2006	$ 445,168,832,015	$ 2,316,935,816
2007	$ 524,462,471,997	$ 2,954,800,660
2008	$ 511,083,266,611	$ 3,083,562,242
2009	$ 960,109,131,688	$ 3,694,553,807

*Missing not included in All DTI column

Table 2: Ever 60+ Delinquency Rates

Year	All DTI	DTI < 32	DTI < 34	DTI < 36	DTI < 38
1997	4.44%	3.27%	3.49%	3.73%	3.96%
1998	3.51%	2.66%	2.80%	2.96%	3.11%
1999	4.38%	3.38%	3.51%	3.65%	3.80%
2000	4.19%	3.31%	3.40%	3.53%	3.66%
2001	3.67%	2.63%	2.75%	2.88%	3.01%
2002	3.56%	2.44%	2.57%	2.69%	2.82%
2003	4.48%	2.95%	3.12%	3.29%	3.46%
2004	7.28%	4.74%	5.01%	5.28%	5.57%
2005	11.90%	7.22%	7.72%	8.23%	8.78%
2006	16.82%	9.84%	10.51%	11.22%	11.94%
2007	21.21%	10.56%	11.42%	12.33%	13.31%
2008	9.41%	3.77%	4.16%	4.57%	5.02%
2009	1.06%	0.49%	0.52%	0.56%	0.60%

Year	DTI < 40	DTI < 42	DTI < 44	DTI < 46	Missing*
1997	4.17%	4.29%	4.35%	4.38%	5.34%
1998	3.25%	3.34%	3.40%	3.43%	4.20%
1999	3.94%	4.05%	4.13%	4.19%	5.66%
2000	3.79%	3.88%	3.95%	4.02%	4.56%
2001	3.14%	3.24%	3.33%	3.41%	4.01%
2002	2.95%	3.06%	3.17%	3.25%	3.69%
2003	3.64%	3.79%	3.92%	4.03%	3.88%
2004	5.85%	6.10%	6.32%	6.50%	5.15%
2005	9.30%	9.76%	10.18%	10.52%	6.14%
2006	12.71%	13.39%	14.02%	14.55%	12.79%
2007	14.34%	15.35%	16.32%	17.12%	19.58%
2008	5.52%	6.04%	6.53%	6.99%	8.61%
2009	0.65%	0.70%	0.74%	0.78%	4.93%

*Missing not included in All DTI column

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The FHFA data are comprehensive and cover the entirety of mortgages purchased or guaranteed by the Enterprises. The Bureau has also acquired commercially available data on mortgages securitized into private label securities,[7] and expects to perform similar data modeling and analysis on this data. In addition, the Bureau is seeking supplemental data on loans held in portfolio and non-conventional loans insured or guaranteed by other federal agencies. These supplemental data sources may also be used to inform the Bureau's analysis.

Certain commenters and interested parties requested that the Bureau adopt a specific DTI ratio requirement for qualified mortgages. For example, some suggested that if a borrower's total DTI ratio is below a specified threshold, the mortgage loan should satisfy the qualified mortgage requirements, assuming other relevant conditions are met. In addition to a DTI requirement, some commenters and interested parties suggested that the Bureau should include within the definition of a ''qualified mortgage'' loans with a DTI above a certain threshold if the consumer has a certain amount of assets, such as money in a savings or similar account, or a certain amount of residual income. The Bureau notes, however, that available data do not provide information on certain non-collateral factors, such as liquid financial reserves, which would enable the Bureau to examine their relationship with measures of loan performance and a consumer's ability to repay. Accordingly, the Bureau seeks data, if available, from commenters or interested parties on such factors (in addition to DTI ratios as discussed above) and their relationship to measures of delinquency or their impact on the number or percentage of mortgage loans that would be a ''qualified mortgage.''

[7] For example, the Bureau has procured commercially available loan-level data related to mortgages held in private label securities from Blackbox Logic LLC.

Request for Comment

1. The Bureau seeks comment on the dataset received from FHFA and commercially available data on mortgages securitized into private label securities, including the data source, parameters, and whether other data or studies are available or more appropriate for the purposes indicated above.

2. The Bureau requests data or tabulations for loans not covered in the FHFA data, including loans insured by the Federal Housing Administration (FHA loans), the Department of Veterans Affairs (VA loans), the Department of Agriculture and the Rural Housing Service (RHS loans); or loans held in portfolio or securitized outside of the Enterprises or a federal agency, which would be appropriate for the purposes indicated above.

3. The Bureau seeks comment and data on any measures of loan performance and their relationship to a consumer's DTI ratio.

4. The Bureau seeks comment and data on any measures of residual income, the use of such measures in loan underwriting, the relationship of these measures to loan performance, and their relationship to measures of consumer expenditures.

5. The Bureau seeks comment and data regarding any measures of the amount of liquid financial reserves available to meet (i) mortgage-related obligations or (ii) current obligations, the use of such measures in loan underwriting, and the relationship of these measures to loan performance.

6. The Bureau seeks comment and data regarding any measures of stable income and timely housing payments, the use of such measures in loan underwriting, and the relationship of these measures to loan performance.

B. Litigation Cost Estimates

In response to information received from commenters and ex parte communications, the Bureau is seeking comment and data on estimates of litigation costs and liability risks associated with claims alleging a violation of ability-to-repay requirements for a mortgage loan that is not a ''qualified mortgage,'' in addition to costs and risks that might apply to a ''qualified mortgage.''

As discussed in detail in the proposal, section 1416 of the Dodd-Frank Act creates special remedies for violations of TILA section 129C(a) and provides that the statute of limitations for an action for a violation of TILA section 129C is three years from the date of the occurrence of the violation. In addition, section 1413 of the Dodd-Frank Act provides that a consumer may assert a violation of TILA section 129C as a defense to foreclosure by recoupment or set off without regard for the time limit on a private action for damages. However, new TILA section 129C, among other things, provides a presumption of compliance with the ability-to-repay requirements if the mortgage loan is a ''qualified mortgage.'' To implement this special protection from liability, the Board proposed two alternative definitions of a ''qualified mortgage'' that would provide either a legal safe harbor or a rebuttable presumption that the ability-to-repay requirements had been met.

Commenters and ex parte communications addressed various aspects of the alternative proposals implementing the presumption of compliance for a ''qualified mortgage.'' In particular, some commenters and interested parties presented estimates of the litigation costs associated with claims alleging a violation of the ability-to-repay requirements. Commenters and interested parties argued that these estimated costs should inform the Bureau's determination between a safe harbor or a rebuttable presumption as well as the scope of coverage of a ''qualified mortgage.'' Other commenters and interested parties noted that additional litigation costs should be considered, such as commercial litigation costs associated with ''put-back'' liabilities and risks for loans sold on the secondary market and extended foreclosure timelines because of ongoing ability-to-repay litigation.

An industry commenter and other interested parties argued that the estimated costs to creditors associated with litigation and penalties for an ability-to-repay violation could be substantial and provided illustrations of costs under the proposal, noting potential cost estimates of the possible statutory damages and attorney's fees.[8] For example, the total estimated costs and damages ranged between approximately $70,000 and $110,000 depending on various assumptions, such as the interest rate on a loan or whether the presumption of compliance is a safe harbor or rebuttable presumption. On the other hand, consumer group commenters and some ex parte communications asserted that the potential incidence of litigation is relatively small, and therefore liability cost and risk are minimal for any given mortgage creditor.[9] Consumer groups provided estimates of the number of cases in foreclosure and the percentage of cases that involve TILA claims, such as a claim of rescission. Consumer groups also provided percentages of borrowers in foreclosure who are represented by lawyers, noting the difficulty in bringing a TILA violation claim, and addressed estimates of litigation costs, such as attorney's fees.

The Bureau is reopening the comment period to seek comment and data on various factors the Bureau believes are relevant to analyzing estimated costs associated with litigation for a claim alleging a violation of ability-to-repay requirements, as described below.

Request for Comment

Foreclosure and other times when a suit may be filed. The Dodd-Frank Act provides that a borrower may assert a violation of the ability-to-repay requirements as a defense to foreclosure. Therefore, the Bureau believes that estimates of serious delinquency and number of homes entering foreclosure are critical to measuring the potential costs of ability-to-repay litigation risk. Although aggregate data on serious delinquency and homes entering foreclosure are available from various sources such as the Mortgage Bankers Association National Delinquency Survey, the Bureau notes that more granular estimates of homes entering foreclosure can be estimated from the FHFA data and other data sources.

1. The Bureau seeks comment on the most appropriate measure of delinquency for purposes of calculating potential costs associated with ability-to-repay litigation in the foreclosure context.

2. The Bureau seeks comment on estimates of potential lawsuits asserting an ability-to-repay violation during the first three years after consummation—when the borrower has not yet defaulted but nevertheless sues the lender.

Number of potential litigants and complaints filed. Consumer groups argued that due to the complexity of mortgage-related litigation, such as a violation of TILA, asserting an ability-to-repay violation would require access to a lawyer. These groups noted that appropriate proxies for the number of

[8] *See, e.g.,* letter from David H. Stevens, Mortgage Bankers Association, to Board of Governors of the Federal Reserve System, July 22, 2011.

[9] *See, e.g.,* letter from Center for Responsible Lending, National Consumer Law Center, Consumer Federation of America, and National Association of Consumer Advocates, to Consumer Financial Protection Bureau and Board of Governors of the Federal Reserve System, July 22, 2011; Memorandum on ''Rebuttable Presumption: A Perspective on Litigation Risk by the Numbers'' from Center for Responsible Lending and National Consumer Law Center, to Consumer Financial Protection Bureau, dated October 11, 2011.

complaints filed would be the percentage of borrowers in foreclosure who are represented by a lawyer as well as the number of other types of TILA violation cases. The Bureau notes that survey and other data indicate that a majority of borrowers in default would not have legal representation.[10]

1. The Bureau seeks comment or data on whether and if so, how the number of lawsuits alleging an ability-to-repay violation would vary under the following circumstances:

(a) The mortgage loan is conceded not to be a ''qualified mortgage.''

(b) The mortgage loan is claimed to be a ''qualified mortgage.''

Potential Outcomes From Litigation and Damages

As noted above, sections 1413 and 1416 of the Dodd-Frank Act provide special statutory remedies for violations of TILA section 129C(a), which can include an award of damages in the amount equal to the sum of all finance charges and fees paid by the consumer within the three-year statute of limitations and in the case of a defense to foreclosure, recoupment or set off.

1. The Bureau seeks comment on the likelihood of potential outcomes of litigation, such as dismissal, summary judgment, settlement, or judgment after trial, and the effect on costs under various scenarios including:

(a) The mortgage loan is conceded not to be a ''qualified mortgage.''

(b) The mortgage loan is claimed to be a ''qualified mortgage.''

2. The Bureau seeks comment and data on assumptions about a loan, such as interest rate, purchase price, finance charges, and fees, required to calculate average amount of damages awarded in a TILA case involving a violation of the ability-to-repay requirements based on the scenarios listed above in paragraph 1.

3. The Bureau seeks comment on the impact of other aspects of damages, such as a consumer's attorney's fees, and lender's litigation costs.

Other Factors or Costs

1. The Bureau seeks comment on whether any additional factors should be considered in assessing the litigation-related costs associated with the ability-to-repay requirements.

2. The Bureau seeks comment and data on any other potential costs of ability-to-repay litigation, including:

(a) Costs associated with risks that loans are ''put back'' to originators by secondary market participants due to a potential ability-to-repay claim or proven violation. Factors that may determine the total cost of put backs may include: (i) Number and type of representation and warranty provisions in purchase and sale agreements going forward; (ii) number of loans that could potentially be put back; (iii) frequency of put backs being realized; and (iv) cost to lender net of any recovery through foreclosure or sale.

(b) Costs associated with extended foreclosure timelines due to ability-to-repay litigation.

Dated: May 31, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–13608 Filed 6–4–12; 8:45 am]

BILLING CODE 4810–AM–P

[10] For example, the New York State Judiciary reported that before New York mandated settlement conferences in residential foreclosure cases, up to ninety percent of borrowers sued failed to appear and received default judgments. *See* State of New York Unified Court System, 2010 Report of the Chief Administrator of the Courts, at 8, 11 (2010), available at: *http://www.courts.state.ny.us/publications/pdfs/foreclosurereportnov2010.pdf.* The court stated: ''The lack of representation in foreclosure cases continues to be one of the greatest challenges we face in fulfilling our statutory mandate.'' *Id.* at 12. Similarly, in one of the most mature foreclosure diversion programs in the country, in Philadelphia, 4.5 percent of the homeowners who participated had legal representation. *See* The Reinvestment Fund, Philadelphia Residential Mortgage Foreclosure Diversion Program: Initial Report of Findings, at 10 (June 2011), available at: *http://www.trfund.com/resource/downloads/policypubs/Foreclosure_Diversion_Initial_Report.pdf.* In addition, a 2010 survey of foreclosure mediation programs across the United States by the Department of Justice and the Department of Housing and Urban Development reported that ''legal resources for homeowners in mediation programs generally are quite limited.'' Department of Justice & Department of Housing & Urban Development, Emerging Strategies for Effective Foreclosure Mediation Programs, at 6 (2010), available at: *http://www.justice.gov/atj/effective-mediation-prog-strategies.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0588; Directorate Identifier 2012–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by reports of chafing between the wire harness along the wing leading edge and the inboard end rib of the wing leading edge due to insufficient clearance. This proposed AD would require inspecting the wire harness along the leading edge for chafing damage, and repair if necessary; and relocating and installing new anchor nuts. We are proposing this AD to detect and correct chafing damage to the wire harness along the wing leading edge which, if not corrected, could lead to the loss of the airframe de-icing system, and could become a possible ignition source causing fire.

DATES: We must receive comments on this proposed AD by July 20, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer,

Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0588; Directorate Identifier 2012–NM–017–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–05, dated January 13, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several in-service reports of chafing between the wire harness along the wing leading edge and the wing leading edge inboard end rib. The chafing condition was found to be caused by insufficient clearance between the wire harness and the structure. Chafing and damage to this wire harness could lead to the loss of the airframe de-icing system and could be a possible ignition source causing fire and the subsequent loss of the aeroplane.
>
> This [TCCA] Airworthiness Directive (AD) mandates [a detailed] inspection of the wire harness along the leading edge [for chafing damage, and repair if necessary] and the relocation [and installation of new] anchor nut[s].

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

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 84–57–24, dated September 30, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 83 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $63,495, or $765 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0588; Directorate Identifier 2012–NM–017–AD.

(a) Comments Due Date

We must receive comments by July 20, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 through 4382 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57: Wings.

(e) Reason

This AD was prompted by reports of chafing between the wire harness along the wing leading edge and the inboard end rib of the wing leading edge due to insufficient

clearance. We are issuing this AD to detect and correct chafing damage to the wire harness along the wing leading edge which, if not corrected, could lead to the loss of the airframe de-icing system, and could become a possible ignition source causing fire.

(f) Compliance

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

(g) Inspection and Repair

Within 3,000 flight hours or 18 months after the effective date of this AD, whichever occurs first: Perform a detailed inspection for chafing damage of the wire harness at the leading edge, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–24, dated September 30, 2011. If any chafing damage is found: Before further flight, repair in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–24, dated September 30, 2011.

(h) Install New Anchor Nut

Within 3,000 flight hours or 18 months after the effective date of this AD, whichever occurs first: Relocate and install new anchor nuts on the leading edge, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–24, dated September 30, 2011.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2012–05, dated January 13, 2012; and Bombardier Service Bulletin 84–57–24, dated September 30, 2011; for related information.

(2) For service information identified in this AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.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 May 24, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13555 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0598; Directorate Identifier 2012–CE–017–AD]

RIN 2120–AA64

Airworthiness Directives; HPH s. r.o. Sailplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all HPH s. r.o. Models 304C, 304CZ, and 304CZ–17 sailplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the lack of a drain hole in the elevator control rod, which may allow water to accumulate in the control rod and lead to possible corrosion. This condition could cause the elevator control rod to fail, which could result in loss of control of the sailplane. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 20, 2012.

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

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

For service information identified in this proposed AD, contact HPH spol. s r.o., Čáslavská 126, P.O. Box 112, 284 01 Kutná Hora, Czech Republic, telephone: +420 327 512 633; fax: +420 327 513 441; email: *hph@hph.cz;* Internet: *www.hph.cz.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0598; Directorate Identifier 2012–CE–017–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also

post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2012–0073, dated April 30, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A broken elevator control rod in the vertical fin on a Kestrel sailplane has been reported.

The technical investigation revealed that water had soaked into the elevator control rod through a control bore hole and resulted in corrosion damage. The investigation concluded that the corrosion cannot be detected from outside the elevator control rod.

This condition, if not detected and corrected, could lead to failure of the elevator control rod, possibly resulting in loss of control of the sailplane.

To address this unsafe condition, HPH spol. s r.o. published Service Bulletins (SB): G304CZ–06a), G304CZ17–06a), G304C–06a), providing instructions for elevator control rod inspection and replacement.

For the reasons described above, this AD requires accomplishment of a one-time inspection of the elevator control rod in the vertical fin and replacement with an improved control rod if control rod without drainage hole is used.

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

Relevant Service Information

HPH spol.s r.o. has issued Service Bulletin No.: G304CZ—06 a)_R01, G304C—06 a)_R01, G304CZ17—06 a)_R01, dated April 23, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 10 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $233 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $7,430, or $743 per product

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

HPH s. r.o. Sailplanes: Docket No. FAA–2012–0598; Directorate Identifier 2012–CE–017–AD.

(a) Comments Due Date

We must receive comments by July 20, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to HPH s. r.o. Models 304C, 304CZ, and 304CZ–17 sailplanes, all serial numbers, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the lack of a drain hole in the elevator control rod, which may allow water to accumulate in the control rod and lead to possible corrosion. We are issuing this AD to prevent failure of the elevator control rod, which could result in loss of control of the sailplane.

(f) Actions and Compliance

Unless already done, do the following actions in accordance with HPH spol.s r.o. Service Bulletin No.: G304CZ—06 a)_R01, G304C—06 a)_R01, G304CZ17—06 a)_R01, dated April 23, 2012:

(1) Within 30 days after the effective date of this AD, inspect the elevator control rod in the vertical fin.

(2) If you find any deficiency during the inspection required by paragraph (f)(1) of this AD, before further flight, replace the elevator control rod with an elevator control rod that has a drain hole.

(3) Within 9 months after the effective date of this AD, unless already done as required by paragraph (f)(2) of this AD, replace the elevator control rod in the vertical fin with an elevator control rod that has a drain hole.

(4) As of the effective date of this AD, do not install an elevator control rod without a drainage hole.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@faa.gov.* Before using any approved AMOC on any sailplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2012–0073, dated April 30, 2012; and HPH spol.s r.o. Service Bulletin No.: G304CZ—06 a)_R01, G304C—06 a)_R01, G304CZ17—06 a)_R01, dated April 23, 2012, for related information. For service information related to this AD, contact HPH spol. s r.o., Čáslavská 126, P.O. Box 112, 284 01 Kutná Hora, Czech Republic, telephone: +420 327 512 633; fax: +420 327 513 441; email: *hph@hph.cz;* Internet: *www.hph.cz.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 29, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13563 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0187; Directorate Identifier 2011–NM–094–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document announces a reopening of the comment period for the above-referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) for certain The Boeing Company Model 757 airplanes. That NPRM invites comments concerning the proposed requirement to modify the fuel quantity indication system (FQIS) wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank. This reopening of the comment period is necessary to provide all interested persons an opportunity to present their views on the proposed requirements of that NPRM.

DATES: We must receive comments on the NPRM by August 6, 2012.

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

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

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: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0187; Directorate Identifier 2011–NM–094–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 issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to certain The Boeing Company Model 757 airplanes. That NPRM published in the **Federal Register** on March 1, 2012 (77 FR 12506). That NPRM proposed to require modifying the fuel quantity indication system wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank.

That action (77 FR 12506, March 1, 2012) invites comments on regulatory, economic, environmental, and energy aspects of the proposal.

That action (77 FR 12506, March 1, 2012) was prompted by fuel system reviews conducted by the manufacturer. The actions specified by the NPRM are intended to prevent ignition sources inside the center fuel tank, which, in

combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Actions Since NPRM (77 FR 12506, March 1, 2012) Was Issued

Since we issued the NPRM (77 FR 12506, March 1, 2012), we have received a request from Airlines for America (A4A), and James Hurd on behalf of the Families of TWA Flight 800, to extend the comment period. A4A requested a 60-day extension because of the extensive scope and significant potential impact of the NPRM, the lack of associated service information, and the need for proper review of the results of prototype efforts. A4A stated that this extension would provide operators additional time to develop estimates of technical methods of compliance with the NPRM, to develop estimates of the potential impact of those methods, and to prepare comments for the rules docket.

We have considered the commenters' request. We find it appropriate to extend the comment period to give all interested persons additional time to examine the proposed requirements and submit comments. We have determined that extending the comment period by 60 days will not compromise the safety of the affected airplanes.

The comment period for Docket No. FAA–2012–0187 closes August 6, 2012.

Because no other portion of the proposal or other regulatory information has been changed, the entire proposal (77 FR 12506, March 1, 2012) is not being republished.

Issued in Renton, Washington, on May 24, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13556 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0386]

RIN 1625–AA08

Special Local Regulation; Kelley's Island Swim, Lake Erie; Kelley's Island, Lakeside, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent Special Local Regulation on Lake Erie, Lakeside, Ohio. This regulation is intended to regulate vessel movement in portions of Lake Erie during the annual Kelley's Island Swim. This special local regulated area is necessary to protect swimmers from vessel traffic.

DATES: Comments and related materials must be received by the Coast Guard on or before July 5, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0386 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 on this proposed rule, call or email ENS Benjamin Nessia, Response Department, MSU Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0386), 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 *www.regulations.gov,* it will be considered received by the Coast Guard when the comment is successfully transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* 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–2012–0386'' 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–2012–0386'' 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 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**.

Basis and Purpose

Each year an organized swimming event takes place in Lake Erie in which individuals swim the four miles between Lakeside and Kelley's Island, OH. The Captain of the Port Detroit has determined that swimmers in close proximity to watercraft and in the shipping channel pose extra and unusual hazards to public safety and property. Thus, the Captain of the Port Detroit has determined that establishing a Special Local Regulation around the location of the race's course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

To alleviate the extra and unusual hazards mentioned above, the Captain of the Port Detroit has determined that it is necessary to establish a Special Local Regulation. Accordingly, this proposed rule is intended to permanently establish a Special Local Regulation that coincides with the annual Kelley's Island Swim. The proposed Special Local Regulation will only be enforced annually on a single day in the second or third week in July from approximately 7:00 a.m. until 11:00 a.m. Due to the presence of swimmers in the water between Lakeside, OH and Kelley's Island, OH, the Coast Guard proposes that all vessels transiting the swim route shall proceed at a no-wake speed and maintain extra vigilance for people in the water. In addition, it is proposed that all vessels in the area yield right-of-way to swimmers and event safety craft. On-scene representatives may direct vessels to transit within or avoid certain areas during the race.

This proposed Special Local Regulation will encompass all navigable waters of the United States on Lake Erie, Lakeside OH, bound by a line extending from a point on land at the Lakeside dock at positions 41°32′51.96″ N; 082°45′3.15″ W and 41°32′52.21″ N; 082°45′2.19″ W and a line extending to Kelley's Island dock to positions 41°35′24.59″ N; 082°42′16.61″ W and 41°35′24.44″ N; 082°42′16.04″ W. The Captain of the Port will notify the affected segments of the public of the enforcement of this proposed Special Local Regulation by all appropriate means. Means of notification will include an annual publication of a Notice of Enforcement (NOE) in the **Federal Register**. Also, means of notification may include Broadcast Notice to Mariners and Local Notice to Mariners.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The proposed Special Local Regulation will cover a relatively small area and exist for a relatively short time, and vessels will still be permitted to travel through the area, albeit with caution and reduced speed. Thus, restrictions on vessel movement within that particular area are expected to be minimal.

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 might be small entities: the owners and operators of vessels intending to transit or anchor in the portion Lake Erie, Lakeside, OH discussed above during the date and time of enforcement in the second or third week in July each year.

This proposed Special Local Regulation will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in above *Regulatory Planning and Review section*.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Benjamin Nessia, Response Department, MSU Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil*. 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 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 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 an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed 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 proposed rule will meet 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 proposed rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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. This proposed rule involves the establishment of a Special Local Regulation and is therefore categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction. During the annual permitting process for this swimming event an environmental analysis will be conducted to include the effects of this proposed Special Local Regulation. Thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this proposed rulemaking action. 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 100

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 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Add § 100.921 Kelley's Island Swim, Lake Erie, Lakeside, OH.

(a) *Regulated Area.* The regulated area includes all U.S. navigable waters of Lake Erie, Lakeside, OH, bound by a line extending from a point on land at the Lakeside dock at positions 41°32′51.96″ N; 082°45′3.15″ W and 41°32′52.21″ N; 082°45′2.19″ W and a line extending to Kelley's Island dock to positions 41°35′24.59″ N; 082°42′16.61″ W and 41°35′24.44″ N; 082°42′16.04″ W. (Datum: NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. Vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for swimmers. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

(c) *Enforcement Period.* These Special Local Regulations will be enforced annually on a single day in the second or third week in July from 7:00 a.m. until 11:00 a.m. The precise date and times of enforcement will be published annually in the **Federal Register** via a Notice of Enforcement.

Dated: May 18, 2012.

J.E. Ogden,

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

[FR Doc. 2012–13519 Filed 6–4–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 156

[CMS–9965–P]

RIN 0938–AR36

Patient Protection and Affordable Care Act; Data Collection To Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish data collection standards necessary to implement aspects of the Patient Protection and Affordable Care Act (Affordable Care Act), which directs the Secretary of Health and Human Services to define essential health benefits. This proposed rule outlines the data on applicable plans to be collected from certain issuers to support the definition of essential health benefits. A bulletin on HHS' intended benchmark approach to defining essential health benefits was published for comment on December 16, 2011, and we intend to pursue comprehensive rulemaking on essential health benefits in the future. This proposed rule would also establish a process for the recognition of accrediting entities for purposes of certification of qualified health plans.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (EST) on July 5, 2012.

ADDRESSES: In commenting, please refer to file code CMS–9965–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9965–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9965–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Adam Block at (301) 492–4392, for matters related to essential health benefits data collection. Deborah Greene at (301) 492–4293, for matters related to accreditation of qualified health plans.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on issues set forth in this proposed rule to assist us in fully considering issues and developing policies. Comments will be most useful if they are organized by the paragraph of the proposed rule to which they apply. You can assist us by referencing the file code CMS–9965–P, and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Executive Summary

Beginning in 2014, all non-grandfathered health plans in the individual and small group market, Medicaid benchmark and benchmark-equivalent plans, and Basic Health Programs, where applicable, will cover the essential health benefits (EHB), as defined by the Secretary of Health and Human Services (the Secretary). The Affordable Care Act directs that the EHB reflect the scope of benefits covered by a typical employer plan and cover at least the following ten general categories of items and services: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. EHB will promote predictability for consumers who purchase coverage in these markets, facilitate comparison across health plans, and ensure that individual and small group subscribers have the same access to the same scope of benefits provided under a typical employer plan.

The Department of Health and Human Services (HHS) has provided the public with information about EHB in several phases:

- On December 16, 2011, HHS released a bulletin, following the report from the Department of Labor describing the scope of benefits covered under employer-sponsored coverage and an HHS commissioned study from the Institute of Medicine (IOM) that

recommended criteria and methods for determining and updating essential health benefits, outlining its intended regulatory approach for defining EHB. The bulletin considered an intended approach in which EHB would be defined by a benchmark plan selected by each State. This State-specific benchmark plan would serve as a reference plan, reflecting both the scope of services and any limits offered by a ''typical employer plan'' in that State as required by section 1302(b)(2)(A) of the Affordable Care Act. In the December 16, 2011, bulletin, we laid out four potential benchmark plan types for 2014 and 2015. They are: (1) The largest plan by enrollment in any of the three largest small group insurance products in the State's small group market, (2) any of the largest three State employee health benefit plans by enrollment, (3) any of the largest three national Federal Employees Health Benefits Program plan options by enrollment, and (4) the largest insured commercial non-Medicaid health maintenance organization (HMO) operating in the State. We intend to propose these options in comprehensive rulemaking on EHB in the future. Health insurance issuers could adopt the scope of services and limits of the State benchmark, or vary it within defined parameters.

- On January 25, 2012, HHS released an illustrative list of the largest three small group market products by State.
- On February 17, 2012, HHS further clarified the approach described in the bulletin through a series of Frequently Asked Questions.

This proposed rule includes data reporting standards for health plans that represent potential State-specific EHB benchmarks, as described in the bulletin released on December 16, 2011. Specifically, the proposed rule would establish that issuers of the largest three small group market products in each State must report information on covered benefits.

In addition, this rule proposes the first phase of a two-phased approach for recognizing accrediting entities to implement the standards established under the Affordable Care Act for qualified health plans (QHPs) to be accredited on the basis of local performance by an accrediting entity recognized by the Secretary on a timeline established by the Exchange. In phase one, the National Committee for Quality Assurance (NCQA) and URAC would be recognized as accrediting entities on an interim basis. In phase two, a criteria-based review process would be adopted through future rulemaking.

II. Background

A. Legislative Overview

Section 1302 of the Affordable Care Act provides for the establishment of EHB, to be defined by the Secretary and included in QHPs offered through an Exchange. In addition, section 2707 of the Public Health Service Act, as added by section 1201 of the Affordable Care Act, directs that on and after January 1, 2014, health insurance issuers offering non-grandfathered plans in the individual or small group market ensure such coverage includes EHB as described in section 1302(a) of the Affordable Care Act. The law also directs that EHB reflect the scope of benefits covered by a typical employer plan and cover at least the following ten general categories of items and services: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. Section 1302(b)(4) of the Affordable Care Act establishes that the Secretary must define the EHB such that it:

- Sets an appropriate balance among the ten general categories;
- Does not discriminate based on age, disability, or expected length of life;
- Takes into account the health care needs of diverse segments of the population; and
- Does not allow denials of essential benefits based on age, life expectancy, disability, or degree of medical dependency and quality of life.

Section 1302(b)(4) of the Affordable Care Act further directs the Secretary to consider the provision of emergency services and dental benefits when determining whether a particular health plan covers the EHB. Finally, sections 1302(b)(4)(G) and (H) of the Affordable Care Act direct the Secretary to periodically review the EHB, report the findings of the review to the Congress and to the public, and update the EHB as needed.

Section 1311(c)(1)(D)(i) of the Affordable Care Act provides that in order to be certified as a QHP and operate in an Exchange, a health plan must be accredited. In a separate rule titled ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers'' (Exchange Rule) published in the March 27, 2012 **Federal Register** (77 FR 18310), HHS finalized 45 CFR 156.275, specifying that a QHP issuer must be accredited by an entity recognized by HHS.

B. Stakeholder Consultation and Input

HHS has consulted with a wide range interested stakeholders on policies related to EHB. First, the Department of Labor issued a report on April 15, 2011, describing the scope of benefits offered under employer-sponsored coverage. Second, the IOM issued a consensus report on October 7, 2011, providing its recommendations for the process HHS should use to define EHB.

Following the release of the IOM's recommendations, HHS held a number of listening sessions with consumers, providers, employers, health plans, and State representatives to gather public input. These sessions were held throughout the country.

HHS also released several documents for public review and comment. On December 16, 2011, HHS released a bulletin outlining its intended regulatory approach to defining EHB. HHS received approximately 11,000 comments in response to the bulletin. Commenters represented a wide variety of stakeholders, including health insurance issuers, consumers, health providers, States, employers, and Members of Congress. Among other topics, many commenters requested additional information on potential EHB benchmark plans, and urged HHS to publish the benefit designs of the selected benchmark plans as soon as possible. In particular, issuers emphasized that timely access to the benefits included in the benchmark is necessary to design health plans.

HHS considered the comments received on the bulletin in developing the policies in this proposed rule. HHS will continue to review the comments on the bulletin as we develop future policy related to EHB.

Regarding the recognition of accrediting entities, HHS received comments in response to the Exchange Rule. In addition, HHS conducted a review of the entities conducting health plan accreditation in the U.S. and found that substantially all issuers that have health plan accreditation are accredited by NCQA and/or URAC.[1]

C. Structure of the Proposed Rule

The regulations outlined in this proposed rule would be codified in 45 CFR part 156. The provision in part 156 outlines the standards for health insurance issuers with respect to

[1] See *http://www.ncqa.org/tabid/135/Default.aspx*. Accessed April 24, 2012. See also *https://www.urac.org/accreditation/* Accessed April 24, 2012.

participation in an Exchange, including the minimum certification requirements for QHPs. The provision in § 156.120 proposes data collection from certain issuers of applicable plans to define benchmark options for EHB.

Additional standards and guidance on the EHB package and phase two of the recognition of accrediting entities would be addressed in future rulemaking. Consistent standards related to the accrediting entities that would fulfill the accreditation requirements for multi-State plans would also be addressed in future rulemaking implementing section 1334 of the Affordable Care Act promulgated by the U.S. Office of Personnel Management.

III. Provisions of the Proposed Regulation

Beginning in 2014, individuals and small businesses would be able to purchase private health insurance through competitive marketplaces called Affordable Insurance Exchanges (Exchanges). Exchanges would facilitate the purchase of insurance coverage by qualified individuals from QHPs and assist qualified employers in the enrollment of their employees into QHPs. See Affordable Care Act § 1311(b).

Beginning in 2014, non-grandfathered health insurance plans offered in the individual or small group market would offer EHB. See Affordable Care Act § 1301(a)(1)(B); Public Health Service Act § 2707(a).[2] Section 1302(b) of the Affordable Care Act directs the Secretary to define EHB in a way that includes at least the ten general categories of benefits described in the statute, and that is equal in scope to the benefits provided under a typical employer plan. Section 1321(a)(1) authorizes the Secretary to issue regulations setting standards for meeting the requirements of title I of the Affordable Care Act, including section 1302, as the Secretary determines appropriate.

The bulletin outlining HHS' intended regulatory approach stated that we are considering an approach whereby EHB would be defined by a benchmark plan selected by each State.[3] The selected benchmark plan would serve as a reference plan, reflecting both the scope of benefits and any limits contained in the plan, as required by section 1302(b)(2)(A) of the Affordable Care Act. If a State does not exercise the option to select a benchmark health plan, we intend to propose in future rulemaking that the default benchmark plan for that State would be the largest plan by enrollment in the largest product in the State's small group market. Under this approach, the specific set of benchmark benefits defined using the data collected in 2012 would apply for plan years 2014 and 2015.[4] We intend to revisit this approach for plan years starting in 2016 and would provide additional information through subsequent rulemaking.

The purpose of this proposed rule is to collect sufficient information on potential benchmark plans' benefits to enable plans seeking to offer coverage in the individual or small group market in 2014 to know what benefits will be included in the EHB benchmark. This proposed rule would add new regulation text at 45 CFR 156.120.

Finally, to implement the accreditation provisions of the Affordable Care Act relating to QHPs, we are proposing the first phase of a two-phased approach for recognizing accrediting entities. In this rule, we propose to recognize, on an interim basis, those entities that best meet the requirements stipulated in section 1311(c)(1)(D)(i) of the Affordable Care Act. In phase two, we currently plan to adopt, through future rulemaking, a recognition process that includes an application procedure, standards for recognition, a criteria-based review of applications, public participation, and public notice of the recognition. At this time, we have determined that recognizing entities through the phase one process outlined above is necessary to meet the timeline for Exchange QHP certification activities which must commence in early 2013. Exchanges may include the accreditation requirements as early as 2013 certification, for the 2014 plan year.

A. Collection of Essential Health Benefits Data (§ 156.120)

1. Definitions

Under § 156.120(a), we propose definitions for terms that are used throughout the section. For the most part, the definitions presented in § 156.120(a) are taken from existing regulations.

We propose to define ''health benefits'' as ''benefits for medical care, as defined at § 144.103 of this chapter, that may be delivered through the purchase of insurance or otherwise.'' This proposed definition is adapted from the definition of health benefits finalized in the Early Retiree Reinsurance Program regulation at 45 CFR 149.2.

We propose that ''health plan'' has the meaning given to the term ''portal plan'' in § 159.110 of this chapter, which is the discrete pairing of a package of benefits and a particular cost sharing option (not including premium rates or premium quotes).

We propose that ''health insurance product'' has the meaning given to the term at § 159.110 of this chapter, which is a package of benefits that an issuer offers that is reported to State regulators in an insurance filing. We propose that ''small group market'' has the meaning given to the term in § 155.20 of this chapter, which is the meaning in section 1304(a)(3) of the Affordable Care Act. We also propose that ''State'' has the meaning given at § 155.20. We note that the Public Health Service Act definition of ''State'' that would apply to section 2707(a) is broader than the definition in section 1304 of the Affordable Care Act.

We propose that ''treatment limitations'' have the meaning found in § 146.136 of this chapter, which includes both quantitative and non-quantitative limits on benefits. Examples of quantitative limits include limits based on the frequency of treatment, days of coverage, or other similar limits on the scope and duration of treatment. Examples of non-quantitative limits include prior authorization and step therapy requirements.

Additionally, throughout this proposed rule we refer to ''issuers'' which is defined in previous rulemaking at 45 CFR 156.20.

2. Required Information (§ 156.120(b))

In § 156.120(b), this rule proposes that certain issuers of applicable plans described in paragraph (c) of this section submit certain benefit and enrollment information to HHS. This information would be used by HHS and eventually States, Exchanges, and issuers to define, evaluate, and provide the EHB.

First, at § 156.120(b)(1), we propose that the relevant issuers would submit administrative data necessary to identify their health plan. Since an issuer may offer multiple similar plans within a product, this information is critical to the identification of a single, uniquely identified benchmark plan.

At § 156.120(b)(2), we propose that the relevant issuers would submit data and descriptive information on the

[2] 45 CFR 147.140(a) defines grandfathered health coverage.

[3] See ''Essential Health Benefits Bulletin,'' Center for Consumer Information and Insurance Oversight. December 16, 2011. Available at: *http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf.*

[4] See ''Frequently Asked Questions on Essential Health Benefits Bulletin,'' Center for Consumer Information and Insurance Oversight. February 17, 2012. Available at: *http://cciio.cms.gov/resources/files/Files2/02172012/ehb-faq-508.pdf.*

plans identified in paragraph (d) in four areas. Additional detail describing the specific data elements that issuers would submit can be found in the revision of the currently approved Health Insurance Web Portal information collection request (ICR). The ICR is approved under OCN: 0938–1086, and would be made available to the public under a notice and comment period separate from this notice of proposed rulemaking. Section 156.120(b)(2)(i) proposes that certain issuers submit information on covered health benefits in the applicable plans. This information is needed to define certain benchmark plan options.

Section 156.120(b)(2)(ii) proposes to collect from issuers data on any treatment limitations imposed on coverage, if applicable. For example, a quantitative scope and duration treatment limitation might limit a physical therapy benefit to 10 physical therapy visits per year.

At § 156.120(b)(2)(iii), we propose to collect data on drug coverage. This would include a list of covered drugs and information on whether each drug is subject to prior authorization and/or step therapy.

At § 156.120(b)(2)(iv) we propose to collect plan enrollment data, which is discussed in more detail in the ''Plans Impacted'' section below.

We are soliciting comment on other data elements that may be necessary to ensure that health plans offer EHB.

3. Issuers Required to Report (§ 156.120(c))

Section 156.120(c) of this proposed regulation specifies that these reporting requirements would apply only to certain issuers. Specifically, we propose to collect data from the issuers in each State that offer the three largest health insurance products, by enrollment, in that State's small group market. We propose that enrollment data submitted to *www.HealthCare.gov* would be the source of product enrollment and therefore, the products eligible to be benchmarks based on enrollment (described in part 159 of this title) on March 31, 2012, the date set forth in the bulletin. State data may vary from *www.HealthCare.gov* data, and we request comment on whether States should be permitted to use an alternative data source for determining the enrollment in the small group market. We are also soliciting comment on whether closed block products or association products should be included as options in the selection of the largest three products.

Under the approach outlined in the December 16, 2011 bulletin, States would be permitted to select their own benchmark plans from a set of options. State submissions of these selections are information collections under the PRA. As noted below, we seek comment on the draft instructions for States to submit benefits for their selected benchmark plan.

4. Plans Impacted (§ 156.120(d))

In § 156.120(d), we propose that issuers of the largest three products in each State provide information based on the plan with the highest enrollment within the product. For purposes of identifying the benchmark plan, we identify the plan following the definition of ''portal plan'' in § 159.110 of this chapter.

Issuers may use their own data to determine which plan within each product has the highest enrollment, although we expect for many products, the benefits will be the same across plans within the product. Enrollment data should reflect a plan's entire service area and to the extent possible should align with the timing of the *www.HealthCare.gov* data collection (reflecting enrollment as of March 31, 2012). We seek comment on the necessity of plan-level specificity.

5. Reporting Requirements (§ 156.120(e))

Finally, § 156.120(e) proposes that issuers described in subparagraph (c) submit the information described in subparagraph (b) to HHS in a form and manner to be determined by HHS. We intend to make information on final State selections of benchmarks publicly available as soon as possible so that issuers can use it for benefit design and rate setting for 2014. We welcome public comment on this approach. See below for more information on how to comment on the data collection, in addition to the draft approach to how and when plans should submit the data.

B. Voluntary Data Collection From Stand-Alone Dental Plans

Beginning in 2014, QHPs and other non-grandfathered health insurance plans in the individual and small group market will offer the EHB. Section 1302(b) of the Affordable Care Act outlines the ten statutory benefit categories, including pediatric oral care, which must be included by those plans. Section 1302(b)(4)(F) allows QHPs in an Exchange in a State to choose not to offer coverage for pediatric oral services provided that a stand-alone dental benefit plan that covers pediatric oral services is offered through the same Exchange.

In order for QHPs to know whether their plan design must include pediatric oral services, issuers need to know if stand-alone dental plans would be offered through their Exchange. To facilitate and streamline the communication of this information, we propose to collect, on a voluntary basis, information from likely stand-alone dental issuers to find out whether various Exchanges are likely to have stand-alone plans as options. Therefore, we are requesting that issuers that intend to offer stand-alone dental plans in any Exchange notify HHS of their intent to participate. We intend to provide further guidance that explains the format and date by which stand-alone dental issuers can begin to submit this information.

C. Accreditation of QHP Issuers (§ 156.275)

Section 1311(c)(1)(D)(i) of the Affordable Care Act directs a health plan to ''be accredited with respect to local performance on clinical quality measures * * * by any entity recognized by the Secretary for the accreditation of health insurance issuers or plans (so long as any such entity has transparent and rigorous methodological and scoring criteria).'' At this time, HHS has determined that recognizing entities through an interim phase one process is necessary to meet the timeline for Exchange QHP certification activities, which must commence in early 2013 and may include the accreditation requirement, depending on the uniform timeline established by an Exchange. After a survey of the market, to HHS's knowledge, only two entities that accredit health plans meet or plan to meet the statutory requirements this year. We propose recognition of the National Committee for Quality Assurance (NCQA) and URAC on an interim basis for the purpose of accreditation of QHPs, subject to the conditions specified in paragraphs (c)(2) through (4) of § 156.275 of this proposed rule. We propose for this recognition to be effective once these conditions are met, at which time HHS would provide notification in the **Federal Register**. This recognition as an approved entity for accreditation of QHPs is effective until it is rescinded or this interim phase one process is replaced by the process that we intend to identify in § 156.275(c)(1)(ii) in future rulemaking. We intend for the future recognition process to include an application procedure, standards for recognition, a criteria-based review of applications, public participation, and public notice of the recognition for entities seeking to become a recognized accrediting entity. We solicit comments to inform this future rulemaking. We request comment

on whether or not there are other accrediting entities that meet or would meet the statutory requirements this year.

We propose recognition of NCQA and URAC as accrediting entities because our review indicates that these accrediting entities currently issue or plan to issue health plan accreditation that meets the conditions for recognition as detailed in paragraphs (c)(2) through (4) of this proposed rule. The majority of people currently enrolled in private health plans are in health plans accredited by these two entities.[5] We solicit comment on our proposal to recognize accrediting entities on this basis and whether or not there are other entities that accredit health plans that meet the requirements of section 1311(c)(1)(D)(i) of the Affordable Care Act.

The first condition of recognition is based on section 1311(c)(1)(D)(i) of the Affordable Care Act, which requires accreditation on local performance in nine categories, which are codified in 45 CFR 156.275(a)(1):

- Clinical quality measures such as the Healthcare Effectiveness Data and Information Set (HEDIS);
- Patient experience ratings on a standardized Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey;
- Consumer access;
- Utilization management;
- Quality Assurance;
- Provider credentialing;
- Complaints and appeals;
- Network adequacy and access; and
- Patient information programs.

In § 156.275(c)(2)(ii) through (iv), we propose requirements to interpret and further implement the statutory accreditation requirements. We solicit comments on each of these three additional provisions.

We propose in § 156.275(c)(2)(ii) that the clinical quality measures meet certain criteria in order for the accreditation to meet the requirements outlined in section 1311(c)(1)(D) of the Affordable Care Act and 45 CFR 156.275(a)(1)(i). These criteria were chosen based on stakeholder input and to ensure that the clinical quality measures used in accreditation are applicable to the Exchange enrollee population.

We propose that the clinical quality measure set must:

- Span a breadth of conditions and domains, including, but not limited to, preventive care, mental health and substance abuse disorders, chronic care, and acute care;
- Include measures that are applicable to adults and separate measures that are applicable to children;
- Align with the priorities of the National Strategy for Quality Improvement in Health Care issued by the Secretary and submitted to Congress on March 12, 2011 (see *http://www.healthcare.gov/law/resources/reports/quality03212011a.html*) and the National Quality Strategy: 2012 Annual Progress Report released by HHS on April 30, 2012 (see *http://www.healthcare.gov/news/factsheets/2012/04/national-quality-strategy04302012a.html*);
- Only include measures that are either developed or adopted by a voluntary consensus standards setting body (such as those described in the National Technology and Transfer Advancement of Act of 1995 (NTTAA) and Office of Management and Budget (OMB) Circular A–119 (1998)) or, where appropriate endorsed measures are unavailable, are in common use for health plan quality measurement and meet health plan industry standards; and,
- Be evidence based.

We solicit comments on these standards for clinical quality measures, including whether additional standards for such measures should be included, the standards for using endorsed and non-endorsed measures, and whether HHS should require entities seeking recognition as accrediting entities to review specific clinical measures as part of accreditation and if so, which ones.

We are aware that URAC does not currently include clinical quality measures or patient experience ratings on a CAHPS survey in its accreditation standards for health plans. Based on URAC's recent press release and whitepaper,[6] URAC plans to release the Health Plan Accreditation Program 7.0, which includes reporting on a CAHPS survey and a set of clinical performance measures, and would allow for the flexibility to add additional clinical measure requirements specified for Exchanges. Because our proposal is to recognize NCQA and URAC on the condition that accreditation be provided consistent with § 156.275(c)(2), recognition of URAC would depend on URAC's implementation of this plan and our review and approval of its new accreditation measures.

In § 156.275(c)(2)(iii), we propose that recognized accrediting entities provide separate accreditation determinations for each product type offered by a QHP issuer in each Exchange (for example, Exchange HMO, Exchange point of service (POS), and Exchange PPO), based on data submitted by the issuer that is representative of the population of each QHP in that Exchange product type. We believe that the product type is the appropriate level for accreditation as it would balance capturing the QHP experience and enabling the reporting of valid and reliable performance measures. An issuer may offer multiple QHPs under the same product type, in the same Exchange, but if the product type for that Exchange is accredited, each of the corresponding QHPs would be considered to be accredited. We solicit comments on the proposed level of accreditation. We also solicit comments on circumstances under which an exception should be made to the accreditation determination being made at the Exchange product type level.

As part of our proposal that recognized accrediting entities include network adequacy and access in the accreditation standards, we propose in subparagraph (c)(2)(iv) that the network adequacy and access standards outlined in section 1311(c)(1)(D) of the Affordable Care Act and 45 CFR 156.275(a)(1)(viii) must, at a minimum, be consistent with the general requirements for network adequacy standards for QHP issuers codified in § 156.230(a). We solicit comments on this proposed requirement.

In § 156.275(c)(3), we propose that each recognized accrediting entity must use transparent and rigorous methodological and scoring criteria. This requirement is taken from section 1311(c)(1)(D)(i) of the Affordable Care Act.

In § 156.275(c)(4), we propose that each accrediting entity recognized by the Secretary, as a condition of gaining and maintaining recognition, provide to HHS its current accreditation processes to demonstrate that the entity meets the conditions described in § 156.275(c)(2) and (3). Documentation should include accreditation standards and requirements, processes, and measure specifications for performance measures. We propose that the initial submission of documentation be made at a time specified by HHS. We solicit comment on this timing requirement, specifically whether NCQA and URAC may only be recognized if this required documentation is provided within a certain number of days of the final rule.

Recognized accrediting entities must also submit any proposed changes or updates to the accreditation and measurement process with 60 days

[5] See *http://www.ncqa.org/tabid/135/Default.aspx.* Accessed April 24, 2012.

[6] URAC Health Plan Accreditation for Health Insurance Exchanges: *A Symbol of Excellence, Quality, and Value* available at: *https://www.urac.org/Whitepaper/Value.pdf,* accessed March 2, 2012.

notice prior to implementation such that HHS has ample opportunity to review and comment on whether these changes or updates are significant enough to mean that the conditions in § 156.275(c)(2) and (3) would no longer be met. We are soliciting comments on these documentation requirements.

As codified in § 156.275(a)(2), a QHP issuer must authorize the accrediting entity that accredits its QHPs to release to the Exchange and HHS certain materials related to QHP accreditation. In accordance with this requirement, we propose that when authorized by an accredited QHP issuer, recognized accrediting entities provide the following accreditation survey data elements to the Exchange in which the issuer plans to operate one or more QHPs during the annual certification period or as changes occur to these data throughout the coverage year:

- The name, address, Health Insurance Oversight System (HIOS) issuer identifier,[7] and unique accreditation identifier(s) of the QHP issuer.
- The QHP issuer's accredited product line(s) (that is, Commercial, Medicaid, Exchange) and type(s) which have been released;
- For each of the QHP issuer's accredited product type, HIOS product identifier (if applicable); accreditation status, survey type or level (if applicable); accreditation score; expiration date of accreditation; and clinical quality measure results and adult and child CAHPS measure survey results (and corresponding expiration dates of these data) at the level specified by the Exchange (for example, QHP product or plan level).

We solicit comment, including whether fewer or more categories of information should be required for HHS to continue recognition of these entities.

Our proposal would permit Exchanges to arrange additional data sharing agreements with the recognized accrediting entities if they choose to require additional information, such as information on the QHP issuer's policies and procedures. We are soliciting comments on these data sharing requirements. We solicit comment whether to incorporate a requirement that recognized accrediting entities must provide this additional information upon request from an Exchange.

[7] The QHP issuer will provide the accrediting entity with this identifier.

IV. Collection of Information Requirements

A. Legislative Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

B. Requirements in Regulation Text

1. ICRs Regarding Collection of Essential Health Benefits Data (§ 156.120)

Proposed § 156.120 states that issuers that offer the three largest health insurance products by enrollment in each State's small group market, as determined by HHS based on data submitted in accordance with part 159 of this title for March 31, 2012, must provide the data described in paragraph (b) for the health plan with the highest enrollment within that product. This data collection mirrors the benefit data fields currently collected under the Health Insurance Web Portal PRA package (OCN: 0938–1086) and also includes: The administrative data necessary to identify the health plan, data on covered benefits, any treatment limitations on those benefits, data on drug coverage, and enrollment. This information would have to be submitted to HHS in a form and manner determined by HHS. The burden associated with meeting this requirement includes the time and effort needed by the issuer to compile the benefit coverage information and submit the information to HHS in a form and manner determined by HHS. Adding the limit data collection needed to establish EHB benchmarks to the benefit data already collected and updated on a regular basis would maximize issuers' ability to leverage current business systems and processes. We estimate that it would take 4 hours for a health insurance issuer to meet this reporting requirement, including data collection, submission, and validation. This estimate is based on current industry surveys collected to monitor the burden of submission of similar data in the Medicare Advantage and Prescription Drug Programs.

Given that the three health insurance issuers with the largest products by enrollment in each State (including the District of Columbia) would submit this information, the total burden is estimated to be 612 hours. We anticipate that the reporting requirement would require four hours for one employee at a cost of $77.00 an hour, based on the hourly cost reported by industry in responses to a CMS survey of Medicare Advantage and Prescription Drug Programs which requires employees with similar technical expertise, for a total cost of $308.00 a year per issuer. The total number of respondents required to report would be 153, the largest three issuers/products in each State and the District of Columbia by enrollment, for a total burden of $47,124. The data elements on which issuers would report are listed in the ICR released concurrently with this notice of proposed rulemaking. Issuers would provide HHS with the data collection requirements through an online tool that we would make available to them.

2. ICRs Regarding Data Collection From Recognized Accrediting Entities (§ 156.275)

Proposed § 156.275(c)(4) requires recognized accrediting entities to submit documentation to HHS as a condition of gaining and maintaining recognition. This documentation includes accreditation standards and requirements, processes, and measure specifications for performance measures. The burden associated with meeting this requirement is for an analyst level employee at the recognized accrediting entity to compile the documentation and electronically transmit it to HHS. It is assumed that these accreditation standards and requirements, processes, and measure specifications for performance measures would not be changed more than once per year. We estimate 2 burden hours in

1 year for each of the accrediting entities at a cost of $110 for a total of $220.[8]

Proposed § 156.275(c)(5) also requires recognized accrediting entities to share accreditation survey data with the Exchange once the release of these data have been authorized by the QHP issuer. To comply with this information collection, the recognized accrediting entities would need to collect the Health Insurance Oversight System (HIOS) issuer identification from each issuer offering an Exchange QHP and seeking accreditation from the recognized accrediting entity. We estimate that the burden associated with meeting this requirement would be in revising the contract language with the issuer and then inputting the HIOS issuer identification into the accrediting entities' database once the HIOS issuer ID has been provided by the issuer. To fulfill this requirement, we are estimating approximately 17 hours of work for an analyst at each accrediting entity with the vast majority of that time used to input the data. The cost burden associated with this requirement is estimated to be $940. Second, the accrediting entity would need to organize its accreditation data elements specified in proposed § 156.275(c)(5) to match the data template provided by each Exchange. We are assuming 51 State-based Exchanges and we are assuming that this will require five hours of labor per Exchange for a total of 255 burden hours for an operations analyst at each accrediting entity. The cost burden associated with this is $14,025. Third, each accrediting entity would need to supply the data elements to each Exchange once per month as these data are updated. We are estimating that this process would take one hour per Exchange each month for a total hour burden of 612 hours and a cost burden of $33,660 per year.

In total, the hour burden for each accrediting entity is 884 hours and the total cost burden per accrediting entity is $48,625. For both of the accrediting entities, the hour burden is 1772 and the cost burden is $97,470.

C. Additional Information Collection Requirements

This proposed rule imposes collection of information requirements as outlined in the regulation text and specified above. However, this proposed rule also makes reference to several associated information collection requirements that are not discussed in the regulations text contained in this document. The following is a discussion of these requirements.

1. State Selection of Benchmark Plan

We request that States indicate to HHS their benchmark plan selection and provide information on this plan in the format that issuers are required to use, which leverages the current data collection for the Health Insurance Web Portal, as described above at the same time CMS collects benefit information from the three largest small group market plan issuers in each State. However, if a State selects as its benchmark one of the three largest small group market benchmark options, for which HHS proposes to collect data to establish default benchmarks, the State may choose to rely on the issuer submission and provide HHS with only the name of the plan and other necessary identifying information. If the State relies solely on issuer data, HHS would review the data to ensure benefits in all ten categories, required by statute are offered. We further note that States may voluntarily provide information on State benefit mandates. We estimate that it would take each State that selects a benchmark five hours to make a benchmark determination, compile the data, and submit the information in the required format to HHS. If a State selects one of the top three small group market plans and chooses to identify its selection by name only, we believe the burden would be less than five hours. At this time we do not have any way to accurately estimate how many States would opt to select a benchmark. We will accept comments on this issue.

2. Data Collection from Stand-Alone Dental Plans

We request that issuers that intend to offer stand-alone dental plans in any State Exchange or in the Federally-facilitated Exchange voluntarily notify HHS of their intent to participate. This collection, which would also be a revision of the Health Insurance Web Portal PRA package (OCN: 0938–1086), includes data on whether the issuer intends to offer stand-alone coverage, the anticipated Exchange market in which coverage would be offered, and the State and service area in which the issuer intends to offer coverage in the Exchange.

The burden associated with this voluntary submission includes the time and effort needed by the issuer to report on whether it intends to offer stand-alone dental coverage. We estimate that it would take 0.5 hours for a health insurance issuer to submit this information. We estimate that approximately 20 issuers would respond to this data collection. Therefore, the total burden is estimated to be 10 hours. We anticipate that the reporting would require one employee at a cost of $77.00 an hour for a total cost of $38.50 a year per issuer. The total number of respondents is estimated to be approximately 20, for a total burden of $770.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, [CMS–9965–P]

Fax: (202) 395–6974; or

Email: OIRA_submission@omb.eop.gov

V. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

It is HHS's belief that this rule does not reach this economic threshold and thus is not considered a major rule. This rule consists of a data collection from a limited number of health insurance issuers and a data submission by two accrediting entities to HHS. Because of the very limited scope of this proposed rule, we do not anticipate that there would be any costs associated with this rulemaking in addition to those costs, as outlined below. We derived the costs outlined below from the labor costs as outlined in the Information Collection section above. The data collection from issuers only applies to the issuers of the three largest products by enrollment in each State's small group market, which would result in a minor economic burden to an estimated 153 issuers, at a total cost across all issuers of $47,124. The PRA package that accompanies this proposed rule requests that issuers that

[8] Wage data in this section are taken from the Bureau of Labor Statistics available at *http://www.bls.gov/oes/current/oes_dc.htm.*

wish to offer stand-alone dental plans in an Exchange notify HHS of their intent to participate. We estimate that 20 dental issuers would voluntarily respond, at a total cost across all responding issuers of $770. The two entities which we are proposing to recognize as accrediting entities already meet most of the conditions for recognition, and we anticipate that any required changes to their accreditation processes would be minor and result economic burden that we have estimated at $48,625.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as—(1) A proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 percent.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a proposed rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Small businesses are those with sizes below thresholds established by the Small Business Administration (SBA).

As discussed above, this proposed rule is necessary to implement certain standards related to the establishment of essential health benefits and recognition of accrediting entities as authorized by the Affordable Care Act. Specifically, this rule proposes collecting data from issuers that offer the three largest small group products in each state and from NCQA and URAC, which are the Phase I recognized accrediting entities. For the purposes of the regulatory flexibility analysis, we expect the following types of entities to be affected by this proposed rule—(1) QHP issuers (2) and NCQA and URAC.

As discussed in the Medical Loss Ratio interim final rule (75 FR 74918), few, if any, issuers are small enough to fall below the size thresholds for small business established by the SBA. In that rule, we used a data set created from 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, the Department used total Accident and Health earned premiums as a proxy for annual receipts. We estimated that there are 28 small entities with less than $7 million in accident and health earned premiums offering individual or group comprehensive major medical coverage. However, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.[9] We further estimate that any issuers that would be considered small businesses are likely to be subsidiaries of larger issuers that are not small businesses.

This proposed rule also requires two accrediting entities, NCQA and URAC, to submit documentation to HHS. The RFA, as noted previously, considers a non-profit entity that is not dominant in its field to be a small entity. We selected both NCQA and URAC because they are the two most dominant actors in the field of health plan accreditation. NCQA is a not-for-profit entity that has been in existence since 1990 and is widely recognized as a national leader in developing health care performance measures and quality standards. NCQA has accredited health plans covering over 70 percent of all Americans.[10] URAC is also a not-for-profit entity that was formed over 20 years ago. URAC accredits plans in every state and, according to its Web site, is the largest accrediting body for health care.[11] Finally, based on their dominant role in accrediting health plans, we believe that NCQA and URAC are both likely to have total annual receipts exceeding the Small Business Administration size standard.[12]

Based on the foregoing, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing proposed rule (and subsequent final rule) that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of costs, mainly those ''Federal mandate'' costs resulting from: (1) Imposing enforceable duties on State, local, or Tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs.

This proposed rule does not place any financial mandates on State, local, or Tribal governments. This rule authorizes a narrow data collection from an estimated 153 issuers, and the only costs associated with this reporting are labor costs, which we anticipate to total $47,124, which is significantly less than the threshold of $139 million. States may, at their option, select a benchmark plan and submit this information to HHS. We anticipate that it would take each State five hours of labor to complete and submit this information and that the per hour labor cost would be similar to that for the issuer data submission, which is $77 per hour. We cannot reasonably anticipate how many States would respond. However, assuming for the sake of argument that all States respond, the total cost would still be under $20,000, which is well below the $139 million threshold. The rule also proposes to have two

[9] According to the Small Business Administration size standards, entities with average annual receipts of $7 million or less would be considered small entities for North American Industry Classification System (NAICS) Code 524114 (Direct Health and Medical Insurance Carriers) (for more information, see ''Table of Size Standards Matched To North American Industry Classification System Codes,'' effective March 26, 2012, U.S. Small Business Administration, available at *http://www.sba.gov*).

[10] See ''About NCQA,'' NCQA Web site. Available at *http://www.ncqa.org/tabid/675Default.aspx.*

[11] See ''Frequently Asked Questions'' URAC Web site. Available at: *https://www.urac.org/about/faqs.aspx#General.*

[12] According to the Small Business Administration size standards, entities with average annual receipts of $7 million or less would be considered small entities for North American Industry Classification System (NAICS) Code 524298 (All Other Insurance Related Activities) (for more information, see ''Table of Size Standards Matched To North American Industry Classification System Codes,'' effective March 26, 2012, U.S. Small Business Administration, available at *http://www.sba.gov*).

accrediting entities submit documentation to HHS as specified in the rule. We expect the cost to the two accrediting entities to be $48,898.

VIII. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed regulation, as it relates to the recognition of accrediting entities, does not impose any costs on State or local governments. However, this proposed regulation includes reporting requirements if a State selects a benchmark plan.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, HHS has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners (NAIC), and consulting with State insurance officials on an individual basis. We believe that this proposed rule does not impose substantial direct costs on State and local governments, preempt State law, or otherwise have federalism implications. We note that States that choose to select a benchmark plan would be required to submit their benchmark plan selection to HHS, and provide information on the benchmark plan in the same format that is used by issuers. However, we anticipate that the administrative costs related to this requirement are likely to be minimal because the States are likely to obtain this information from the issuers.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department of Health and Human Services certifies that CMS has complied with the requirements of Executive Order 13132 for the attached proposed regulation in a meaningful and timely manner.

List of Subjects in 45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs—health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter B, as set forth below:

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

1. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, Sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1341–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

2. Amend part 156 by adding subpart B, consisting of § 156.120, to read as follows:

Subpart B—Standards for Essential Health Benefits, Actuarial Value, and Cost Sharing

§ 156.120 Collection of data from certain issuers to define essential health benefits.

(a) *Definitions.* The following definitions apply to this section, unless the context indicates otherwise:

Health benefits means benefits for medical care, as defined at § 144.103 of this chapter, that may be delivered through the purchase of insurance or otherwise.

Health insurance product has the meaning given to the term in § 159.110 of this chapter.

Health plan has the meaning given to the term, ''Portal Plan'' in § 159.110 of this chapter.

Small group market has the meaning given to the term in § 155.20 of this chapter.

State has the meaning given to the term in § 155.20 of this chapter.

Treatment limitations has the meaning given to the term in § 146.136 of this chapter.

(b) *Required information.* The issuers described in paragraph (c) of this section must provide the following information for the health plans described in paragraph (d) of this section in accordance with the standards in paragraph (e) of this section:

(1) Administrative data necessary to identify the health plan;

(2) Data and descriptive information for each plan on the following items:

(i) All health benefits in the plan;

(ii) Treatment limitations;

(iii) Drug coverage; and

(iv) Enrollment;

(c) *Issuers required to report.* The issuers that offer the three largest health insurance products by enrollment, as of March 31, 2012 (enrollment is determined by HHS based on data submitted in accordance with part 159 of this title) in each State's small group market must provide the information in paragraph (b) of this section.

(d) *Plans impacted.* The issuers described in paragraph (c) of this section must provide the information described in paragraph (b) of this section for the health plan with the highest enrollment (as determined by the issuer) within the products described in paragraph (c) of this section.

(e) *Reporting requirement.* To ensure consistency in reporting, an issuer described in paragraph (c) of this section must submit, in a form and manner to be determined by HHS, the information described in paragraph (b) of this section to HHS.

3. Amend § 156.275 by adding paragraph (c) to read as follows:

§ 156.275 Accreditation of QHP issuers.

* * * * *

(c)(1) *Recognition of accrediting entity by HHS.* (i) Effective upon completion of conditions listed in paragraphs (c)(2) through (4) of this section, at which time HHS will notify the public in the **Federal Register** that the National Committee for Quality Assurance (NCQA) and URAC are recognized as accrediting entities by the Secretary of HHS to provide accreditation of QHPs meeting the requirement of this section. Such recognition is effective until rescinded or recognition is required to be made by the process identified in paragraph (c)(1)(ii) of this section.

(ii) [Reserved]

(2)(i) *Scope of accreditation.* Subject to paragraphs (c)(2)(ii) through (iv) of this section, recognized accrediting entities must provide accreditation within the categories identified in paragraphs (a)(1) of this section.

(ii) *Clinical quality measures.* Recognized accrediting entities must include a clinical quality measure set in their accreditation standards for health plans that:

(A) Spans a breadth of conditions and domains, including, but not limited to, preventive care, mental health and substance abuse disorders, chronic care, and acute care.

(B) Includes measures that are applicable to adults and measures that are applicable to children.

(C) Aligns with the priorities of the National Strategy for Quality Improvement in Health Care issued by the Secretary of HHS and submitted to Congress on March 12, 2011;

(D) Only includes measures that are either developed or adopted by a voluntary consensus standards setting body (such as those described in the National Technology and Transfer Advancement of Act of 1995 (NTTAA) and Office of Management and Budget (OMB) Circular A–119 (1998)) or, where appropriate endorsed measures are unavailable, are in common use for health plan quality measurement and meet health plan industry standards; and

(E) Is evidence-based.

(iii) *Level of accreditation.* Recognized accrediting entities must provide accreditation at the Exchange product type level.

(iv) *Network adequacy.* The network adequacy standards for accreditation used by the recognized accrediting entities must, at a minimum, be consistent with the general requirements for network adequacy for QHP issuers codified in § 156.230(a).

(3) *Methodological and scoring criteria for accreditation.* Recognized accrediting entities must use transparent and rigorous methodological and scoring criteria.

(4) *Documentation.* An accrediting entity must provide the following documentation:

(i) To be recognized, an accrediting entity must provide current accreditation standards and requirements, processes, and measure specifications for performance measures to demonstrate that each entity meets the conditions described in paragraphs (c)(2) and (3) of this section to HHS at a time period specified by HHS.

(ii) Recognized accrediting entities must provide any proposed changes or updates to the accreditation standards and requirements, processes, and measure specifications for performance measures with 60 days notice prior to implementation.

(5) *Data sharing requirements between the recognized accrediting entities and Exchanges.* When authorized by an accredited QHP issuer pursuant to paragraph (a)(2) of this section, recognized accrediting entities must provide the following QHP issuer's accreditation survey data elements to the Exchange in which the issuer plans to operate one or more QHPs during the annual certification period or as changes occur to these data throughout the coverage year—the name, address, Health Insurance Oversight System (HIOS) issuer identifier, and unique accreditation identifier(s) of the QHP issuer and its accredited product line(s) and type(s) which have been released; and for each accredited product type:

(i) HIOS product identifier (if applicable);

(ii) Accreditation status, survey type, or level (if applicable);

(iii) Accreditation score;

(iv) Expiration date of accreditation; and

(v) Clinical quality measure results and adult and child CAHPS measure survey results (and corresponding expiration dates of these data) at the level specified by the Exchange.

Dated: May 23, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 23, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–13489 Filed 6–1–12; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0049; 4500030113]

RIN 1018–AX89

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Listing of *Arctostaphylos franciscana* as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our September 8, 2011, combined 12-month petition finding and proposed rule to list *Arctostaphylos franciscana* (Franciscan manzanita) as endangered and designate critical habitat under the Endangered species Act of 1973, as amended (Act). In the proposed rule, we found that critical habitat was not determinable at the time because we did not have sufficient information on what physical and biological features would be essential to the conservation of the species, or what other areas outside the known occupied site may be essential for the conservation of the species. The Service seeks data and comments from the public on this proposed listing rule and whether the designation of critical habitat for the species is prudent and determinable. We are reopening the comment period to allow all interested parties an additional opportunity to comment on the proposed rule and to submit information on the status of the species. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will accept comments received or postmarked on or before June 20, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2010–0049, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2010–0049, which is the docket number for this rulemaking. Then, on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document and submit a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2010–0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Karen Leyse, Listing Coordinator, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; by telephone at 916–414–6600; or by facsimile at 916–414–6712. If you use a telecommunications device for the deaf (TDD), please call the Federal

Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2011 (76 FR 55623), we published in the **Federal Register** a combined 12-month finding and proposed rule to list *Arctostaphylos franciscana* as endangered. That proposal had a 60-day comment period, ending November 7, 2011. We received no requests for a public hearing; therefore, no public hearing will be held.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing for *Arctostaphylos franciscana* that published in the **Federal Register** on September 8, 2011 (76 FR 55623). We will consider information and recommendations from all interested parties. We intend that any final action resulting from this proposal be as accurate as possible and based on the best available scientific and commercial data. For more information on the specific information we are seeking, please see the September 8, 2011, proposed listing rule (76 FR 55623).

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning this proposed listing and critical habitat will take into consideration all written comments and any additional information we receive.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2010–0049, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2010–0049, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Dated: May 23, 2012.

Gregory E. Siekaniec,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–13487 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0023; 4500030114]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Southern White-Tailed Ptarmigan and the Mt. Rainier White-Tailed Ptarmigan as Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the southern white-tailed ptarmigan (*Lagopus leucura altipetens*) and the Mt. Rainier white-tailed ptarmigan (*L. l. rainierensis*) as threatened under the Endangered Species Act of 1973, as amended (Act), and designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigan may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the two subspecies to determine if listing is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding these subspecies. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act. We will make a determination on critical habitat for these subspecies if and when we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before August 6, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After August 6, 2012, you must submit information directly to the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section, below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the SEARCH field, enter Docket No. FWS–R6–ES–2012–0023, which is the docket number for this action. Then click on the Search button. You may submit a comment by clicking on ''Submit a Comment.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2012–0023; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office, P.O. Box 25486, DFC Mail Stop 65412, Denver, CO 80225–0486; telephone (303) 236–4773; fax (303) 236–4005. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and

commercial information, we request information on the southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigan from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We particularly seek the following information regarding the southern and Mt. Rainier white-tailed ptarmigans:

(1) Biology, range, and population trends, including:

(a) Taxonomy (especially the genetics of the species and subspecies);

(b) Historic and current range, including distribution patterns; and

(c) Historic and current population levels, and current and projected trends.

(2) Past and ongoing conservation measures and management programs for the species, its habitat, or both.

(3) The potential effects of climate change on habitats.

We also seek information on the following five threat factors used to determine if a species, as defined by the Act, is endangered or threatened under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*):

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

Of particular interest to us is information on the potential cumulative effects of the five threat factors listed above.

If, after the status review, we determine that listing the southern or Mt. Rainier white-tailed ptarmigan is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), in accordance with section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species.

(2) Where these features are currently found.

(3) Whether any of these features may require special management considerations or protection.

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species.''

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information we receive during this public comment period. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this 90-day finding are available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On August 24, 2010, we received a petition of the same date prepared by Noah Greenwald for the Center for Biological Diversity (petitioner) requesting that we list either the U.S. population or the Rocky Mountains population of the white-tailed ptarmigan (*Lagopus leucura*) as threatened and to designate critical habitat. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). The petition specifically requested that we list either the contiguous U.S. population of white-tailed ptarmigan as a distinct population segment or list only the Rocky Mountain population as a distinct population segment under the Act. On May 6, 2011, we notified the petitioner that we received the petition and requested copies of the references cited.

In a July 20, 2011, letter we informed the petitioner that we had reviewed the information presented in the petition and determined that each of the requested distinct population segments included multiple, recognized subspecies of white-tailed ptarmigan. Therefore, we could not accurately evaluate the discreetness and significance criteria for the two requested population segments according to our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722; February 7, 1996). Our letter provided the petitioner with an opportunity to amend or revise the petition based on our acceptance of the subspecific taxonomic designations of white-tailed ptarmigan.

On September 1, 2011, the petitioner responded by email and indicated that they intended to revise their petition

based on the information that we provided in our July 20 letter. In a letter dated October 12, 2011, the petitioner revised their petition to request listing of the southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigan as threatened. We verified receipt of the revised petition by email on October 12, 2011. This finding addresses the revised petition.

Previous Federal Actions

There are no previous Federal actions involving the white-tailed ptarmigan or any of the subspecies.

Species Information

Taxonomy

The white-tailed ptarmigan is a small bird in the order Galliformes, family Phasianidae, and the subfamily Tetraoninae, which includes the grouse, or ground-feeding game birds (Hoffman 2006, p. 11; NatureServe 2011, p. 1). Likely descended from ancestral rock ptarmigan (*Lagopus muta*) isolated during the last ice age (Pleistocene Epoch, 2.6 million to 12,000 years before present), the white-tailed ptarmigan does not hybridize or compete for resources with either the rock or willow ptarmigan (*L. lagopus*) where ranges overlap in the northern part of the range (Short 1967, p. 17; Johnsgard 1973, p. 252; Gibbard and van Kolfschoten 2004, p. 441; Hoffman 2006, pp. 11, 36). The blue grouse (*Dendragapus obscurus)* shares breeding habitats with the white-tailed ptarmigan, but hybridization or competition between the species has not been documented (Hoffman 2006, pp. 11, 36).

There are five recognized subspecies of white-tailed ptarmigan in North America (American Ornithologists' Union (AOU) 1957, p. 135). The southern white-tailed ptarmigan (*Lagopus leucura altipetens*) occupies the Rocky Mountains in Colorado, New Mexico, and historically in Wyoming. The Mt. Rainier white-tailed ptarmigan (*L. l. rainierensis*) occupies the Cascade Mountains of Washington. The Kenai white-tailed ptarmigan (*L. l. peninsularis*) extends from Canada into Alaska, and the Vancouver white-tailed ptarmigan (*L. l. saxatilis*) is restricted to Vancouver Island in Canada. The northern white-tailed ptarmigan (*L. l. leucurus*) extends from Canada into Montana (Aldrich 1963, p. 542).

Based on a lack of comparative work, Braun *et al.* (1993, p. 1) questioned the status and validity of the five subspecies of white-tailed ptarmigan. After examining museum specimens, Braun *et al.* suggested that the southern, Mt. Rainier, and Vancouver white-tailed ptarmigans are similar in size and color, whereas the northern and Kenai white-tailed ptarmigan are similar in size and color (1993, p. 1; Hoffman 2006, p. 11). Braun *et al.* observed a gradation in size and color from south to north, with larger, darker-colored birds in the south (1993, p. 1). However, Braun *et al.* never published their results, and, thus, their questioning of the subspecies designations has not been subjected to scientific peer review.

Multiple taxonomic authorities for birds recognize the validity of the five subspecies of white-tailed ptarmigan. The AOU recognized the five subspecies in their Checklist (1957, p. 135). Since 1957, the AOU has not conducted a review of its subspecific distinction and stopped listing subspecies as of the 6th edition in 1983. However, the AOU recommends the continued use of its 5th edition for taxonomy at the subspecific level (1997, p. xii). Based on their 1957 consideration of the taxon, the AOU still recognizes the southern and Mt. Rainier white-tailed ptarmigan as valid subspecies. Additionally, the Integrated Taxonomic Information System (ITIS) (2011) and Clements Checklist (2011, Version 6.6) also recognize the five subspecies of white-tailed ptarmigan. Hoffman (2006, p. 11) and Storch (2007, p. 39) also reference the five subspecies. No scientifically peer-reviewed studies exist that review or analyze the subspecific designations of white-tailed ptarmigan.

We recognize the lack of information, particularly morphological and genetic data, regarding the subspecific designations of white-tailed ptarmigan. We are aware of a proposed study by the U.S. Geological Survey that will use genetics to clarify the subspecific designations of white-tailed ptarmigan throughout its range. However, at the time of this evaluation, the best available scientific and commercial information suggests that the five subspecies identified by the AOU are valid. Therefore, we accept the taxonomic characterization of white-tailed ptarmigan as five subspecies occurring in North America.

The petitioner requests that we list two of the five recognized subspecies of white-tailed ptarmigan as threatened: The southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigan. Section 3(16) of the Act defines the term ''species'' as any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. After a review of the available taxonomic information, we determine that the southern white-tailed ptarmigan and Mt. Rainier white-tailed ptarmigan are subspecies and are listable entities under the Act. During our status review, we will further evaluate the taxonomic classifications of the southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigan.

Physical Description

The southern and Mt. Rainier white-tailed ptarmigans are physically similar (Braun *et al.* 1993, p. 1; Hoffman 2006, p. 11). Both subspecies of white-tailed ptarmigan are white in winter and brown in summer, the feathers changing color with the seasons to camouflage the birds (Braun *et al.* 1993, p. 1). Although the body feathers change color, the white-tailed ptarmigan is named for its white tail feathers, which never change color. These perpetually white tail feathers distinguish the species from other ptarmigan species (Short 1967, p. 17; Braun *et al.* 1993, p. 1; Hoffman 2006, p. 12). Males and females share similar body size, shape, and winter plumage, with adult body lengths up to 13.4 inches (34 centimeters) and body masses up to 0.9 pounds (425 grams) (Braun *et al.* 1993, p. 1; Hoffman 2006, p. 12). During the winter, both males and females are stark white and difficult to distinguish from each other and from the background of snow, except for black eyes, black toenails, and a black beak (Braun *et al.* 1993, p. 1; Hoffman 2006, p. 12). As the snow melts and the breeding season begins, males turn a lighter color of brown or gray than females, and have a dark band of feathers on the breast that resembles a necklace (Braun *et al.* 1993, p. 1). Both males and females have heavily feathered feet that act as snowshoes to support them as they walk across the snow (Braun *et al.* 1993, p. 1).

Life History

The southern and Mt. Rainier white-tailed ptarmigans share similar life histories. During the winter, the southern and Mt. Rainier white-tailed ptarmigans congregate in flocks and travel to the lowest elevations in their respective ranges, seeking areas with soft snow and willows (*Salix* spp.) (Hoffman and Braun 1977, p. 110). During the winter, the birds feed on willows that protrude through the snow, and dig burrows, or roosts, in the soft snow that provide shelter from winter storms (Braun *et al.* 1993, p. 1; Hoffman 2006, pp. 17, 27). As alpine winters transition to spring, the southern and Mt. Rainier white-tailed ptarmigans migrate upwards in elevation for breeding and nesting to areas that are free of snow and provide access to

willows by mid-May (Hoffman and Braun 1975, p. 486). After breeding and nesting, the southern and Mt. Rainier white-tailed ptarmigans spend the summer at the highest elevations of their respective ranges, where temperatures are coolest and rocky areas provide protection from predators and storms. Summer forage includes willows and other plants (May and Braun 1972, p. 1184; Braun *et al.* 1993, p. 1; Hoffman 2006, p. 27). The first snowstorm of the season forces the southern and Mt. Rainier white-tailed ptarmigans back down to the lower elevations of their respective ranges.

The southern and Mt. Rainier white-tailed ptarmigans spend their entire lifecycles in alpine ecosystems and are well adapted to survive in cold, arid, and open alpine environments (Johnson 1968, p. 1011; Hoffman 2006, p. 12; Storch 2007, p. 4). The color-changing plumage effectively camouflages the southern and Mt. Rainier white-tailed ptarmigans against white snow in winter and alpine vegetation and rocks in the summer (Ligon 1961, p. 87; Braun *et al.* 1993, p. 1; Martin and Forbes 2004, p. 1). The color-changing plumage also alters the reflective and absorptive properties of the feathers according to season to help the birds regulate body temperature (Hoffman 2006, p. 31). Metabolic rates are low, allowing the southern and Mt. Rainier white-tailed ptarmigans to gain weight during the winter (Hoffman 2006, p. 31). Low evaporative efficiencies prevent the loss of body heat (Laisiewski *et al.* 1966, p. 15; Johnson 1968, p. 1010; Hoffman 2006, p. 31). Additionally, snowshoe-like, feathered feet allow the southern and Mt. Rainier ptarmigans to save energy by walking on top of snow rather than flying, which is energetically expensive (Storch 2007, p. 4).

Habitat

The southern and Mt. Rainier white-tailed ptarmigans inhabit alpine ecosystems at or above treeline, a transition zone defined as the upper elevational edge where wind, cold, and harsh weather prevent the growth of trees (Wardle 1974, p. 371). Treeline occurs at elevations around 11,500 feet (ft) (3,500 meters (m)) above sea level in New Mexico and southern Colorado, and 9,500 ft (2,900 m) in Wyoming (Hoffman 2006, p. 23). Treeline is as low as 6,600 ft (2,000 m) in the North Cascades of Washington (Clarke and Johnson 1990, p. 652; Hoffman 2006, p. 23). These alpine habitats at or above treeline are characterized by high winds, cold temperatures, short vegetation growing seasons, low atmospheric oxygen concentrations, and intense solar radiation (Martin and Weibe 2004, p. 177; Sandercock *et al.* 2005, p. 13). The extreme topography and harsh climatic conditions of the alpine slows the growth of plants (Hoffman 2006, p. 22). Slow growth rates make alpine ecosystems sensitive to disturbance, and vegetation may take many years to recover from disturbance (Willard and Marr 1970, p. 257). Within these open and arid alpine habitats, the southern and Mt. Rainier white-tailed ptarmigans prefer rocky areas, dwarfed trees, and vegetation near snowfields and streams (Choate 1963, p. 686; Frederick and Gutiérrez 1992, p. 898; Hoffman 2006, p. 23). The southern and Mt. Rainier white-tailed ptarmigans make seasonal migrations between elevations. Factors affecting their distribution include cool temperatures and the presence of exposed rocky areas, soft snow, and willows (Hoffman 2006, p. 23).

Distribution, Abundance, and Trends

Specific population distribution, abundance, and demography information is lacking for the white-tailed ptarmigan or any of its subspecies, likely a reflection of the difficulty of surveying in often remote, high-elevation habitats. Although, at the species level, the white-tailed ptarmigan still occupies most of its historical range, population estimates are mostly unknown, other than in localized areas of study (Braun *et al.* 1993, p. 2; Hoffman 2006, p. 16). Storch (2007, p. 40) estimated a rangewide, spring population of more than 200,000 birds (for all subspecies of white-tailed ptarmigan). The North American Landbird Conservation Plan estimates the global population at 2,000,000 birds (again, for all subspecies combined) (Rich *et al.* 2004; Hoffman 2006, p. 16); however, Hoffman (2006, p. 16) argues that this estimate is likely extremely inflated and may be a reporting error. Breeding densities fluctuate between years and locations, ranging from 5 to 36 birds per square mile (sq mi) (2 to 14 birds per square kilometer (sq km)) (Hoffman 2006, p. 16). Most populations are probably stable and secure; however, localized populations may be at risk (Storch 2007, p. 152). NatureServe ranks the white-tailed ptarmigan as ''secure'' rangewide (2011, p. 1). The International Union for Conservation of Nature (IUCN) ranks the white-tailed ptarmigan as a species of ''least concern'' (IUCN 2011, p. 1). Within the U.S. Forest Service (USFS) Rocky Mountain Region, Hoffman states that populations of white-tailed ptarmigan are stable, and are in no immediate jeopardy of declining (2006, p. 40). However, these rankings are for the species as a whole, and do not evaluate the status of the individual subspecies of the white-tailed ptarmigan.

The white-tailed ptarmigan is endemic to alpine habitats in western North America and is the only species of ptarmigan whose range extends south of Canada (Aldrich 1963, p. 543; AOU 1998, p. 120; Hoffman 2006, p. 12). The southern white-tailed ptarmigan inhabits alpine areas in the Rocky Mountains of Colorado and New Mexico, but is likely not found in Wyoming (Hoffman 2006, p. 13). The Mt. Rainier white-tailed ptarmigan inhabits the northern Cascade Mountains of Washington, but there are no published accounts of the Mt. Rainier white-tailed ptarmigan in the Olympic Mountains in the northwestern part of the State (Hoffman 2006, p. 12). There are no verified records of white-tailed ptarmigan in Idaho, Oregon, California, or Utah (Gabrielson and Jewett 1940, p. 602; Aldrich 1963, pp. 541, 543; Braun *et al.* 1993, p. 1; Gilligan *et al.* 1994, p. 86; Hoffman 2006, p. 12). The historical absence of white-tailed ptarmigan from apparently suitable alpine habitats in Oregon, California, Utah, and the Olympic Mountains in Washington is due to long distances to the nearest occupied ranges (Hoffman 2006, p. 12). A lack of suitable alpine habitats explains the absence of ptarmigan in Idaho (Hoffman 2006, p. 12).

In Colorado, the southern white-tailed ptarmigan lives in all available alpine areas, except in the Spanish Peaks and Greenhorn Mountain in the southern part of the State (Braun *et al.* 1993, p. 1). Colorado supports the largest population of white-tailed ptarmigan in the United States outside of Alaska, with a statewide breeding population estimated at 34,800 birds (Hoffman 2006, pp. 15, 16). At Rocky Mountain National Park (RMNP) and Mt. Evans in Colorado, Braun *et al.* (1993, p. 1) reported breeding densities of 11.7 to 35.0 birds per sq mi (4.5 to 13.5 birds per sq km) and 5.2 to 26.7 birds per sq mi (2.0 to 10.3 birds per sq km), respectively (Hoffman 2006, p. 11).

In New Mexico, the southern white-tailed ptarmigan historically inhabited all the ridges and peaks above timberline within the Sangre de Cristo Mountains, but by the mid-1900s, it was found only on the northernmost peaks (Ligon 1961, p. 87; New Mexico Department of Game and Fish (NMDGF) 2008, p. 87). Following declines in the southernmost peaks, the NMDGF listed the white-tailed ptarmigan as endangered in 1975 (NMGFD 2008, p. 87). Recent observations and reports

suggest that the reintroduction of white-tailed ptarmigan into the southern peaks of the Sangre de Cristo Mountains was successful, and that populations have persisted on the northernmost peaks (NMDGF 2008, p. 87). Coordinated surveys of all suitable habitats within the Sangre de Cristo Mountains are needed to document the current distribution and abundance of white-tailed ptarmigan in New Mexico (NMDGF 2008, p. 88).

The southern white-tailed ptarmigan appears to be absent from most alpine habitats in Wyoming, except possibly for the Snowy Range in the southern part of the State (Hoffman 2006, p. 15). Anecdotal reports suggest the southern white-tailed ptarmigan persists in the Snowy Range, but there have been no confirmed sightings since the early 1970s and the available habitats are limited (Hoffman 2006, p. 15). The Medicine Bow National Forest in southern Wyoming considers the white-tailed ptarmigan to be present historically but currently extirpated from the Snowy Range (USFS 2003, pp. 3, 154; Hoffman 2006, p. 15).

There is little information available regarding the distribution, abundance, or trends of the Mt. Rainier white-tailed ptarmigan in the Cascade Mountains of Washington (Smith *et al.* 1997, p. 140). No studies have been conducted in Washington other than general monitoring and surveys to determine presence or absence (Hoffman 2006, p. 8). There are no population estimates and no published accounts for the white-tailed ptarmigan in the Olympic Mountains of northwestern Washington (Hoffman 2006, p. 12). The Mt. Rainier white-tailed ptarmigan inhabits the North Cascades but not the South Cascades, primarily due to the lack of suitable alpine areas for dispersal and colonization in the south (Clark and Johnson 1990, p. 652).

Researchers successfully translocated white-tailed ptarmigan in the Sierra Nevada Mountains of California, the Uinta Mountains in Utah, Pike's Peak in Colorado, and the Pecos Wilderness in New Mexico (Braun *et al.* 1993, p. 1; Hoffman 2006, p. 13). Reports indicate that ptarmigans still exist in these translocation areas (Braun *et al.* 1978, p. 665; NMDGF 2006, p. 79; Hoffman 2006, p. 13). However, a translocation attempt in the Wallowa Mountains in northeastern Oregon was unsuccessful when the introduced population did not survive (Braun *et al.* 1993, p. 1; Marshall *et al.* 2003, p. 618; Hoffman 2006, p. 13).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may meet the definition of endangered or threatened under the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a substantial finding. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigan, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The petitioner asserts that threats causing the present or threatened destruction, modification, or curtailment of habitat or range for the southern and Mt. Rainier white-tailed ptarmigans include global climate change, recreation, livestock grazing, and mining. These assertions are described in more detail below.

Global Climate Change

Information Provided in the Petition—The petitioner asserts that global climate change is the greatest threat to the survival of the southern and Mt. Rainier white-tailed ptarmigans in the United States. The petitioner claims that the white-tailed ptarmigan depends on open alpine habitats, willow as its main food source, soft snow in which to burrow, and cool temperatures to which it is uniquely adapted. The petitioner also asserts that these subspecies are physiologically underequipped to cope with rising temperatures associated with global climate change. Because these are physiological effects rather than effects to habitat, we discuss these assertions under Factor E.

The petitioner asserts that the loss of alpine habitats to global climate change threatens the southern and Mt. Rainier white-tailed ptarmigans, and provides several citations to support these claims. Foremost amongst these are the various publications of the Intergovernmental Panel on Climate Change (IPCC), specifically the four-volume IPCC Fourth Assessment Report: Climate Change 2007 and the *Copenhagen Diagnosis, 2009: Updating the World on the Latest Climate Science* (IPCC 2007, p. iii; 2009, p. 1). The *Copenhagen Diagnosis* summarizes research regarding the accumulation of carbon dioxide in the atmosphere and the resulting greenhouse effect that contributes to global warming. The IPCC also summarized changes in the amount, intensity, frequency, and type of precipitation associated with warming global temperatures (Trenberth *et al.* 2007, p. 262).

The petitioner alleges that several of the effects of climate change threaten the white-tailed ptarmigan. The petition presents research indicating that mountaintops and their alpine ecosystems are especially sensitive to changes in climate (Hougton *et al.* 1995 and 1996; Pepin 2000, p. 135; Beniston *et al.* 1997, p. 233; Kullman 2002, p. 68). The petitioner presents research indicating that the greater photosynthetic efficiency of alpine

plants coupled with more carbon dioxide in the atmosphere suggests that overall changes in vegetation will be especially dramatic in alpine habitats (Korner and Diemer 1994, p. 58; Hoffman 2006, p. 46). Additionally, warming temperatures will shift treelines upwards in elevation, reducing available alpine habitats (Markham *et al.* 1993, p. 65; Root *et al.* 2003, p. 57; Hoffman 2006, pp. 3, 46). Warmer winter temperatures also suggest that a higher percentage of total precipitation will fall as rain rather than snow (Mote 2003, p. 1; Mote 2005, p. 39; Knowles *et al.* 2006, p. 4545; Karl *et al.* 2009, pp. 24, 135), which the petitioner argues may further reduce available alpine habitats for both subspecies.

After summarizing current research on global climate change, the petitioner provides research that forecasts the range of the white-tailed ptarmigan under several, predicted climate scenarios (Lawler *et al.* 2009, pp. 591–593). The petitioner predicts that the current northern range of the white-tailed ptarmigan will contract, and the species will be eliminated from the contiguous United States by year 2061, citing Lawler *et al.* (2009, appendix e) to support this claim.

Furthermore, the petitioner claims that climate change has already occurred and is predicted to continue within the range of the southern and Mt. Rainier white-tailed ptarmigans in the United States. The petitioner summarizes research indicating that temperatures in Colorado have increased significantly more than the average for the western United States (Ray *et al.* 2008, pp. 5, 10, 11, 21, 29). The references presented by the petitioner indicate that Colorado will experience few extreme cold months, more extreme warm months, with more consecutive warm winters (Ray *et al.* 2008, p. 29). The petitioner also presents evidence of ongoing climatic warming within the range of the Mt. Rainier white-tailed ptarmigan in the Cascade Mountains of Washington (Karl *et al.* 2009, pp. 135–136).

The petitioner presents research that global climate change, through increasing temperatures, also will affect the elevation of treeline, citing studies that document the advancement of treeline upslope (Wang *et al.* 2002b, p. 82; Grace *et al.* 2002, p. 540; Millar *et al.* 2004, p. 181; Stohlgren and Baron 2003, p. 1; Hoffman 2006, p. 45). The petitioner deduces that the upslope migration of trees and the expansion of forest will compress and fragment white-tailed ptarmigan habitats (Wang *et al.* 2002b, p. 82; Hoffman 2006, p. 45).

Finally, the petitioner presents research that changes will occur to the alpine plant communities bounded by the encroaching treeline because of global climate change (Hoffman 2006, p. 46; Cannone *et al.* 2007, p. 360). Although the exact changes to vegetation communities are uncertain, the petitioner reasons that the changes will be significant to the alpine habitats of the white-tailed ptarmigan. The petitioner also suggests that changed snowfall patterns will alter and reduce the availability of vegetation features important to the white-tailed ptarmigan, such as wet meadows below late-lying snowfields that are used by females to raise broods (Hoffman 2006, p. 46).

The petitioner concludes that global warming is the greatest threat to the survival of the white-tailed ptarmigan because of the loss and fragmentation of alpine habitats, the upslope advancement of treeline, and other changes to alpine plant communities.

Evaluation of Information in the Petition and Available in Service Files—Climatic and species models referenced by the petitioner suggest that the white-tailed ptarmigan may be completely extirpated from its current range within the United States with more than a 90 percent model agreement under low and high carbon dioxide emission scenarios (Lawler *et al.* 2009, appendix e). Therefore, the petitioner concludes that global warming modifies and curtails the range of the white-tailed ptarmigan in the United States, restricting the species to any remaining alpine habitats in Alaska and Canada, resulting in local extirpations, and threatening both subspecies. Although the complexities of modeling often confound the predicted species distributions and loss of habitats attributed to global climate change, the information presented by the petition and available in our files indicates that global climate change may curtail the range of the southern or Mt. Rainier white-tailed ptarmigan, potentially resulting in the extirpation of both subspecies from the contiguous United States.

The petitioner cites information indicating that climatic warming has occurred within the range of the southern and Mt. Rainier white-tailed ptarmigans. Over the past 30 years, temperatures in Colorado increased by 1.9 °F (1.1 °C), twice the average increase for the entire western United States for the same time period (Ray *et al.* 2008, pp. 10, 21). Ray *et al.* expect Colorado to warm by 3.96 °F (2.2 °C) by 2050, with winter temperatures increasing by 3.06 °F (1.7 °C) (Ray *et al.* 2008, pp. 5, 11, 29). Summer temperatures also are expected to increase in Colorado, with predicted increases of 5.04 °F (2.8 °C) (Ray *et al.* 2008, p. 29). Climate models for Washington State project increases in annual average temperatures of 5.22 °F (2.9 °C) by 2080 (Littell *et al.* 2009, pp. 33, 199). This report also illustrated an increase of 1.44 °F (0.8 °C) for Washington since 1920 (Littell *et al.* 2009, pp. 39, 199). In the Pacific Northwest, spring snowpack has declined by approximately 40 percent since the mid-20th century and is consistent with observed increases in global temperature (Mote 2003, p. 2). Payne *et al.* (2004, p. 243) predict further declines in the spring snowpack of the Cascade Mountains by as much as 40 percent by the year 2040. These studies indicate that temperatures are increasing, and may be a result of global climate change within the range of the southern and Mt. Rainier white-tailed ptarmigans.

Furthermore, we evaluated the claims and references provided by the petitioner regarding the response of treeline to warming temperatures and the potential impact on alpine environments. For certain areas of the RMNP in Colorado, krummholz (wind-trimmed, low-growing) trees are moving upslope at an average rate of 3.3 ft (1 m) per 27 years (Stohlgren and Baron 2003, p. 1). The researchers predicted that at certain sites, the krummholz could develop into forests in response to environmental factors, such as temperature and soil moisture. If unchecked, the researchers predicted that the developing forests would invade alpine ecosystems, thereby reducing the diversity of understory plants and habitat for alpine wildlife (Stohlgren and Baron 2003, p. 1). Based on predicted increases in temperature, Grace *et al.* (2002, p. 540) similarly predicted the advancement of treeline upwards and the subsequent invasion of trees into alpine meadows. Forest expansion has occurred to similar alpine habitats in the Arctic and Alaska (Millar *et al.* 2004, p. 181). Available studies also suggest that small increments of 1.8 to 3.6 °F (1 to 2 °C) of warming may result in changes to the dynamics of vegetation communities in the alpine (Korner and Diemer 1994, p. 58; Hoffman 2006, p. 46; Cannone *et al.* 2007, p. 360). The response of plants to increased levels of atmospheric carbon dioxide and shifts in precipitation patterns may impact the distribution of willow and other important ptarmigan food plants (Hoffman 2006, p. 46).

Although it is unclear exactly how alpine vegetation communities will respond to a warming climate, the cited references indicate that the upslope

migration of treeline, the expansion of subalpine forests, and changes to alpine plant communities may occur. Cumulatively, these changes may reduce the alpine habitats available to the southern and Mt. Rainier white-tailed ptarmigans; however, the magnitude of this loss is undeterminable based on our review of the information in the petition and in our files.

Based on the results of the empirical studies cited by the petitioner and information available in our files, along with predictions of increasing air temperatures, decreasing snow packs, and predicted changes to white-tailed ptarmigan habitats and distribution of food plants, we find that the ranges of the southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigans and the alpine habitats within these ranges may decrease as a result of global climate change. Therefore, we find that the petition and information in our files present substantial information to indicate that the predicted changes in habitat due to the effects of climate change may be a threat to the southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigan. We discuss potential physiological and behavioral effects of a warming climate under Factor E, below.

Recreation

Information Provided in the Petition—The petitioner asserts that recreational activities (specifically hiking, off-road vehicle (ORV) use, and skiing) destroy alpine habitats and directly disturb the southern and Mt. Rainier white-tailed ptarmigans. The petitioner provides citations indicating that various recreational activities occur within alpine habitats and that, in Colorado, these activities have increased in popularity over time (Hesse 2000, p. 68; Ebersole *et al.* 2002, p. 101). The petitioner asserts that these activities can adversely affect habitats of the southern and Mt. Rainier white-tailed ptarmigans via: (1) Hikers trampling alpine vegetation; (2) the erosion, slumping, soil compaction, snow compaction, and vegetation damage from ORV use, including snowmobiles; and (3) the compaction of snow and loss of willows by skiers and snowmaking machines at ski areas. The petitioner provides citations to several sources that describe the impacts of trampling and ORV use on slow-growing alpine vegetation (Willard and Marr 1971, p. 257; Lodico 1973, entire; Ebersole *et al.* 2002, p. 101; Hoffman 2006, p. 43). The petitioner also provides one reference that speaks generally to the historical impacts of recreation on alpine habitats (Brown *et al.* 1978b, pp. 23–44). The petitioner cites 27 biological evaluations (BEs) prepared by the USFS in the Rocky Mountain Region that concluded that recreational projects may affect individual white-tailed ptarmigan, but would not cause a trend towards Federal listing, a standard for BEs described by the USFS's operational manual regarding sensitive species (USFS 2011, p. 3, 5).

The petitioner suggests that hikers may wander off trails, trample alpine vegetation, and create new trails, with lasting damage to vegetation occurring (Hoffman 2006, p. 43). The petitioner also asserts that snowmobiles are especially dangerous to the white-tailed ptarmigan because they may occasionally collide with and kill the birds. Additionally, the petitioner stresses that noise and activity associated with snowmobiles may disturb the birds and cause them to leave their optimal feeding and roosting sites, exposing the birds to predation (Hoffman 2006, p. 44).

The petitioner cites Braun *et al.* (1976, p. 9) to report that white-tailed ptarmigan exist within ski areas, but to a lesser extent, because of development. However, the petitioner reasons that skiers repeatedly displace white-tailed ptarmigans and force them to unnecessarily expend extra energy. Additionally, the petitioner suggests that skiers and grooming machines may damage willows while snowmaking operations may cover any remaining willows, rendering them inaccessible to the white-tailed ptarmigan. The petitioner argues that skiers and grooming machines also may compact soft snow and make it unsuitable for roosting (Hoffman 2006, p. 44). Finally, the petitioner asserts that the development of ski areas results in habitat loss and may increase predation, which we discuss below under Factor C.

Evaluation of Information in the Petition and Available in Service Files—Recreational activities occur within the alpine habitats of the southern and Mt. Rainier white-tailed ptarmigans. However, the probability of humans interacting with either subspecies or their habitats remains relatively low, because the severe environment and low productivity of the alpine zone have deterred human use and habitation (Hoffman 2006, p. 41). When recreation occurs in alpine habitats, the effects of trampling, ORVs, skiing, and other forms of recreation on slow-growing alpine vegetation are well documented (Willard and Marr 1971, p. 257; Billings 1973, p. 703; Lodico 1973, entire; Ebersole *et al.* 2002, p. 101). However, we are unaware of any information to indicate that recreational activities may be a threat to the habitats or the range of the southern or Mt. Rainier white-tailed ptarmigan.

Although hikers may trample vegetation, ORVs may erode soils, and skiers or grooming machines may compact snow or cover willows, the references cited by the petitioner and available in our files describe only anecdotal and isolated impacts from recreation to the habitats of the southern and Mt. Rainier white-tailed ptarmigans. While recreational use of the alpine habitat has increased over time in Colorado, the references cited by the petitioner and available in our files do not indicate recreation is occurring at levels that impact the habitats or range of the southern and Mt. Rainier white-tailed ptarmigans. We have no specific information, nor did the petitioner provide any information, regarding recreational use within the range of the Mt. Rainier white-tailed ptarmigan in Washington. Furthermore, the cited references provide no information, and we found no information, that winter recreational activities compact soft snow to an extent that impedes the construction of snow roosts or limits the availability of willows such that the southern or Mt. Rainier white-tailed ptarmigan is unable to seek shelter or feed during the winter. Similarly, the cited references provide no information to suggest that the development of ski areas has destroyed, modified, or curtailed the habitats or range of either of the petitioned subspecies. We have no information and the petitioner provided no information regarding ski area development in Washington and potential impacts to the Mt. Rainier white-tailed ptarmigan.

Additionally, while recreationists in alpine areas may interact with and occasionally disturb ptarmigan, the cited references and information in our files provide only anecdotal evidence of this interaction or disturbance. The references do not suggest that the southern and Mt. Rainier white-tailed ptarmigans abandon habitats after being disturbed or that ORVs kill birds in any scope or scale that result in population-level impacts. We found no evidence that ptarmigans abandon sites frequented by motorized vehicles. However, ptarmigans may temporarily move away if disturbed and are occasionally killed by collisions (Hoffman 2006, p. 44). The petitioner cites USFS BEs that concluded that recreation projects may affect the white-tailed ptarmigan in the Rocky Mountain Region, although these BEs concluded that the activities would not contribute to loss of viability or lead to a trend

towards Federal listing. There is also no evidence that these impacts actually occurred or represent a threat to the southern white-tailed ptarmigan. Therefore, we find that the petition and information in our files do not present substantial scientific or commercial information to indicate that habitat impacts due to recreational activities may be a threat to the southern or Mt. Rainier white-tailed ptarmigan.

Livestock and Native Ungulate Grazing

Information Provided in the Petition—The petitioner asserts that livestock grazing, as well as grazing by overabundant native ungulates, threatens the southern and Mt. Rainier white-tailed ptarmigans by impacting habitats and reducing the availability of food. The petitioner asserts that livestock grazing is the dominant land use within the range of the southern and Mt. Rainier white-tailed ptarmigans in the United States and provides references demonstrating that grazing can affect natural communities by removing vegetation, adjusting the structure of plant communities, and trampling or compacting soils (Fleischner 1994, p. 629; Krueper *et al.* 2003, p. 608; Hoffman 2006, p. 42). The petitioner also asserts that livestock grazing changes the availability of water, alters the diversity of plant species, and disrupts nutrient cycling and community succession; the petitioner presents references in support of those assertions (Fleischner 1994, pp. 631–634; Fleischner 2010, p. 242). The petitioner provides references to indicate that cattle grazing may impact the breeding success of nesting birds in riparian and forested ecosystems below treeline (Ammon and Stacey 1997, pp. 7, 11, 12; Walsberg 2005, p. 715).

However, the petitioner recognizes that cattle are poorly adapted to the alpine habitats of the white-tailed ptarmigan and are not a major influence on alpine areas (Alexander and Jensen 1959, pp. 680–689; Thilenius 1975, pp. 15, 28). Where cattle cannot graze, the petitioner asserts that grazing by sheep has deleterious effects on alpine ecosystems, including the creation of trails, trampling of vegetation, and overgrazing, resulting in considerable damage to alpine habitats (Thilenius 1975, p. 28; Hoffman 2006, p. 42). Extended and concentrated grazing periods, coupled with the long recovery times of alpine ecosystems, have had a significant impact on the structure and function of many alpine areas (Thilenius 1975, p. 15; Hoffman 2006, p. 42). Additionally, sheep feed on many of the same plants as the white-tailed ptarmigan (Hoffman 2006, p. 42). As a result, the petitioner concludes that sheep compete with the white-tailed ptarmigan for food where they overlap.

The petitioner cites 13 BEs prepared by the USFS in the Rocky Mountain Region that determined that grazing sheep may adversely affect the white-tailed ptarmigan, but would not lead to a trend towards Federal listing. Potential effects analyzed in the BEs included sheep crushing birds or eggs, disturbance or mortality caused by herds or working dogs, and the loss of habitat from overgrazing by sheep. The petitioner also reports that the southern white-tailed ptarmigan also may alter its movement behaviors in heavily grazed areas of the Rocky Mountains (Hoffman 2006, p. 26).

Native ungulates also graze in alpine areas, and the petitioner asserts that, like sheep, they too may impact the habitats of the southern and Mt. Rainier white-tailed ptarmigans. The petitioner indicates that populations of elk (*Cervus elaphus*) have grown dramatically in the contiguous United States as natural predators disappeared and States enforced game laws (Hoffman 2006, pp. 36, 42). Consequently, the petitioner states that elk graze in alpine ranges more frequently during all seasons of the year (Hoffman 2006, p. 42). The petitioner cites one study that determined that willow habitats found below treeline that are overgrazed by elk typically convert into shrub-steppe habitats (Anderson 2007, pp. 401, 406). Although this study focused on low-elevation, riparian habitats outside of the range of either white-tailed ptarmigan subspecies, the petitioner predicts that if alpine willow habitats above treeline are overgrazed by elk, they too will turn into unfavorable shrub-steppe habitats.

The petitioner concludes that grazing by livestock and native ungulates impacts white-tailed ptarmigan habitats, reduces the availability of willows, and forces changes in migration patterns.

Evaluation of Information in the Petition and Available in Service Files—Although the effects of livestock grazing on natural ecosystems are well documented, the cited references and information in our files do not address the impacts of cattle grazing on the southern and Mt. Rainier white-tailed ptarmigans or their habitats. Cattle are not generally a major influence in alpine environments, and while grazing allotments for cattle may include alpine areas in the Rocky Mountains, cattle are poorly adapted to high-elevation, alpine environments and, therefore, are not likely to persist or overgraze in white-tailed ptarmigan habitats. Where cattle grazing occurs in the alpine, the references cited by the petitioner provide no evidence to conclude that cattle have negatively impacted either subspecies of white-tailed ptarmigan or their habitats. The petitioner provided no information and we have no information in our files regarding cattle grazing in Washington within the range of the Mt. Rainier white-tailed ptarmigan.

Sheep are more tolerant of alpine environments than cattle and can graze in white-tailed ptarmigan habitats. Although the petitioner cites USFS BEs identifying potential impacts to white-tailed ptarmigan and their habitats in the Rocky Mountains from sheep grazing, these BEs determined that grazing would not contribute to a loss of viability or lead to a trend towards Federal listing. The petitioner provided no evidence and we have no information to indicate that the impacts evaluated by the BEs actually occurred or that they may threaten the subspecies. The petitioner provided no information and we have no information in our files regarding sheep grazing and the Mt. Rainier white-tailed ptarmigan in Washington. While sheep may feed on the same willows and other alpine plants as the white-tailed ptarmigan, we found no information to support that competition for food between sheep and ptarmigans negatively impacts either subspecies. Additionally, although the petitioner cites anecdotal observations that ptarmigans may move away from heavily grazed areas, the cited references and information in our files do not provide evidence that this movement or disruption may be a threat to either subspecies.

Finally, we found no evidence to conclude that elk overgraze on alpine vegetation at any time of the year such that either subspecies may show a negative response. The petitioner asserts that elk use of the alpine has increased during all seasons of the year, but elk generally move down to lower elevations during the winter (Fitzgerald *et al.* 1994, p. 385). At these lower wintering elevations, elk are more removed from ptarmigans and their alpine habitats when the birds are congregating in their snow-covered wintering areas and feeding on willow. Similarly, we have no information in our files nor does the petitioner provide information to indicate that alpine willow habitats that are overgrazed by elk change into shrub-steppe habitats that may be unfavorable to the southern or Mt. Rainier white-tailed ptarmigan, or grazed to the extent to which either population of the subspecies may be negatively impacted. Finally, the petitioner provided no information and

we have no information in our files regarding elk grazing in the alpine habitats of the Mt. Rainier white-tailed ptarmigan or any potential impacts to the subspecies. Therefore, we find that the petition and information in our files do not present substantial scientific or commercial information to indicate that habitat impacts attributed to grazing may be a threat to the southern or Mt. Rainier white-tailed ptarmigan.

Mining

Information Provided in the Petition—The petitioner asserts that mining has destroyed alpine habitats and that pollutants from abandoned mines threaten the southern and Mt. Rainier white-tailed ptarmigans. Compared to recreation and grazing, the petitioner considers mining the most destructive human activity in alpine habitats and provides evidence where mining historically degraded alpine ecosystems, damaged soils, destroyed vegetation, and polluted watersheds in the Rocky Mountains (Brown *et al.* 1978, p. 23; Chambers 1997, p. 161; Macyk 2000, p. 537; Clements *et al.* 2000, p. 626). The petitioner also presents research showing that white-tailed ptarmigans are susceptible to toxic pollutants leeching from abandoned mines that have not been properly reclaimed (Larison *et al.* 2000, p. 181). In southwestern Colorado, the southern white-tailed ptarmigan exhibited calcium deficiencies, skewed sex ratios, and other physiological effects after eating willows contaminated with cadmium, a toxic heavy metal found at abandoned mines (Larison *et al.* 2000, p. 181). The petitioner also cites two BEs prepared by the USFS in Colorado that determined that vehicles operated at mines could drive over nests, crush eggs, and disturb the summer foraging habitats of the white-tailed ptarmigan.

Evaluation of Information in the Petition and Available in Service Files—In the Rocky Mountains, historic and current mining operations occurred within the range of the southern white-tailed ptarmigan and may have reduced available habitats. However, the available information cited by the petitioner and available in our files does not indicate that these mining operations significantly reduced or fragmented habitats to an extent that the southern white-tailed ptarmigan has shown a negative population response. Although the petitioner cites USFS BEs that determined impacts to the white-tailed ptarmigan would occur at mines in the Rocky Mountain Region, these evaluations also determined that the mining operations would not contribute to a loss of viability or lead to a trend towards Federal listing. We have no information to indicate that these impacts actually occurred or that the southern white-tailed ptarmigan exhibited a negative population response as a result. Additionally, cadmium poisoning in white-tailed ptarmigan has only been observed in improperly reclaimed mines within the ore-belt of southwestern Colorado; there is no evidence of cadmium poisoning elsewhere in the Rocky Mountains or Washington (Hoffman 2006, p. 47). While ptarmigan in the ore-belt of southwestern Colorado may be poisoned after eating contaminated willows, we found no information to conclude that this occurs at a level that impacts the subspecies. Finally, the petitioner provided no information and we have no information regarding mining or potential effects within the range of the Mt. Rainier white-tailed ptarmigan in Washington. Therefore, we find that the petition and information in our files do not present substantial scientific or commercial information to indicate that habitat impacts due to mining activities may be a threat to the southern or Mt. Rainier white-tailed ptarmigan.

Summary of Factor A

Based on the information provided in the petition, as well as other information readily available in our files, we find that the petition presents substantial scientific or commercial information indicating that the southern white-tailed ptarmigan and Mt. Rainier white-tailed ptarmigan may warrant listing due to the present or threatened destruction, modification, or curtailment of the species' habitat or range as a result of the habitat changes brought about by the effects of global climate change. We find that the petition does not present substantial scientific or commercial information indicating that the southern or Mt. Rainier white-tailed ptarmigan may warrant listing due to the present or threatened destruction, modification, or curtailment of the species' habitat or range from recreation, livestock grazing, or mining. However, we will more fully evaluate these activities in our status review.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petitioner claims that hunting threatens the white-tailed ptarmigan and provides general background information on ptarmigan hunting regulations in the United States. Hunting of white-tailed ptarmigan is legal in Alaska, Colorado, Utah, and California (Hoffman 2006, p. 47). The white-tailed ptarmigan is not hunted in New Mexico, Montana, Wyoming, or Washington. The petitioner reports that the current threat of hunting to white-tailed ptarmigan populations is localized, and, therefore, populations may be susceptible to overharvest based on a variety of factors. The petitioner indicates that white-tailed ptarmigans are unwary, congregate in large flocks, and return to habitats even after they are repeatedly disturbed. The petitioner asserts that this behavior may make the birds easy to hunt. The petitioner also explains that approximately 95 percent of the occupied range of the southern white-tailed ptarmigan in Colorado is publicly owned and open to hunting (Hoffman 2006, p. 9). Much of this occupied range is close to metropolitan areas and accessible to hunters. The petitioner also reports that declining populations of other grouse species are causing a renewed interest in the white-tailed ptarmigan among hunters. Additionally, where brood habitat is limited and occurs along rocky areas, female white-tailed ptarmigans may be easier to detect than males, easier to hunt, and more susceptible to hunting mortality (Sandercock *et al.* 2005, p. 22; Hoffman 2006, p. 47).

The petitioner cites a dissertation that estimated a 15 to 27 percent higher mortality rate in hunted white-tailed ptarmigan populations, which suggested that hunting results in additive mortality (Hoffman 2006, p. 47). However, the petitioner argues that population declines of white-tailed ptarmigan associated with hunting may not be readily apparent. The petitioner cites a study on willow grouse (*Lagopus lagopus lagopus*) in Sweden and a study on ruffed grouse (*Bonasa umbellus*) in Wisconsin to explain that immigration from non-hunted or lightly hunted populations may sustain breeding densities of white-tailed ptarmigan in heavily hunted areas (Small *et al.* 1991, p. 512; Smith and Willebrand 1999, p. 722; Hoffman 2006, p. 47). The petitioner reasons that because breeding densities for other species of grouse remain stable with immigration, the effects of hunting on white-tailed ptarmigan populations may be difficult to detect.

Evaluation of Information in the Petition and Available in Service Files

Wyoming classifies the southern white-tailed ptarmigan as a game bird, but does not permit hunting due to its restricted distribution and small population size in the State (Braun *et al.* 1993, p. 1; Hoffman 2006, p. 10). New

Mexico also does not permit hunting of the southern white-tailed ptarmigan. Similarly, Washington does not permit hunting of the Mt. Rainier white-tailed ptarmigan. In the States where hunting is not permitted, the petitioner provided no information and we have no information in our files to suggest that illegal hunting may be a threat to either the southern or Mt. Rainier white-tailed ptarmigan.

Colorado permits the legal hunting of the southern white-tailed ptarmigan. In Colorado, daily bag and possession limits are 3 and 6 birds, respectively, and the hunting season is 23 days long, commencing in mid-September when young ptarmigans have reached adulthood and can survive independently from the brood hen (Hoffman 2006, p. 10). The hunting season in Colorado ends before ptarmigans start congregating on wintering areas, when they are most susceptible to overharvest (Hoffman 2006, p. 10). The short season and small bag limits of the hunting season in Colorado are designed to prevent overharvesting (Hoffman 2006, p. 10). While ptarmigans may be unwary of humans, relatively easy to hunt, and found primarily on public lands, there is no information to suggest that illegal harvest by hunters may be a threat to the southern white-tailed ptarmigan in Colorado. Although immigration may make it difficult to detect the effects of hunting on other species of grouse, we have no information to suggest that hunting has resulted in additive mortality to the southern or Mt. Rainier white-tailed ptarmigan such that populations are unable to sustain viable breeding densities. Similarly, we have no information to suggest that hunting the species is currently more popular such that overharvesting may be a threat to the southern white-tailed ptarmigan. Therefore, we find that the petition and information in our files do not present substantial scientific or commercial information to indicate that hunting may be a threat to the southern or Mt. Rainier white-tailed ptarmigan. However, we will more fully evaluate hunting in our status review.

C. Disease or Predation

Information Provided in the Petition

The petitioner asserts that the development of ski areas increases the presence of generalist predators that threaten the white-tailed ptarmigan in alpine habitats. As support, the petitioner cites a study on rock ptarmigan in Scotland that reported an increase in generalist predators, such as carrion crows (*Corvus corone*), feeding on birds and eggs following the development of a ski area (Watson and Moss 2004, p. 267). In this study, the rock ptarmigans that nested closest to developed areas lost more nests to predation by crows or gulls and reared abnormally few broods compared to ptarmigans that nested farther away from development (Watson and Moss 2004, p. 267; Hoffman 2006, p. 44). The petitioner argues that this study on the rock ptarmigan in Scotland is applicable to white-tailed ptarmigan populations in the United States. Although the petitioner states that specific studies regarding post-development increases in generalist predators and the potential effects on the white-tailed ptarmigan are lacking, the petitioner stresses that any development that increases generalist predators can impact the number of juvenile white-tailed ptarmigans in the population (Storch 2007, pp. 12, 40).

Evaluation of Information in the Petition and Available in Service Files

In the presence of suitable habitats, predation is generally not a limiting factor for ptarmigans, as the birds have evolved closely with their predators and developed strategies to compensate for high predation rates (Hoffman 2006, p. 34). Although ski resorts or other human developments may attract predators, there is no information from the petition or our files to indicate that predation in any part of the range has exceeded any population-level compensation strategies to negatively impact southern and Mt. Rainier white-tailed ptarmigans. Although the petitioner provides evidence of predation of rock ptarmigan at ski resorts in Scotland, we have no information to conclude that there are more predators at ski resorts in the United States, that predation on white-tailed ptarmigan populations has increased, or that predation may be a threat to either subspecies. The petitioner provides no specific information regarding ski areas and the Mt. Rainier white-tailed ptarmigan in Washington. Ski areas and other forms of human development, such as roads, may enable predators to access alpine habitats, but there is no information in the petition or our files to indicate that predation within any part of the range of the southern or Mt. Rainier white-tailed ptarmigan may be a threat, regardless of the proximity of occupied habitats to development.

The petitioner provides no information regarding any disease or pathogen that threatens the southern or Mt. Rainier white-tailed ptarmigans, and we found no evidence in our files that the subspecies may be at risk from any specific disease or pathogen. Therefore, we find that the petition and information in our files do not present substantial scientific or commercial information to indicate that disease or predation may be threats to the southern or Mt. Rainier white-tailed ptarmigans. However, we will more fully evaluate potential threats associated with disease and predation in our status review.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioner claims that existing regulatory mechanisms are inadequate to prevent the decline of the white-tailed ptarmigan because global and national regulations are failing to reduce carbon emissions to levels that will slow global surface warming. They also assert that no legal mechanisms currently exist to regulate greenhouse gases on a national level in the United States. The petitioner argues that stabilizing current climatic conditions through reductions in greenhouse gas emissions is necessary to preserve the remaining alpine habitats of the white-tailed ptarmigan, as discussed under Factor A, above. The petitioner also argues that other regulatory mechanisms inadequately protect the white-tailed ptarmigan from threats other than climate change. The petitioner argues that changes in climate caused by human activities must be mitigated through stronger regulatory mechanisms because the existing mechanisms are inadequate.

The petitioner stresses that legislative action is necessary to save the white-tailed ptarmigan because scientists warn that we are approaching emissions levels that would cause dangerous climate change (Hansen *et al.* 2008, pp. 217–218). The petitioner stresses that with current atmospheric carbon dioxide levels at approximately 390 parts per million (ppm), and worldwide emissions continuing to increase by more than 2 ppm each year, immediate reductions in greenhouse gas emissions are necessary to prevent the loss of species and ecosystems to climate change.

The petitioner reports that the United States produces approximately 20 percent of worldwide carbon dioxide emissions each year (U.S. Energy Information Administration 2010), yet lacks adequate regulations to reduce the greenhouse gas emissions. The petitioner cites the Service's 2008 listing of the polar bear (*Ursus maritimus*), which recognized that there are no regulatory mechanisms that address the anthropogenic causes of climate change (e.g., greenhouse gas emissions) and the

impact of warming temperatures and altered precipitation patterns on diminishing sea ice (73 FR 28288, May 15, 2008). The petition also states that existing domestic laws which grant authority to require greenhouse gas emissions reductions (e.g., Clean Air Act, Clean Water Act, Endangered Species Act, Energy Policy and Conservation Act) are not fully implemented. As an example, the petitioner references the U.S. Environmental Protection Agency's (EPA's) implementation of the Clean Air Act (42 U.S.C. 7401 *et seq.*) to lower emissions by requiring improved fuel economy and higher emission standards for light-duty vehicles (75 FR 25324, May 7, 2010), but states that the majority of other Clean Air Act programs are not fully implemented to address greenhouse gas emissions (75 FR 17004, April 2, 2010). The petitioner argues that full implementation of these environmental laws would provide an effective and comprehensive greenhouse gas reduction strategy, but does not explain how the majority of these laws could be applied to control emissions.

The petitioner also indicates that the international agreements that address greenhouse gas emissions (e.g., United Nations Framework Convention on Climate Change, Kyoto Protocol) rely on non-binding and ineffective controls (Pew 2010, p. 1; Rogelj *et al.* 2010, p. 464). Therefore, the petitioner considers international regulatory mechanisms inadequate to protect the white-tailed ptarmigan from climate change.

Furthermore, the petitioner contends that other State and Federal regulatory mechanisms in the United States do not adequately protect the white-tailed ptarmigan from threats other than climate change. The petitioner asserts that the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) does not prohibit Federal agencies from choosing project alternatives that may negatively affect individuals or populations of white-tailed ptarmigans. The USFS recognizes the white-tailed ptarmigan as a sensitive species in its Rocky Mountain (Region 2) and Southwest Region (Region 3), but the petitioner contends that because the NEPA does not require avoidance of harm, the sensitive species designation provides little regulatory protection. The petitioner cites 41 BEs prepared by the USFS in the Rocky Mountain Region within the last 10 years that evaluated activities that could harm ptarmigan. The petitioner also explains that the National Forest Management Act (16 U.S.C. 1600 *et seq.*) does not prohibit the USFS from carrying out actions that harm the white-tailed ptarmigan or its habitats.

Finally, the petitioner explains that the State of New Mexico added the white-tailed ptarmigan to its list of endangered species in 1975, and as a species of greatest conservation need in 2006. The petitioner argues that these designations in New Mexico confer no regulatory authority to protect white-tailed ptarmigan habitats. The petitioner provides no information or analysis regarding State regulations in either Colorado or Washington.

The petitioner concludes that, given the threat of climate change as discussed under Factor A, it is important to protect all existing alpine habitats in order to provide the species with the best possible chance to find suitable habitats in a warmer world. The petitioner argues that none of the existing regulatory mechanisms provide substantial protection for the white-tailed ptarmigan from other threats discussed under Factor A, such as livestock grazing, recreation, or mining.

Evaluation of Information in the Petition and Available in Service Files

According to the IPCC, anthropogenic emissions of long-lived greenhouse gases, especially carbon dioxide, are currently contributing the largest positive radiative forcings (leading to warming of climate) of any climate factor (Forster *et al.* 2007, pp. 136–137). After providing scientific references in support of global climatic warming as discussed under Factor A, the petitioner refers to the limited application of the Clean Air Act by the EPA to effectively regulate greenhouse gas emissions. Information in our files indicates that on December 15, 2009, the EPA announced that current and projected concentration of six greenhouse gases in the atmosphere threaten the public health and welfare of current and future generations (74 FR 66496). In effect, the EPA concluded that the greenhouse gases linked to climate change are pollutants whose emissions can be subject to the Clean Air Act (42 U.S.C. 7401 *et seq.*).

The EPA proposed specific regulations to limit greenhouse gas emissions under the Clean Air Act in 2010. However, specific regulations to limit greenhouse gas emissions were only proposed in 2010, and have not yet been finalized. Therefore, the Clean Air Act cannot, at present, be considered an existing regulatory mechanism that addresses greenhouse gas emissions. Nor do we have any basis to conclude that implementation of the Clean Air Act in the foreseeable future (40 years, based on global climate projections) may substantially reduce the current rate of global climate change through regulation of greenhouse gas emissions. Thus, we conclude that the Clean Air Act is not designed to specifically address the primary threats to the southern and Mt. Rainier white-tailed ptarmigans, including the loss of alpine habitats and other environmental changes associated with climate change, as discussed under Factor A.

Given that the petition, as revised, is specifically for the southern and Mt. Rainier white-tailed ptarmigan, we do not consider the adequacy of existing international regulations, treaties, or agreements that do not directly apply to the United States, and to the subspecies, when evaluating possible threats under Factor D. There is no information in the petition or in our files regarding applicable international regulations or treaties that might alleviate threats to the southern and Mt. Rainier white-tailed ptarmigans in the United States. Also, concerning the petitioner's assertion that NEPA does not provide adequate regulatory protection, NEPA is a disclosure law which does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for sensitive species as a result of the NEPA process, any such measures are voluntary in nature and not required by the statute. Thus it is outside the scope of NEPA to provide regulatory protections to species. As with the Clean Air Act, NEPA is not designed to specifically address the specific threats to the southern and Mt. Rainier white-tailed ptarmigans.

In the Rocky Mountains, approximately 95 percent of occupied ptarmigan habitats are on public lands, 85 percent of which are administered by the USFS (Hoffman 2006, p. 9). The petitioner did not provide information, and we found no information in our files, regarding the land ownership and corresponding management regulations for alpine habitats in Washington. Because the ptarmigan is a USFS sensitive species in the Rocky Mountains, the USFS actively manages it to avoid trends toward Federal listing and to maintain population viability across its range in Regions 2 and 3. The petitioner argues that according to BEs, 41 projects administered by the USFS within the last 10 years in the Rocky Mountain Region harmed the white-tailed ptarmigan. The petitioner previously indicated that 8 of these projects were associated with sheep grazing, 2 were associated with mining, and 27 were associated with recreation. However, the USFS determined that

these activities would not contribute to a loss of viability or lead to a trend towards Federal listing, and the petitioner does not provide evidence these projects actually occurred or contributed to a trend towards listing contrary to the USFS' determination. The petitioner also does not provide evidence that State regulations in New Mexico are ineffective and may threaten the southern white-tailed ptarmigan. The petitioner provides no information, and we have no information in our files, regarding regulations or laws specific to the Mt. Rainier white-tailed ptarmigan in Washington.

Summary of Factor D

We are not aware of any existing regulatory mechanisms that are designed to address the changes described in Factor A in the southern and Mt. Rainier white-tailed ptarmigan habitats that are occurring or likely to occur in the future.

As discussed above, there are no applicable international regulations or treaties that might alleviate threats to the southern and Mt. Rainier white-tailed ptarmigans in the United States. Similarly, it is beyond the scope of NEPA to provide specific protections to the subspecies.

Approximately 95 percent of the occupied range of the southern white-tailed ptarmigan in the Rocky Mountains occurs on public lands, at least 85 percent of which is federally managed (Hoffman 2006, p. 9). Public lands are subject to several Federal laws and regulations that protect habitats from direct destruction or modification. There is no information in the petition nor readily available in our files regarding laws or regulations in the State of Washington and the effectiveness of regulations in other States, and it is uncertain whether Federal or State laws and regulations adequately address the potential threats to habitats of the white-tailed ptarmigan associated with climate change as discussed under Factor A. Existing regulatory mechanisms are not designed to, nor do they, ameliorate the threats to the southern or Mt. Rainier white-tailed ptarmigan. Therefore, we find that the petition and information in our files do not present substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may be a threat to the southern or Mt. Rainier white-tailed ptarmigans. We will more fully evaluate existing regulatory mechanisms in our status review.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

In their petition, the petitioner presented information regarding potential physiological effects of a warming climate on the southern and Mt. Rainier white-tailed ptarmigans under Factor A. Because these are physiological effects, we discuss these assertions below. The petitioner also claims that population isolation and limited dispersal distances threaten the white-tailed ptarmigan.

Physiological Response to Climate Warming

Information Provided in the Petition—The petitioner cites a study conducted in the RMNP, Colorado, as evidence that warming temperatures have had a negative effect on the population dynamics of white-tailed ptarmigan (Wang *et al.* 2002, pp. 81–86). The petitioner also explains that increased temperatures may not only decrease population growth rates of the white-tailed ptarmigan, but also may directly impact individual ptarmigans because of their inability to cope with the stress caused by warming temperatures. The petitioner explains that the southern and Mt. Rainier white-tailed ptarmigans are well adapted to their seasonally cold alpine habitats, but are not physiologically adapted to high ambient air temperatures (Hoffman 2006, p. 24). To support this claim, the petitioner cites several studies that determined that the white-tailed ptarmigan has low mean body temperatures, a wide temperature-tolerance zone, excellent insulation to trap body heat, and low evaporative efficiencies (Veghte and Herreid 1965, p. 267; Lasiewski *et al.* 1966, p. 445; Johnson 1968, p. 1003; Hoffman 2006, pp. 24, 45). The petitioner argues that southern and Mt. Rainier white-tailed ptarmigans are susceptible to heat stress and underequipped to adapt to the warming temperatures associated with climate change.

The petitioner explains that white-tailed ptarmigans modify their behaviors to avoid overheating, but this may not be sufficient to compensate for a warming climate. While nesting, female white-tailed ptarmigans take incubation breaks to forage, but they may take fewer breaks if temperatures are high. With less food, as a result of fewer foraging breaks, the health of nesting females may deteriorate, and they may abandon the nest (Hoffman 2006, p. 46). Additionally, the petitioner suggests that warming temperatures may force females to nest in shaded, denser vegetation, where they may be more susceptible to predation (Hoffman 2006, p. 46). Therefore, the petitioner concludes that behavioral adaptations that ptarmigans employ to avoid overheating may be ineffective with a warming climate.

Evaluation of Information in the Petition and Available in Service Files—Empirical studies show that warm ambient temperatures negatively affected the population dynamics of the southern white-tailed ptarmigan in Colorado by depressing population growth rates and skewing hatch dates (Wang *et al.* 2002, p. 81). This study reported that increases in April and May temperatures between years 1975 through 1999 at RMNP significantly advanced the median hatch dates of ptarmigan eggs and depressed the population growth rate of ptarmigans in RMNP (Wang *et al.* 2002, p. 85). Additionally, a population model anticipated that warming resulted in population decreases from 30 to 40 birds to 2 to 3 birds in RMNP (Wang *et al.* 2002, p. 84–85). This study concluded that there is a clear population-level response in white-tailed ptarmigans to climate change, and that predicted temperature increases in RMNP may accelerate population declines and increase the probability of local extinction (Wang *et al.* 2002, p. 86).

As discussed under Factor A, global climate change may result in an increase in temperatures within the habitats of the southern and Mt. Rainier white-tailed ptarmigans; and the effect of increasing temperatures may decrease population growth rates. Additionally, the southern and Mt. Rainier white-tailed ptarmigans are physiologically well adapted to conserve heat and tolerate the cold temperatures of their alpine environments. However, available information suggests that these adaptations are detrimental to the white-tailed ptarmigan in warm temperatures, with heat stress developing quickly when the birds are unable to cool off (Johnson 1968, p. 1012; Hoffman 2006, pp. 24, 31). Although the birds seek cooler microclimates with shade and cover to escape warm temperatures, climatic warming may reduce the number of these cooler microclimates available, and the southern and Mt. Rainier white-tailed ptarmigans may be incapable of avoiding heat stress. If physiologically unable to cool body temperatures through evaporation, guttural fluttering, bathing in snow, or relocating to cooler microclimates, heat stress aggravated by climate change may be a threat to the southern or Mt. Rainier white-tailed ptarmigan. However, the petitioner did

not provide information, and we found no evidence in our files to indicate, that the birds are more susceptible to predation in cooler microclimate areas or that females will take fewer foraging breaks so that malnutrition eventually reduces breeding success eventually resulting in a negative population response. But, as discussed above, we still find that warming temperatures associated with climate change may be a threat by depressing population growth rates and aggravating heat stress. Therefore, we find that the information presented in the petition and information in our files presents substantial scientific or commercial evidence to indicate the physiological response of the southern or Mt. Rainier white-tailed ptarmigan to climate warming may be a threat.

Population Isolation and Limited Dispersal Distances

Information Presented in the Petition—The petitioner claims that isolation, small populations, low densities, and limited dispersal distances render the southern and Mt. Rainier white-tailed ptarmigans particularly vulnerable to extinction. To support this claim, the petitioner cites a species account for the Vancouver Island white-tailed ptarmigan, the subspecies endemic to Vancouver Island, which indicates that this subspecies exists in low densities with stochastic population dynamics and environmental conditions (Martin and Forbes 2004, pp. 4–5). The petitioner also provides the USFS sensitive species designation for the white-tailed ptarmigan in the Rocky Mountain Region as evidence that population isolation and limited dispersal distances are a threat (USFS 2005, p. 1). The petitioner also explains that alpine habitats are isolated and geographically separated by expanses of unsuitable habitats, and that distances between habitats exceed the maximum recorded travel distances for the white-tailed ptarmigan (Martin *et al.* 2000, p. 514). Therefore, the petitioner concludes that as climate change modifies and reduces available habitats, distances between suitable habitats will increase, further isolating populations and threatening the subspecies.

Evaluation of Information in the Petition and Available in Service Files—While the Vancouver Island white-tailed ptarmigan may be susceptible to population extirpations because of their low densities, patchy habitats, and stochastic environment, we found no information in the petition nor available in our files that these variables may be threats to either the southern or the Mt. Rainier white-tailed ptarmigan. Contrary to the Vancouver Island white-tailed ptarmigan study, a study in the Rocky Mountains suggested that small population sizes, low densities, relatively low fecundity, and high annual variation in most population parameters did not appear to threaten the white-tailed ptarmigan population (Martin *et al.* 2000, p. 512). Additional information suggests that a well-developed system of population exchange and recruitment allows ptarmigans to persist in isolated, small populations, even during regional stochastic events in Colorado (Martin *et al.* 2000, pp. 512, 514). The petitioner provided no information regarding maximum distances between alpine habitats that may hinder population exchange or recruitment, and we have no information indicating that the current distances between alpine habitats may impede interchange for the southern or Mt. Rainier white-tailed ptarmigans. While climate change may increase the distance between alpine habitats, the petitioner did not provide information, and we have no information in our files, that distances between alpine habitats may threaten either subspecies. Additionally, the USFS sensitive species recommendation and evaluation for white-tailed ptarmigan summarizes potential threats, but provides no supporting information regarding population isolation or dispersal distances. Therefore, we find that the petition and information in our files do not present substantial scientific or commercial information to indicate that isolated populations or limited dispersal distances may be threats to the southern and Mt. Rainier white-tailed ptarmigans.

Summary of Factor E

We find that the information presented in the petition regarding population growth rates and physiological response to a warming climate presents substantial scientific or commercial evidence to indicate that the petitioned action may be warranted. We find that the petition does not present substantial scientific or commercial information to indicate that population isolation or limited dispersal distances may be threats to the southern and Mt. Rainier white-tailed ptarmigans. We will evaluate population isolation and limited dispersal distances more fully during our status reviews.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the southern and Mt. Rainier white-tailed ptarmigans throughout the entire ranges of both subspecies may be warranted. This finding is based on information provided under factors A and E. The information provided in the petition and available in our files under factors B, C, and D is not substantial. During the status review, we will fully address the cumulative effects of threats discussed under each factor.

Because we have found that the petition presents substantial information indicating that listing the southern and Mt. Rainier white-tailed ptarmigans may be warranted, we are initiating a status review to determine whether listing these subspecies under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the subspecies, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not necessarily mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members of the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 21, 2012.

Gregory E. Siekaniec,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–13320 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 77, No. 108

Tuesday, June 5, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Request New Information Collection

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to send comments regarding any aspect of this proposed information collection. This is a new collection to provide state-level estimates of the prevalence and geographic distribution of School Food Authorities (SFAs) conducting Farm to School activities.

DATES: Written comments on this notice must be received on or before August 6, 2012 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Katherine Ralston, Food Economics Division, Economic Research Service, U.S. Department of Agriculture, STOP 1800, 1400 Independence Avenue SW., Washington, DC 20250–1800. Comments may also be submitted via fax to the attention of Katherine Ralston at 202–245–4779 or via email to *kralston@ers.usda.gov*, or through the Federal eRulemaking Portal (*http://www.regulations.gov*), which provides online instructions for submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Katherine Ralston, *kralston@ers.usda.gov*, Tel. 202–694–5463.

SUPPLEMENTARY INFORMATION:

Title: Farm to School Census.

OMB Number: 0536–XXXX.

Expiration Date: Three years from the date of approval.

Type of Request: New collection.

Abstract: The Healthy, Hunger-Free Kids Act of 2010 directed USDA to carry out, through grants and technical assistance, a program to help eligible schools, State and local agencies, Indian tribal organizations, agricultural producers or groups of agricultural producers, and nonprofit entities implement farm to school activities that promote and improve access to local foods in eligible schools. The Act funded this requirement with an authorization of $5,000,000, to be allocated with consideration for geographic diversity and equitable treatment of rural, urban, and tribal communities as it relates to the distribution of farm to school programs.

The Farm to School Census will be used to establish a baseline measure of local food purchases in schools and set priorities for USDA programming related to local school food sourcing. The Farm to School Census data will be used in mapping School Food Authorities (SFAs) that procured local foods for school meal programs in 2011–12 in order to characterize the geographic distribution of farm to school programs and obtain State-level estimates of the prevalence of local procurement among SFAs. These data will be used to set priorities for USDA outreach and technical support.

The 2011–12 Farm to School Census questionnaire will be disseminated electronically to all public school district SFA food service directors as part of an invitation to participate from the Food and Nutrition Service (FNS) Child Nutrition Division, through State Child Nutrition Directors. State Child Nutrition Directors will also forward 3 reminder emails from FNS. A sample of non-respondents will be followed up by phone as part of an analysis of non-response. Data collection instruments will be kept as simple and respondent-friendly as possible. Responses are voluntary.

The map of local procurement by SFAs will require geocode boundary coordinates for each SFA. While boundary coordinates are available from the U.S. Census Bureau for school districts, SFAs can include more than one school district. Available data on SFAs from the Food and Nutrition Service is only available for SFAs that submit verification reports and is thus not a complete list of SFAs. Therefore, in order to obtain a more complete list, we will ask State Child Nutrition Directors to submit a list of SFAs with business contact information for SFA Food Service Directors in each State. This list will be matched to geocode boundary coordinates from the U.S. Census Bureau and characteristics such as enrollment and rural/urban status from the Common Core of Data, a data file compiled annually by the U.S. Department of Education's National Center of Education Statistics. Geocode boundary coordinates will be used to map SFAs purchasing local foods. Characteristics such as enrollment and rural/urban status will be used to analyze non-response and develop non-response weights. Business contact information will be used to follow-up a sample of non-respondents by telephone for an analysis of non-response.

Respondents will be informed that the information collected will be used for non-statistical purposes, i.e., to map each individual School Food Authority and the proportion of food expenditures going to locally-produced foods. Given the intended purpose of this information collection, to create a publicly accessible map of the extent of local purchasing by individual SFAs, this information collection is not covered by the Confidential Information Protection and Statistical Efficiency Act of 2002. The questionnaire will inform respondents that ERS will treat all information generated or gathered in the Farm to School Census in accordance with the Freedom of Information Act (5 U.S.C. 552).

Affected Public: The first respondent group is the universe of State Child Nutrition Directors from the 50 States and the District of Columbia, numbering 51 in total. The second respondent group is the universe of SFA food service directors in the 50 States and the District of Columbia, excluding private schools and charter schools, numbering 13,629.

Estimated Number of Respondents: All 51 State Child Nutrition Directors are expected to forward the invitation to participate in the Census and 3 reminder emails from FNS. Forty State Child Nutrition Directors (78 percent) are expected to provide a list of SFAs in the State with contact information, and 10,494 SFA Food Service Directors (77 percent) are expected to complete the Census questionnaire. The expected response rate for State Child Nutrition

Directors is based on consultation with FNS Farm to School Program liaisons in FNS regional offices. The expected response rate for SFA Food Service Director is based on experience with the 2008 North Carolina Farm to School Survey, which was an email survey of similar length distributed by email with 3 reminders from the State Child Nutrition Director. A sample of 100 non-responding SFA Food Service Directors will be followed up by phone as part of an analysis of non-response.

Estimated Number of Responses per Respondent: 4 responses from State Child Nutrition Directors for the request to forward the invitation to participate and 3 reminder emails to SFAs, 1 response from State Child Nutrition Directors for a list of SFAs with contact information, 1 response from SFA Food Service Directors for the Farm to School Census, and 1 response from Census non-responders contacted by telephone for follow-up.

Estimated Total Responses: 204 responses from 51 State Child Nutrition Directors to the request to forward the survey invitation and 3 reminder emails, 40 responses from State Child Nutrition Directors to the request for a list of SFAs in the State, 10,494 responses from SFAs completing the Farm to School Census, and 100 SFAs selected as a sample of non-respondents.

Estimated Time per Response: State Child Nutrition Directors. The request to State Child Nutrition Directors to forward the Census invitation and 3 reminder emails from the Director of Child Nutrition to SFA Food Service Directors is estimated to each take 15 minutes, for a total of 1 hour.

The request to State Child Nutrition Directors to provide the list of SFAs in the State is estimated to take 1 hour. Non-responding State Child Nutrition Directors are expected to take 10 minutes determining that they are unable to provide this list in a timely fashion.

SFA Food Service Directors. We estimate the average time for responding SFA Food Service Directors as 9 minutes on average. This average includes 20 minutes for SFAs that have a local procurement program, and 5 minutes for those that do not, based on reviews of the data collection instrument by food service directors who are registered as members of the National Farm to School Network. About 20 percent of SFAs are estimated to have a local procurement program, based on results from the 2009–10 School Food Purchase Study. In addition, responding Food Service Directors are expected to spend an average of 1 minute total reading reminder emails either before they respond or after they respond, since reminders will be sent to all SFAs regardless of whether they have already responded.

We estimate that non-responding SFA Food Service Directors will spend 1 minute each reading the initial invitation to participate, a first reminder email, a second reminder email, and a third reminder email for a total of 4 minutes.

Non-responding Food Service Directors contacted by phone are expected to spend an average of 15 minutes answering an abridged set of questions about the presence and volume of local food procurement for the SFA.

Estimated Total Burden on Respondents: 1,901 hours. See the table below for details.

REPORTING BURDEN

Description	Estimated number of respondents or non-respondents	Responses or non-responses annually per respondent	Total annual reponses or non-responses	Estimated average number of minutes per response or non-response*	Estimated total annual hours of response and non-response burden
Forwarding request to participate from FNS Child Nutrition Division to SFA Food Service Directors, plus 3 reminders	51	4	204	15	51
Request to State Directors for list of School Food Authorities and Director Contact Information	40	1	40	60	40
Non-respondents to request for list	11	1	11	10	2
Total Burden, State Child Nutrition Directors					93
Farm to School Census for School Food Authority Directors	10,494	1	10,494	9	1,574
Non-respondents	3,135	1	3,135	4	209
Follow-up phone calls for non-response analysis	100	1	100	15	25
Total Burden, School Food Authority Directors					1,808
Total Burden					1,901

*Average minutes per response and nonresponse are based on reviews of the questionnaire by School Food Authority Directors that are members of the National Farm to School Network. Complete responses to the Farm to School Census questionnaire are estimated to require 20 minutes in School Food Authorities that purchase food locally, and 5 minutes for School Food Authorities that do not purchase food locally, with an estimated 20 percent purchasing locally produced food based on the 2009–10 School Food Purchase Study. In addition, respondents are estimated to spend an average of 1 minute total reading reminder emails either before they respond, or after they respond, since reminders will be sent to all SFAs regardless of whether they have already responded.

Comments: All written comments will be open for public inspection in the Resource Center of the Economic Research Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 355 E St. SW., Room 04P33, Washington, DC 20024–4221. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: May 22, 2012.

Mary Bohman,

Administrator, Economic Research Service.

[FR Doc. 2012–13497 Filed 6–4–12; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest, California, Sugarloaf Hazardous Fuels Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Feather River Ranger District of the Plumas National Forest (PNF) will prepare an environmental impact statement (EIS) on the Sugarloaf Hazardous Fuels Reduction Project proposed to modify fire behavior, promote forest and watershed health, while contributing to the economic stability of rural communities through: fuels treatments; group selections (GS); area and variable density thinning from below; road improvements; and prescribed fire treatments on National Forest System (NFS) lands. The Sugarloaf Project is located south of Little Grass Valley Reservoir, from Goat Mountain in the north to American House in the south, surrounding the community of La Porte; including the Valley Creek Special Interest Area (SIA) administered by the PNF.

DATES: Comments concerning the scope of the analysis must be received within 45 days from date of publication in the **Federal Register**. The draft environmental impact statement is expected July 2012 and the final environmental impact statement is expected August 2012. A decision is expected in September 2012 and implementation may begin as early as spring of 2013.

ADDRESSES: Send written comments to Carol Spinos, Interdisciplinary Team Leader, Feather River Ranger District Ranger District, 875 Mitchell Avenue, Oroville, CA 95965. Comments may be: (1) Mailed; (2) hand delivered between the hours of 8:00 a.m. to 4:30 p.m. weekdays Pacific Time; (3) faxed to (530) 532–1210; or (4) electronically mailed to: *comments-pacificsouthwest-plumas-featherrvr@fs.fed.us.* Please indicate the name ''Sugarloaf Hazardous Fuels Reduction Project'' on the subject line of your email. Comments submitted electronically must be in Rich Text Format (.rtf), plain text format (.txt.) or Word (.doc).

FOR FURTHER INFORMATION CONTACT: Carol Spinos, Interdisciplinary Team Leader, Feather River Ranger District Ranger District, 875 Mitchell Avenue, Oroville, CA 95966. Telephone: (530) 534–6500 or electronic address: *cspinos@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The proposed action is designed to meet the standards and guidelines for land management activities described in the Plumas National Forest Land and Resource Management Plan (PNF LRMP) (USDA 1988) as amended by Herger-Feinstein Quincy Library Group (HFQLG) Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision (ROD) (USDA 1999a, 1999b, 2003b, 2003c), and the Sierra Nevada Forest Plan Amendment (SNFPA) FSEIS and ROD (USDA 2004a, 2004b). This project is being planned under authorization of the *Healthy Forest Restoration Act* (H.R. 1904; Pub. L. 108–148; 36 CFR part 218—Predecisional Administrative Review Process).

The Sugarloaf Hazardous Fuels Reduction Project boundary encompasses all or portions of T. 21 N., R. 8 E., sec. 24–26; T. 21 N., R. 9 E., sec. 2, 3, 5–10, 15–22, 27–32 in Plumas County, CA, MDM.

Purpose and Need for Action

This Project is proposed to establish defensible fuel profile zones (DFPZs), modify fire behavior, promote forest and watershed health, while contributing to the economic stability of rural communities in Plumas County, CA. Fire behavior needs to be modified in selected forest stands in order to reduce high fuel loading and resulting increased risks to people, structures, and resources in the wildland urban-interface (WUI). There is a need for forest health, tree species diversity and structural complexity to be altered in the Sugarloaf Project area, because stand densities are unnaturally overcrowded and dominated by shade-tolerant tree species (e.g. Douglas-fir and white-fir) and high fuel loads, at-risk from stand-replacing wildfire, insect infestations and disease. There is a need to improve watershed health as road surfaces are eroding, contributing sedimentation downstream to degrade water quality. There is a need to contribute to local forestry-related employment and provide forest products offerings, vital for rural communities such as La Porte and American House, isolated from urban job markets.

Proposed Action

The USDA Forest Service, Feather River Ranger District of the Plumas National Forest will prepare an environmental impact statement (EIS) for the Sugarloaf Hazardous Fuels Reduction Project. The proposed action would establish 992 acres of defensible fuel profile zones (DFPZs) using 763 acres of variable density and 229 acres of thinning from below; 100 acres of group selection (GS); 5 miles of NFS classified road reconstruction, 5 miles of unclassified (temporary) road construction (closed post operations) and the construction of up to 52 new log landing sites; 223 acres of mastication; 455 acres of hand thin, pile, and burn; 3,195 acres of prescribed fire using manual ignition (i.e., drip torch) techniques, and 28 miles of National Forest System (NFS) road improvements to mitigate resource damage; consistent with the Plumas National Forest Travel Management decision. The selected NFS land roads would be improved using various methods, such as grading, removing and upgrading culverts, ripping and seeding, slope re-contouring, and installing barriers. Wood by-products from these treatments are expected to produce 7 million board feet of commercially-valuable timber, while retaining all live trees greater than 29.9 inches diameter at breast height (DBH) and a minimum of 40 percent forest canopy cover.

Possible Alternatives

In addition to the proposed action, a no-action alternative and a non-commercial funding alternative aimed solely at reducing hazardous fuels as required by the Memorandum and Order dated 11/04/2009 (Case 2:05–CV–00205–MCE–GGH). Additional alternatives may be developed and analyzed during the environmental analysis process.

Responsible Official

The Plumas National Forest Supervisor is the Responsible Official.

Nature of Decision To Be Made

The decision to be made is whether to: (1) Implement the proposed action; (2) meet the purpose and need for action

through some other combination of activities; or, (3) take no action at this time.

Preliminary Issues

The US Forest Service has identified the following preliminary issues including potential cumulative effects to watershed resources and wildlife habitat.

Permits or Licenses Required

An Air Pollution Permit, Smoke Management Plan, and California Water Quality Board timber harvest waiver for waste discharge are required by local agencies.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Sugarloaf Hazardous Fuels Reduction Project will initiate and request comments at: an open house in Oroville, CA in June 2012, an official 45 day comment period once a Notice of Availability (NOA) is published in the **Federal Register**, a 30 day objection period, and an objection resolution period.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents. Individual members of organizations must have submitted their own comments to meet the requirements of eligibility as an individual, objections received on behalf of an organization are considered as those of the organization only.

There will not be an appeal period after the final decision. Instead of an appeal period, there will be an objection process before the final decision is made and after the final EIS is mailed (36 CFR part 218). In order to be eligible to file an objection to the preferred alternative identified in the final EIS, specific written comments related to the project must be submitted during scoping or any other periods public comment is specifically requested on this EIS (36 DFR 218.5).

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: May 23, 2012.

Laurence Crabtree,

Acting Plumas National Forest Supervisor.

[FR Doc. 2012–13576 Filed 6–4–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Documentation of Fish Harvest.

OMB Control Number: 0648–0365.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 25.

Average Hours per Response: 30 minutes.

Burden Hours: 50.

Needs and Uses: This request is for a revision and extension of a currently approved information collection.

The seafood dealers who process greater amberjack, red porgy, gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, or coney during seasonal fishery closures must maintain documentation, as specified in 50 CFR part 300 subpart K, that such fish were harvested from areas other than the South Atlantic.

The documentation includes information on the vessel that harvested the fish and on where and when the fish were offloaded. The information is required for the enforcement of fishery regulations. Revision: To include the additional species added to this information collection in 2009 (no change to burden hours).

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: May 30, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–13510 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801]

Ball Bearings and Parts Thereof From France, Germany, and Italy: Preliminary Results of Antidumping Duty Administrative Reviews and Rescission of Antidumping Duty Administrative Reviews in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, and Italy for the period May 1, 2010, through April 30, 2011. We have preliminarily determined that sales have been made below normal value by certain companies subject to these reviews. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published the antidumping duty orders on ball bearings and parts thereof from France (54 FR 20902), Germany (54 FR 20900), and Italy (54 FR 20903) in the

Federal Register. On June 28, 2011, in accordance with 19 CFR 351.221(b), we published a notice of initiation of administrative reviews of 89 companies subject to these orders. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011).[1]

On January 18, 2012, we issued a notice of extension of the deadline for completion of the preliminary results of reviews from January 31, 2012, to April 2, 2012. *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews,* 77 FR 2511 (January 18, 2012). On March 21, 2012, we issued a second notice of extension of the deadline for completion of the preliminary results of reviews from April 2, 2012, to May 30, 2012. *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews,* 77 FR 16537 (March 21, 2012).

The period of review is May 1, 2010, through April 30, 2011. The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Orders

The products covered by the orders are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written descriptions of the scope of the orders remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. The orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the orders. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the orders.

For a list of scope determinations which pertain to the orders, *see* the ''Memorandum to Minoo Hatten'' regarding scope determinations for the 2010/2011 reviews, dated concurrently with this notice, which is on file in the Central Records Unit (CRU) of the main Commerce building, room 7046.

Selection of Respondents for Individual Examination

Due to the large number of companies in these reviews and the resulting administrative burden of examining each company for which a request was made and not withdrawn, the Department exercised its authority to limit the number of respondents selected for individual examination in these reviews. Where it is not practicable to examine all known exporters/producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act allows the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

Accordingly, on July 6, 2011, we requested information concerning the quantity and value of sales to the United States from the 89 exporters/producers for which we had initiated reviews. We received responses from most of the exporters/producers subject to the reviews; some companies withdrew their requests for review.[2] Based on our analysis of the responses and our available resources, we chose to examine the sales of certain companies. *See* Memoranda to Laurie Parkhill, dated August 8, 2011, for a detailed analysis of the selection process for each country-specific review. We selected the following companies for individual examination:

Country	Company
France	Eurocopter S.A.S.
	NTN–SNR Roulements S.A. (NTN–SNR) (formerly SNR Roulements S.A./SNR Europe).
Germany	Volkswagen Zubehor GmbH, Volkswagen AG, myonic GmbH (myonic).
Italy	SKF Italy.
	Schaeffler Italia S.r.l. (formerly FAG Italia S.p.A.).[3]

Rescission of Reviews in Part

In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review in part ''if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review.'' Subsequent to the initiation of these reviews, we received timely withdrawals of the requests we had received for the reviews as follows:

Country	Company
France	Eurocopter S.A.S., Kongskilde Limited, SKF France.

[1] On July 16, 2011, we revoked the antidumping duty orders with respect to ball bearings and parts thereof from Japan and the United Kingdom. *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Revocation of Antidumping Duty Orders,* 76 FR 41761 (July 15, 2011). In the **Federal Register** notice we indicated that, as a result of the revocation, the Department is discontinuing all unfinished administrative reviews immediately and will not initiate any new administrative reviews of the orders.

[2] *See* ''Rescission of Reviews in Part'' section below.

[3] We initiated on WBP Pump Bearing GmbH & Co. KG as well.

Country	Company
Germany	Audi AG, Kongskilde Limited, Schaeffler KG, Schaeffler Technologies GmbH & Co. KG, SKF GmbH, Volkswagen AG, Volkswagen Zubehor GmbH.
Italy	Eurocopter S.A.S., Kongskilde Limited.

Rates for Respondents Not Selected for Individual Examination

Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on total facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies excluding zero, *de minimis,* and rates based entirely on facts available. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16 (*AFBs 2008*). Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis,* or based on total facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possible method is ''averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

In these reviews, we have calculated zero or *de minimis* weighted-average dumping margins for all companies selected as mandatory respondents. In previous cases, the Department has determined that a ''reasonable method'' to use when, as here, the rates of the respondents selected for individual examination are zero or *de minimis* is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available (which may be from a prior review or new shipper review). *See AFBs 2008* and accompanying Issue and Decision Memorandum at Comment 16. If any such non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected company in the review in question, including when that rate is zero or *de minimis. Id.* However, all prior rates for this proceeding were calculated using the Department's zeroing methodology. The Department has stated that it will not use its zeroing methodology in administrative reviews with preliminary determinations issued after April 16, 2012. *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews).* Therefore, we will not apply any rates calculated in prior reviews to the non-selected companies in these reviews. Based on this, and in accordance with the statute, we determine that a reasonable method for determining the weighted-average dumping margins for the non-selected respondents in these reviews is to average the weighted-average dumping margins calculated for the mandatory respondents or to assign the rate calculated for the sole mandatory respondent, where applicable.

Verification

As provided in section 782(i) of the Act, we have verified information provided by NTN–SNR. We conducted this verification using standard verification procedures including the examination of relevant sales and financial records and the selection and review of original documentation containing relevant information. Our verification results are outlined in the public version of our verification report,[4] which is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building.

During the home market sales verification of NTN–SNR, we requested that the company present specific information and source documentation substantiating the rebates that it claims it granted to certain customers. The company was not able to do so. Thus, for the preliminary results, we denied an offset for all customer-specific rebates NTN–SNR reported. *See* NTN–SNR's verification report and preliminary analysis memorandum for further discussion.

Targeted Dumping Allegations

The Department received targeted dumping allegations from the petitioner concerning NTN–SNR, myonic, Schaeffler Italia S.r.l, and SKF Italy. Specifically, the petitioner states that it conducted its own targeted dumping analysis of the U.S. sales of these companies using the Department's targeted dumping methodology. Based on its own analysis, the petitioner argues that the Department should conduct targeted dumping analyses and employ average-to-transaction comparisons without offsets should the Department find targeted dumping. NTN–SNR, Schaeffler Italia S.r.l, and SKF Italy argue that the Department does not have the statutory authority to apply a targeted dumping analysis in an administrative review. Myonic argues that the petitioner's targeted dumping allegation does not provide sufficient grounds for using a comparison methodology different than the Department's standard comparison methodology, *i.e.,* comparing monthly weighted-average normal values to monthly weighted-average export prices, because the value of targeted dumping alleged by the petitioner is immaterial. *See* myonic's May 3, 2012, comments at 2.

NTN–SNR, myonic, Schaeffler Italia S.r.l, and SKF Italy contend that the Department should use an average-to-average comparison methodology or, if it does use an average-to-transaction comparison methodology, it should not apply zeroing but should grant offsets for non-dumped comparisons.

For purposes of these preliminary results the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margins for the mandatory respondents, the Department applied the calculation methodology adopted in *Final Modification for Reviews.* In particular, the Department compared monthly weighted-average export prices (EPs) (or constructed export prices (CEPs)) with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margins. Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review. The Department intends to continue to consider,

[4] *See* Memorandum to file from Yang Jin Chun and Sandra Stewart entitled, ''Ball Bearings and Parts Thereof from France: Verification Report for NTN–SNR Roulement S.A.'s Sales,'' dated February 27, 2012 (NTN–SNR's verification report).

pursuant to 19 CFR 351.414(c), whether another method is appropriate in these administrative reviews in light of the parties' pre-preliminary comments and any comments on the issue that parties may include in their case and rebuttal briefs.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in sections 772(a) and (b) of the Act, as appropriate.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. *See* 19 CFR 351.401(c) and 351.102(b)(38). We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Certain companies received freight revenues or packing revenues from the customer for certain U.S. sales. In *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 46584 (August 11, 2008) (*OJ Brazil*), and accompanying Issues and Decision Memorandum at Comment 7, and in *Polyethylene Retail Carrier Bags From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 6857 (February 11, 2009) (*PRC Bags*), and accompanying Issues and Decision Memorandum at Comment 6, the Department determined to treat such revenues as an offset to the specific expenses for which they were intended to compensate. Accordingly, we have used the revenues of the particular respondents as an offset to their respective expenses.

Consistent with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States which includes commissions, direct selling expenses, and U.S. repacking expenses. In accordance with sections 772(d)(1) and (2) of the Act, we also deducted those indirect selling expenses associated with economic activities occurring in the United States and the profit allocated to expenses deducted under section 772(d)(1) of the Act in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to NTN–SNR, because it reported inland freight, international freight, and packing expenses applicable to its U.S. sales on the basis of value, we recalculated these expenses on the basis of weight. *See Ball Bearings and Parts Thereof From France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews,* 71 FR 12170, 12173 (March 9, 2006), unchanged in *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews,* 71 FR 40064 (July 14, 2006) (*AFBs 16*), and accompanying Issues and Decision Memorandum at Comment 6. *See also Ball Bearings and Parts Thereof From France, et al.: Preliminary Results of Antidumping Administrative and Changed-Circumstances Reviews,* 76 FR 22372 (April 21, 2011), unchanged in *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Administrative and Changed-Circumstances Reviews,* 76 FR 52937 (August 24, 2011) (*AFBs 21*).

SKF Italy imported subject merchandise and further processed it in the United States before selling it to an unaffiliated purchaser. Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold by the exporter or producer to an unaffiliated customer if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by the further-manufacturing firms accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. *See* 19 CFR 351.402(c) for an explanation of our practice on this issue. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise for SKF Italy. Also, for SKF Italy, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales is appropriate. For the analysis of the decision not to require further-manufactured data, *see* the Department's company-specific preliminary analysis memoranda dated concurrently with this notice. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margin calculated on sales of identical and other subject merchandise sold to unaffiliated persons.

No other adjustments to EP or CEP sales were claimed by the respondents. For further descriptions of our analyses, *see* the company-specific preliminary analysis memoranda dated concurrently with this notice.

Home Market Sales

Based on a comparison of the aggregate quantity of home market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP sales.

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.,* sales were made at arm's-length prices. *See* 19 CFR

351.403(c). We excluded from our analysis sales to affiliated customers for consumption in the home market that we determined not to have been made at arm's-length prices. To test whether sales to affiliated parties were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002). We included in our calculation of normal value those sales to affiliated parties that were made at arm's-length prices. *See* company-specific preliminary analysis memoranda dated concurrently with this notice.

Cost of Production

In accordance with section 773(b) of the Act, in the last completed segment of the relevant country-specific proceeding we disregarded below-cost sales for NTN–SNR, Schaeffler Italia S.r.l., SKF Italy, and myonic. Therefore, for the instant reviews, we have reasonable grounds to believe or suspect that sales by all of the above companies of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in the respective home markets.

We examined the cost data for NTN–SNR, Schaeffler Italia S.r.l., SKF Italy, and myonic and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annuals costs based on the reported data, adjusted as described below.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the general and administrative expenses, and financial expenses. In our COP analysis, we used the home market sales and COP information provided by each respondent in its questionnaire responses or, in the case of Schaeffler Italia S.r.l., additional COP information provided by its largest supplier.

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested whether home market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts and rebates, selling and packing expenses.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard the below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the period of review, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales made by myonic, Schaeffler Italia S.r.l., SKF Italy, and NTN–SNR. *See* the relevant company-specific preliminary analysis memoranda dated concurrently with this notice.

Model Match Methodology

For all respondents, where possible, we compared the monthly, weighted-average U.S. sales to the monthly, weighted-average sales of the foreign like product in the home market. Specifically, in making our comparisons, if an identical home market model was reported, we made comparisons to monthly weighted-average home market prices that were based on all sales which, where appropriate, passed the COP test of the identical product during the relevant month. We calculated the monthly weighted-average home market prices on a level of trade-specific basis and a manufacturer basis. If there were no contemporaneous sales of an identical model, we identified the most similar home market model.

To determine the most similar model, we limited our examination to models sold in the home market that had the same bearing design, load direction, number of rows, and precision grade. Next, we calculated the sum of the deviations (expressed as a percentage of the value of the U.S. model's characteristics) of the inner diameter, outer diameter, width, and load rating for each potential home market match and selected the bearing with the smallest sum of the deviations. If two or more bearings had the same sum of the deviations, we selected the model that was sold at the same level of trade as the U.S. sale and was the closest contemporaneous sale to the U.S. sale. If two or more models were sold at the same level of trade and were sold equally contemporaneously, we selected the model with the smallest difference-in-merchandise adjustment.

Finally, if no model sold in the home market had a sum of the deviations that was less than 40 percent, we concluded that no appropriate comparison existed in the home market. For a full discussion of the model match methodology we have used in these reviews, *see Antifriction Bearings and Parts Thereof from France, et al.: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Reviews,* 70 FR 25538, 25542 (May 13, 2005), and *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews,* 70 FR 54711 (September 16, 2005), and accompanying Issues and Decision Memorandum at Comments 2, 3, and 5.

Normal Value

Home market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. Where companies received freight or packing revenues from the home-market customer, we offset these expenses in accordance with *OJ Brazil* and *PRC Bags* as discussed above. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting home market

direct selling expenses from, and adding U.S. direct selling expenses to, normal value. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting home market direct selling expenses from normal value. We also made adjustments, when applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the EP or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7)(A) of the Act. *See* ''Level of Trade'' section below.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general & administrative (SG&A) expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based selling SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance-of-sale differences and level-of-trade differences. For comparisons to EP, we made circumstance-of-sale adjustments by deducting home market direct selling expenses from and adding U.S. direct selling expenses to constructed value. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting home market direct selling expenses from constructed value. We also made adjustments, when applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the EP or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home market sales at a different level of trade. The normal value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the home market sales from which we derived the adjustments for SG&A and profit.

To determine whether home market sales were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales were at a different level of trade from that of U.S. sales and the difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and home market sales at the level of trade of the export transactions, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997).

Where the respondent reported no home market levels of trade that were equivalent to the CEP level of trade and where the CEP level of trade was at a less advanced stage than any of the home market levels of trade, we were unable to calculate a level-of-trade adjustment based on the respondent's home market sales of the foreign like product. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For CEP sales in such situations, to the extent possible, we determined normal value at the same level of trade as the U.S. sale to the first unaffiliated customer and made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP-offset adjustment to normal value was subject to the so-called ''offset cap,'' calculated as the sum of home market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP (or, if there were no home market commissions, the sum of U.S. indirect selling expenses and U.S. commissions).

For a company-specific description of our level-of-trade analyses for these preliminary results, *see* Memorandum to Minoo Hatten, dated concurrently with this notice, entitled ''Ball Bearings and Parts Thereof from Various Countries: 2010/2011 Level-of-Trade Analysis,'' electronically filed in IA ACCESS in each country specific record.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine that the following weighted-average dumping margins on ball bearings and parts thereof from various countries exist for the period May 1, 2010, through April 30, 2011:

Company	Margin (percent)
FRANCE	
Audi AG	0.00
Bosch Rexroth SAS	0.00
Caterpillar Group Services S.A.	0.00
Caterpillar Materials Routiers S.A.S	0.00
Caterpillar S.A.R.L	0.00
Intertechnique SAS	0.00
Perkins Engines Company Limited	0.00
SNECMA	0.00
NTN–SNR	0.00
Volkswagen AG	0.00
Volkswagen Zubehor GmbH	0.00
GERMANY	
Bayerische Motoren Werke AG	0.00
Bosch Rexroth AG	0.00
BSH Bosch und Siemens Hausgerate GmbH	0.00
Caterpillar S.A.R.L	0.00
myonic GmbH	0.00
Robert Bosch GmbH	0.00
Robert Bosch GmbH Power Tools and Hagglunds Drives	0.00
ITALY	
Audi AG	0.00
Bosch Rexroth S.p.A	0.00
Caterpillar Overseas S.A.R.L	0.00
Caterpillar of Australia Pty. Ltd.	0.00
Caterpillar Group Services S.A.	0.00
Caterpillar Mexico, S.A. de C.V.	0.00
Caterpillar Americas C.V	0.00
Hagglunds Drives S.r.l	0.00
Perkins Engines Company Limited	0.00
Schaeffler Italia S.r.l. and WPB Water Pump Bearing GmbH & Co. KG, Schaeffler Italia SpA and The Schaeffler Group	0.00
SKF Industries S.p.A., Somecat S.p.A., and SKF RIV–SKF Officine di Villar Perosa S.p.A	0.00
SNECMA	0.00
Volkswagen AG	0.00

Company	Margin (percent)
Volkswagen Zubehor GmbH	0.00

Comments

We will disclose the calculations we used in our analysis to parties to these reviews within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). If requested, a general-issues hearing and any hearings regarding issues related solely to specific countries will be held at the main Department building at times and locations to be determined.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the following: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed.

Issues raised in hearings will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the following dates:

Case	Briefs due	Rebuttals due
France	July 23, 2012	July 30, 2012.
Germany	July 23, 2012	July 30, 2012.
Italy	July 23, 2012	July 30, 2012.

Parties who submit case briefs (*see* 19 CFR 351.309(c)) or rebuttal briefs (*see* 19 CFR 351.309(d)) in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department intends to issue the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs or at the hearings, if held, within 120 days of the date of publication of this notice.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for particular respondents is above *de minimis* in the final results of these reviews, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value for those sales in accordance with 19 CFR 351.212(b)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by companies selected for individual examination in these preliminary results of reviews for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the country-specific all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. *Id.*

For the companies which were not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of these reviews.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative reviews and rescission in part are issued and published in accordance with sections 751(a)(1), 751(b)(1), and 777(i)(1) of the Act.

Dated: May 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13565 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Pure Magnesium in Granular Form From the People's Republic of China: Final Results of Expedited Second Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2012, the Department of Commerce (''the Department'') initiated the second sunset review of the antidumping duty order on pure magnesium in granular form from the People's Republic of China (''the PRC''), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties, as well as lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins likely to prevail are identified in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Eugene Degnan, Office 8, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–0414.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2012, the Department published the notice of initiation of the sunset review of the antidumping duty order on pure magnesium in granular form from the PRC.[1] On February 16, 2012, the Department received a notice of intent to participate from US Magnesium LLC (''US Magnesium''), the domestic interested party, within the deadline specified in section 315.218(d)(1)(i) of the Department's regulations. US Magnesium claimed interested party status under section 771(9)(C) of the Act, as a producer of the domestic-like product in the United States. On March 2, 2012, the Department received a complete substantive response from US Magnesium within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of this order.

Scope of the Order

There is an existing antidumping duty order on pure magnesium from the People's Republic of China (PRC).[2] The scope of this order excludes pure magnesium that is already covered by the existing order on pure magnesium in ingot form, and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy''[3] (generally referred to as ''off specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al2O3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.[4]

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), Main Commerce Building, Room 7046, and is also accessible on the Web at *http://ia.ita.doc.gov/frn* under the heading ''June 2012.'' The paper copy and electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on pure magnesium in granular form from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/exporters/producers	Weighted average margin (percent)
China Minmetals Precious & Rare Minerals Import and Export Corp.	24.67
PRC–Wide Entity	305.56

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 29, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13580 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (''Sunset'') Review*, 77 FR 4995 (February 1, 2012)(''*Initiation Notice*'').

[2] *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995).

[3] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[4] The Department has issued four scope rulings with respect to pure magnesium in granular form. See *Notice of Scope Rulings and Anticircumvention Inquiries,* 68 FR 7772, 7774 (February 18, 2003); Memorandum to the File ''Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling: ESM Group Inc.,'' dated September 18, 2006; Memorandum to Christian Marsh, ''Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling on Granular Magnesium Ground in Mexico,'' dated October 27, 2011; Memorandum to Christian Marsh, ''Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling for ESM Group Inc. (Atomized Magnesium),'' dated October 28, 2011.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on citric acid and citrate salts from the People's Republic of China for the period January 1, 2010, through December 31, 2010. These preliminary results cover RZBC Group Shareholding Co., Ltd., RZBC Co., Ltd., RZBC Juxian Co., Ltd., and RZBC Imp. & Exp. Co., Ltd. (collectively, the RZBC Companies). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Patricia Tran, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4793 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2009, the Department published a CVD order on citric acid and certain citrate salts (citric acid) from the People's Republic of China (PRC).[1] On May 2, 2011, we published a notice of ''Opportunity to Request Administrative Review'' of the order.[2]

On May 20, 2011, we received a request to conduct an administrative review from the RZBC Companies.[3] On May 27, 2011, we received a request for administrative review from Yixing Union Biochemical Co., Ltd. (Yixing Union Co.) and Yixing Union Cogeneration Co., Ltd. (Cogeneration) (collectively, the Yixing Union Companies). On May 31, 2011, we received a request for administrative review from Huangshi Xinghua Biochemical Co., Ltd. (Xinghua). On June 14, 2011, the Yixing Union Companies withdrew their request for review. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on June 28, 2011, covering the RZBC Companies and Xinghua.[4]

On July 26, 2011, the Department issued the initial questionnaire to the Government of the People's Republic of China (GOC), the RZBC Companies, and Xinghua. On July 27, 2011, Xingua withdrew its review request. On August 11, 2011, the Department published a partial rescission of review for Xingua.[5]

On September 27, 2011, the GOC and the RZBC Companies submitted their responses to the initial questionnaire. Based on a request by Petitioners,[6] on October 12, 2011, the Department extended the regulatory deadline to submit factual information until November 17, 2011. On October 17, 2011, Petitioners submitted comments on the initial questionnaire responses filed by the GOC and the RZBC Companies.

On November 17, 2011, Petitioners submitted new factual information concerning world market prices and international freight prices for steam coal and sulfuric acid as well as internal freight charges for steam coal. On November 28, 2011, the RZBC Companies submitted new factual information concerning world prices for sulfuric acid in response to Petitioners' November 17, 2011, submission. On December 13, 2011, Petitioners replied to the RZBC Companies' November 28, 2011, submission and submitted additional factual information. On December 15, 2011, the Department issued letters to the RZBC Companies and Petitioners in which it rejected the factual information contained in their respective November 28 and December 13, 2011, submissions on the grounds that the submissions were untimely. On December 21, 2011, the RZBC Companies submitted a letter objecting to the Department's decision to reject its factual information. On December 22, 2011, Department officials met with counsel representing the RZBC Companies to discuss the Department's decision to reject the November 28, 2011, new factual information submitted by the RZBC Companies.

On December 30, 2011, the Department published a notice of postponement for the preliminary results of this review until no later than May 30, 2012.[7]

On January 3, 2012, the Department issued a letter to the RZBC Companies regarding the November 28, 2011, submission, stating that the companies' arguments were considered, but that the Department continues to reject the document on the grounds that it was untimely.

On January 9, 2012, the Department issued a supplemental questionnaire to the RZBC Companies regarding the provision of steam coal for less than adequate remuneration (LTAR) and provision of sulfuric acid for LTAR programs. On February 1, 2012, the Department issued a supplemental questionnaire to the GOC and a second supplemental to the RZBC Companies. On February 6 and March 2, 2012, the RZBC Companies submitted their supplemental questionnaire responses. On February 15 and 29, 2012, the GOC submitted its supplemental questionnaire responses.

On February 27, 2012, Petitioners submitted deficiency comments on and filed rebuttal factual information to the GOC's February 15, 2012, supplemental questionnaire response regarding the provision of steam coal for LTAR.

On March 8 and 16, 2012, the Department issued supplemental questionnaires to the GOC and received the GOC's responses on March 23 and 29, 2012. On March 20, 2012, Petitioners submitted deficiency comments on the RZBC Companies' March 2, 2012, supplemental questionnaire response. On March 21, 2012, the Department issued a third supplemental questionnaire to the RZBC Companies and received the questionnaire response on April 11, 2012.

[1] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Countervailing Duty Order,* 74 FR 25705 (May 29, 2009) (*CVD Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 24460 (May 2, 2011).

[3] This public document and all other public documents and public versions generated in the course of this proceeding by the Department and interested parties are available to the public through Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), located in Room 7046 of the main Department building.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011).

[5] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review,* 76 FR 49735 (August 11, 2011).

[6] Petitioners are Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC.

[7] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 82275 (December 30, 2011).

On May 18, 2012, Petitioners filed pre-preliminary comments on the provision of steam coal for LTAR program.

Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Rulings

On November 2, 2010, Aceto Corporation (Aceto) requested that the Department find its calcium citrate USP to be outside the scope of the *CVD Order* and the antidumping duty orders on citric acid and certain citrate salts from the PRC and Canada. *See CVD Order,* 74 FR 25703. On February 14, 2011, the Department issued a final scope ruling, finding that Aceto's product is within the scope of those orders. *See* Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Citric Acid and Certain Citrate Salts: Scope Ruling for Calcium Citrate USP,'' (February 14, 2011).

On July 26, 2010, Global Commodity Group LLC (GCG) requested that the Department find a blend of citric acid it imports containing 35 percent citric acid from the PRC and 65 percent citric acid from other countries is outside the scope of the *CVD Order* and the antidumping duty order on citric acid and certain citrate salts from the PRC. On May 2, 2011, the Department issued a final scope ruling, finding that GCG's product is within the scope of those orders. *See* Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Citric Acid and Certain Citrate Salts: Final Determination on Scope Inquiry for Blended Citrate Acid from the People's Republic of China and Other Countries,'' (May 2, 2011). Pursuant to this ruling, we have instructed CBP that the quantity of citric acid from the PRC in the commingled merchandise is subject to the CVD and antidumping orders. We have also instructed CBP that if the quantity of citric acid from the PRC in a commingled shipment cannot be accurately determined, then the entire commingled quantity is subject to the orders.

Period of Review

The period for which we are measuring subsidies, *i.e.,* the period of review (POR), is January 1, 2010, through December 31, 2010.

Application of the CVD Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*Coated Paper from the PRC*), and the accompanying Issues and Decision Memorandum (Coated Paper Decision Memorandum). In *Coated Paper from the PRC,* the Department found that:

> given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as {a} bar to proceeding with a CVD investigation involving products from China.

See Coated Paper Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[8] Furthermore, on March 13, 2012, Public Law 112–99 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies (NMEs) such as the PRC. The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[9]

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC. *See* CWP Decision Memorandum at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and

[8] *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 FR 31966 (June 5, 2008), (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP Decision Memorandum) at Comment 1.

[9] *See* Public Law 112–99, § 1(b), 126 Stat. 265 (2012).

accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 at 870 (1994).

GOC—Sulfuric Acid

In the July 26, 2011, initial questionnaire, we requested ownership information from the GOC about the companies that produced the sulfuric acid purchased by the RZBC Companies.[10] We notified the GOC that the Department generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as ''authorities'' within the meaning of section 771(5)(B) of the Act. However, for those majority government-owned companies that the GOC argues are not ''authorities'' and for each producer that is not majority owned by the government, we instructed the GOC to answer all questions in Appendix 5 (Information Regarding Input Producers) and Appendix 6 (Information on Government and Chinese Communist Party (CCP) Officials and Representatives).

With the exception of one sulfuric acid producer, the GOC did not challenge the Department's ''authority'' practice with regard to producers that are majority owned by the government or a government entity. The GOC attempted to provide information to Appendices 5 and 6 for only one of the sulfuric acid producers from which the RZBC Companies purchased the input during the POR. For that sulfuric acid producer, the GOC provided a response to some of the questions contained in Appendix 5, but failed to identify owners, members of the board of directors, or managers who were also government or CCP officials or representatives during the POR.[11] For the same sulfuric acid producer, the GOC did not respond to any questions contained in Appendix 6.[12] To Appendix 6, the GOC stated that the Department's CCP questions are not relevant to the investigation of the LTAR program and that, as a matter of PRC law the government cannot interfere in the management and operation of the sulfuric acid suppliers.[13] The GOC stated that, in prior cases, it explained that the CCP, the People's Congress, and the Chinese People's Political Consultative Conference are not government bodies.[14] The GOC also stated that ''because these organizations are not governmental bodies, the GOC cannot require them to provide the information requested by the Department.'' [15] Furthermore, the GOC stated that ''there is no central informational database to search for the requested information, and the industry and commerce administrations do not require companies to provide such information.'' [16] As such, the GOC claimed that it was unable to respond to the Department's questions.[17]

On March 16, 2012, we issued a deficiency questionnaire in which we asked the GOC to provide a response to those questions in Appendix 5 and Appendix 6, which it did not answer in the initial questionnaire response.[18] In its March 23, 2012, response, the GOC did not provide an answer to the questions, stating ''The GOC has previously provided a response that it believes appropriately addresses these inquires.'' [19]

Regarding the GOC's objection to the Department's questions about the role of CCP officials in the management and operations of the sulfuric acid producer, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.[20] Public information suggests that the CCP exerts significant control over activities in the PRC.[21] This conclusion is supported by, among other documents, a publicly available background report from the U.S. Department of State.[22] With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[23]

Because the GOC did not respond to our requests for information on this issue, we have no further basis for evaluating the GOC's claim that the role of the CCP is irrelevant. Thus, the Department finds, as it has in other PRC CVD proceedings, that the information requested regarding the role of CCP officials in the management and operations of the sulfuric acid producer, and in the management and operations of the producer's owners, is necessary to our determination of whether the producer is an authority within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c), that it was unable to submit the information in the requested form and manner, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not provide any information regarding the attempts it undertook to obtain this information, despite the fact that we provided the GOC with a second opportunity to provide the information. Therefore, we have no basis to accept the GOC's claim that it is unable to provide this information. This is particularly appropriate given that the GOC has claimed that such information regarding the CCP is irrelevant, when the Department has made it clear on the record of this administrative review, other segments of this proceeding, as well as other PRC CVD proceedings that such information is relevant to our analysis of whether input producers are ''authorities'' under the statute.

Therefore, we preliminarily find that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts otherwise available'' in conducting our preliminary analysis of a sulfuric acid producer.[24] Moreover, we preliminarily find that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, and only

[10] *See* Department's Initial Questionnaire Issued to the GOC (July 26, 2011) at II–8.

[11] *See* GOC's Initial Questionnaire Response (IQR) (September 27, 2011) at II–12.

[12] *Id.* at II–14 through II–18.

[13] *Id.*

[14] *Id.* at II–14.

[15] *Id.* at II–16.

[16] *Id.*

[17] *Id.*

[18] *See* Department's Deficiency Questionnaire Issued to the GOC (March 16, 2012) at 3.

[19] *See* GOC's Deficiency Questionnaire Response (March 23, 2012) at 5.

[20] *See* Memorandum to the File from Patricia M. Tran, ''Additional Documents for the Preliminary Results,'' dated May 30, 2012 (Additional Documents Memorandum) at Attachments II and III (which include the post-preliminary analysis memorandum from certain seamless carbon and alloy steel standard, line, and pressure pipe and a State Department report, both recognizing the significant role the CCP has in the GOC).

[21] *Id.* at Attachment IV.

[22] *Id.; see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Seamless Pipe Decision Memorandum) at Comment 7.

[23] *See* Seamless Pipe Decision Memorandum at 16.

[24] *See* section 776(a)(2)(A) of the Act.

the Department can determine what is relevant to this administrative review.[25] Furthermore, by stating that it is unable to obtain the information because the CCP is not the government, the GOC is substantially non-responsive. The GOC would have the Department reach its determination on the role of the CCP with regard to the government and the input producer based solely on the conclusory statements of the GOC without any of the information that the Department considers necessary for its analysis. As this constitutes a failure to cooperate to the best of its ability, we find that an adverse inference is warranted in the application of facts available.[26] As AFA, we preliminarily find that the sulfuric acid producer for which the GOC did not provide complete information is an ''authority'' within the meaning of section 771(5)(B) of the Act.

GOC—Steam Coal

In the final results of the first administrative review, the Department was not able to determine whether steam coal is being provided by the GOC to a specific industry or enterprise or group of industries or enterprises, because of insufficient record evidence. *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review,* 76 FR 77206 (December 12, 2011) (*Citric Acid First Review*), and accompanying Issues and Decision Memorandum (Citric Acid First Review ID Memo) at Comment 6. We stated that we would revisit the *de facto* specificity of the provision of steam coal for LTAR program in a future review. *Id.*

On February 1, 2012, we issued a supplemental questionnaire in which we requested the GOC to provide the following information concerning the steam coal industry in the PRC for 2008, 2009, and 2010:

the number of producers of steam coal;

the percentage of total volume and value of domestic production of steam coal that is accounted for by companies in which the GOC maintains an ownership or management interest either directly or through other government entities;

the names and addresses of the top ten steam coal producing firms—in terms of sales and quantity produced—in which the GOC maintains an ownership or management interest;

a discussion of what laws or policies govern the pricing of steam coal, the levels of production of steam coal, or the development of steam coal capacity; and a list of industries in China that use steam coal and the volume of steam coal used/consumed by each industry and submit official documentation to support the response.

On February 15, 2012, the GOC provided an inadequate response to the Department's questions regarding steam coal, stating that ''the GOC only collects information on general coal producers and does not disaggregate the data it collects about the coal industry by different segments within that industry.''[27] The GOC added that ''most of the Chinese coal producers also produced steam coal and, thus, the GOC believes that providing information on general coal producers and the general coal industry will provide a reasonable indication of nature of the steam coal industry.''[28]

Specifically, to the Department's request for the number of producers of steam coal for 2008, 2009, and 2010, the GOC provided information on coal producers.[29] Similarly, to the Department's request for the percentage of total volume and value of domestic production of steam coal that is accounted for by companies in which the GOC maintains an ownership or management interest, the GOC limited its response to only ''coal producers that are wholly state-owned or state-controlled'' and submitted those ''companies' share of gross industry revenue.''[30] In response to the Department's request for the names and addresses of the top ten steam coal producing firms, in terms of sales and quantity produced, in which the GOC maintains an ownership or management interest, the GOC provided a list of ten coal companies for each year, but failed to submit the requested ''sales and quantity produced'' for the listed companies.[31] Additionally, to the Department's request for a list of industries in China that use steam coal and the volume of steam coal used/consumed by each industry, the GOC provided a list of industries that purchase steam coal directly with no associated volume data and no explanation about how the list was compiled.[32]

On March 8, 2012, we issued a second supplemental questionnaire in which we again asked the GOC to provide a response to the provision of steam coal questions.[33] In its March 29, 2012, response, the GOC explained that after receiving the February 1, 2012, questionnaire, the government contacted the National Bureau of Statistics of China (NBSC) to obtain information on the steam coal industry, but the NBSC stated that it did not have such information.[34] The GOC stated that it also consulted with the China National Coal Association (CNCA), which responded that:

''At present, relevant Chinese agencies and institutions have not collected information on the total number of steam coal producers. At present, almost all coal producers produce both steam coal and coking coal. Until now, there is not a single coal producer that produces solely coking coal. Therefore {the total number of Chinese coal producers} should be the total number of Chinese steam coal producers.''[35]

As such, the GOC stated that it submitted information on the steam coal industry/production in its February 15, 2012, response and had no additional information to provide to the Department.[36] Concerning the Department's second request for a list of industries in China that use steam coal and the volume of steam coal used/consumed by each industry, the GOC, in its March 29, 2012, response stated that ''this information has already been provided by the GOC, to the best of its ability'' in its February 15, 2012, response.[37] However, in response to the Department's request for this data, in its February 15, 2012, response, the GOC simply submitted a list of industries that

[25] *See Ansaldo Componenti, S.p.A.* v. *United States,* 628 F. Supp. 198, 205 (CIT 1986) (stating that ''{i}t is Commerce, not the respondent, that determines what information is to be provided''). The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be ''an unreasonable and unnecessary burden on the company.'' *Id. See also Essar Steel Ltd.* v. *United States,* 721 F. Supp. 2d 1285, 1298–99 (CIT 2010) (stating that ''{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion'' and that ''Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin''); *NSK, Ltd.* v. *United States,* 919 F. Supp. 442, 447 (CIT 1996) (''NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'''); *Nachi-Fujikoshi Corp.* v. *United States,* 890 F. Supp. 1106, 1111 (CIT 1995) (''Respondents have the burden of creating an adequate record to assist Commerce's determinations.'').

[26] *See* section 776(b) of the Act.

[27] *See* GOC's First Supplemental Questionnaire Response—Part A (February 15, 2012) (GOC Part A SQR) at 1.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 1–2

[31] *Id.* at 2–4.

[32] *Id.* at 5 and Exhibit 2.

[33] *See* Department's Supplemental Questionnaire Issued to the GOC (March 8, 2012).

[34] *See* GOC's Second SQR (March 29, 2012) (GOC Second SQR) at 1.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 4.

it claims purchase steam coal directly and failed to submit the requested volume data.[38] The GOC also failed to provide documentation supporting its response that those listed industries actually purchase steam coal.[39]

With respect to the GOC's failure to provide the information requested about steam coal, we preliminarily find that necessary information is not available on the record and that the GOC has withheld necessary information that was requested of it and, thus, the Department must rely on facts otherwise available.[40] Concerning the PRC steam coal industry/production, we preliminarily find that the GOC acted to the best of its ability in responding to the Department's information request. The GOC provided a detailed explanation of the efforts it took to obtain information regarding steam coal. Because the GOC's explanation is sufficient to determine that it acted to the best of its ability, we are relying on the ''facts available'' on the record and are not applying an adverse inference for the preliminary finding on whether PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.

As noted above, the GOC submitted information for the coal industry and stated that the information on general coal producers and the general coal industry can provide a reasonable indication of the steam coal industry. We, therefore, are relying on that general coal information to determine whether the PRC steam coal market is distorted by the involvement of the GOC. In its February 15, 2012, supplemental questionnaire response, the GOC reported that Chinese wholly state-owned or state controlled coal producers accounted for 60.59, 61.94, and 59.13 percent of gross industry revenue in 2008, 2009, and 2010, respectively.[41] The fact that Chinese state-owned enterprises were responsible for such a large percentage of domestic production volume, as reflected in their share of gross industry revenue, we preliminarily find that it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. *See Preamble to Countervailing Duty Regulations,* 63 FR 65348, 65377 (November 25, 1998) (*Preamble*); *see also* ''Provision of Steam Coal for LTAR,'' below.

We preliminary find, however, that the GOC failed to cooperate by not acting to the best of its ability in responding to the Department's information request about the PRC industries that use steam coal and the volume of steam coal used/consumed by each of those industries. Despite two opportunities to submit volume data for the industries reported to purchase steam coal, the GOC chose to not provide such data to the Department. The GOC did not notify the Department, in accordance with section 782(c) of the Act, that it was unable to submit the information in the requested form and manner, nor did it suggest any alternative forms of data. As a result, the record is void of any evidence that would allow the Department to conduct an analysis to determine whether there is predominant or disproportionate use of steam coal by an industry(ies) reported by the GOC. Consequently, we preliminarily find that an adverse inference is warranted in the application of facts available with regard to the specificity of the provision of steam coal for LTAR.[42] As AFA, we preliminarily find that the provision of steam coal for LTAR is *de facto* specific. *See* ''Provision of Steam Coal for LTAR,'' below.

GOC—Other Subsidies

The financial statements submitted by the RZBC Companies indicated that they received potentially countervailable subsidies in the form of grants. Consequently, we sought further information from the companies about these grants, and also asked the GOC to provide information about the programs under which the grants were provided.[43]

The Department normally relies on information from the government to assess program specificity; however, the GOC did not submit such information in all instances. Where the RZBC Companies submitted information which showed the specificity of a program, we relied upon that information to make our preliminary finding. Where neither the RZBC Companies nor the GOC provided information that would allow us to determine the specificity of a program, we relied upon AFA to make our preliminary finding. For those particular programs, we preliminarily find that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts available for these preliminary results. *See* section 776(a)(2)(A) of the Act. Moreover, we preliminarily find that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

Due to the GOC's failure to provide the requested information about the programs under which the RZBC Companies received grants, we are assuming adversely that these grants are being provided to a specific enterprise or industry, or group of enterprises or industries. *See* section 771(5A) of the Act.

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review,* 72 FR 43607, 43608 (August 6, 2007), unchanged in final, 73 FR 7708.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)–(iv) direct the Department to attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, or produce an input that is primarily dedicated to the production of the downstream product. In the case of a transfer of a subsidy between cross-owned companies, 19 CFR 351.525(b)(6)(v) directs the Department to attribute the subsidy to the sales of the company that receives the transferred subsidy.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists

[38] *See* GOC Part A SQR at 5 and Exhibit 2.

[39] *Id.*

[40] *See* sections 776(a)(1) and (a)(2)(A) of the Act.

[41] *See* GOC Part A SQR at 2.

[42] *See* section 776(b) of the Act.

[43] *See* Department's Supplemental Questionnaires Issued to the GOC on February 1 and March 16, 2012, and Supplemental Questionnaires Issued to the RZBC Companies on February 1 and March 21, 2012.

between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001).

The RZBC Companies

The RZBC Companies consist of the RZBC Group Shareholding Co. Ltd. (RZBC Group),[44] RZBC Co., Ltd. (RZBC Co.), RZBC (Juxian) Co., Ltd. (RZBC Juxian), and RZBC Imp. & Exp. Co., Ltd. (RZBC IE). All companies are domestically owned PRC companies. RZBC Co., RZBC Juxian, and RZBC IE are wholly owned by RZBC Group and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). RZBC Co. and RZBC Juxian are producers of the subject merchandise; RZBC IE is the exporter of the subject merchandise; and RZBC Group is a headquarters company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii),(c) and (b)(6)(iii), respectively.

In its initial questionnaire response, the RZBC Companies also reported their ownership history and affiliations prior to the POR, but since the cut-off date of December 11, 2001. RZBC Co. reported that the company ''Sisha'' was a prior owner.[45] In the first administrative review of this order, the Department determined that Sisha Co., Ltd. (Sisha) was cross-owned with RZBC Co. and instructed the company to file a response on behalf of Sisha.[46] *See* Citric Acid First Review ID Memo at ''Attribution of Subsidies—RZBC.'' The Department found that Sisha received a countervailable, allocable subsidy in 2003. *See* Citric Acid First Review ID Memo at ''Enterprise Development Fund from Zibo City Financial Bureau.''

Consistent with the *Citric Acid First Review,* we continue to find that Sisha was cross-owned with RZBC Co. (*see* 19 CFR 351.525(b)(6)(vi)) and have attributed the allocable benefit for Sisha's grant to the RZBC Companies for the POR. For more information, *see* ''Enterprise Development Fund from Zibo City Financial Bureau,'' below.

Also, RZBC IE reported that it exports subject merchandise produced by other, unaffiliated companies, but that this merchandise was not exported to the United States during the POR.[47] Although any subsidies to the unaffiliated producers would normally be cumulated with those of the trading company that sold their merchandise pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where the merchandise was not exported to the United States during the POR or accounted for a very small share of respondent's exports to the United States.[48] In this review, we have not issued CVD questionnaires to the unaffiliated producers of citric acid whose merchandise was exported by RZBC IE, because such merchandise was not exported to the United States during the POR. Also, we have removed the sales of these products from RZBC IE's 2010 sales to derive the denominator for purposes of calculating countervailable subsidy rates for the RZBC Companies. This approach is consistent with the Department's treatment of RZBC IE's exports of subject merchandise produced by unaffiliated companies in *Citric Acid First Review. See* Citric Acid First Review ID Memo at ''Attribution of Subsidies—RZBC.''

Sales Denominators

We preliminarily determine that multiple sales denominators are appropriate for use in the attribution of subsidies to the RZBC Companies. To attribute a subsidy received by RZBC Co., RZBC Juxian, or RZBC IE, we used as the denominator the total consolidated sales of all three companies, exclusive of sales among affiliated companies, for 2010. To attribute a subsidy received by RZBC Group, we used as the denominator the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE, exclusive of sales among affiliated companies, for 2010. Lastly, to attribute an export subsidy received by a company, we used as the denominator the 2010 export sales of RBZC IE, exclusive of sales of merchandise produced by unaffiliated companies.

Benchmarks and Discount Rates

The Department is investigating loans received by the RZBC Companies from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (see 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[49] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national average interest rate for comparable commercial loans.''[50]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *Coated Paper from the PRC,*[51] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an

[44] During the POR, there was a name change from ''RZBC Group Co., Ltd.'' to ''RZBC Group Shareholding Company.'' *See* RZBC Companies' IQR (September 27, 2011) at ''RZBC Group'' page III–7.

[45] *Id.* at ''RZBC Co. Ltd.'' page III–5.

[46] In the first administrative review, the Department also found that the company ''HTI'' was a prior owner of RZBC Co. and, thus, was cross-owned with the RZBC Companies. *See* Citric Acid First Review ID Memo at ''Attribution of Subsidies—RZBC.'' All subsidies received by HTI that the Department found to be countervailable were expensed. *See* Citric Acid First Review ID Memo at ''Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project.''

[47] *See* RZBC Companies' IQR at ''RZBC IE'' page III–6.

[48] *See, e.g., Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review,* 66 FR 64214 (December 12, 2001), and accompanying Issues and Decision Memorandum at ''Attribution.''

[49] *See* 19 CFR 351.505(a)(3)(i).

[50] *See* 19 CFR 351.505(a)(3)(ii).

[51] *See* Coated Paper Decision Memorandum at Comment 10.

external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada,* the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[52]

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *Coated Paper from the PRC*[53] and more recently updated in *Thermal Paper from the PRC.*[54] Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: Low income; lower-middle income; upper-middle income; and high income. As explained in *Coated Paper from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[55] Beginning in 2010, however, the PRC is in the upper-middle income category. Accordingly, as explained further below, we are using the interest rates of upper-middle income countries to construct the 2010 benchmark.

After identifying the appropriate interest rates, the next step in constructing the benchmark has been to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators. In each of the years from 2001–2009, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.

This contrary result for a single year in ten does not lead us to reject the strength of governance as a determinant of interest rates. As confirmed by the Federal Reserve, ''there is a significant negative correlation between institutional quality and the real interest rate, such that higher quality institutions are associated with lower real interest rates.'' [56] However, for 2010, incorporating the governance indicators in our analysis does not make for a better benchmark. Therefore, while we have continued to rely on the regression-based analysis used since *Coated Paper from the PRC* to compute the benchmarks for loans taken out prior to the POI, for the 2010 benchmark we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001–2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as ''upper middle income'' by the World Bank for 2010 and ''lower middle income'' for 2001–2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

The resulting inflation-adjusted benchmark lending rates are in the Department's Interest Rate Benchmark Memorandum.[57] Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[58]

In *Citric Acid from the PRC,* this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.[59] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations. For US dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any loans denominated in other foreign

[52] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada,* 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (Softwood Lumber Decision Memorandum) at ''Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.''

[53] *See* Coated Paper Decision Memorandum at Comment 10.

[54] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum (Thermal Paper Decision Memorandum) at 8–10.

[55] *See* The World Bank Country Classification, *http://econ.worldbank.org/.*

[56] *See* Additional Documents Memorandum at Attachment I for Federal Reserve Consultation Memorandum.

[57] *See* Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding ''Preliminary Results Interest Rate Benchmark Memorandum,'' dated May 30, 2012 (Interest Rate Benchmark Memorandum).

[58] *See, e.g., Light-Walled Rectangular Pipe and Tube from People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008) (*Rectangular Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Rectangular Pipe Decision Memorandum) at 8.

[59] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) (*Citric Acid Investigation*), and accompanying Issues and Decision Memorandum (Citric Acid Investigation ID Memo) at Comment 14.

currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where ''n'' equals or approximates the number of years of the term of the loan in question.

Discount Rate Benchmarks

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy.

The resulting interest rate benchmarks that we used in the preliminary calculations are provided in the Preliminary Results Interest Rate Benchmark Memorandum.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Shandong Province Policy Loans Program

In the underlying investigation and *Citric Acid First Review,* the Department found that the *Shandong Province Development Plan of Chemical Industry during ''Tenth Five-Year Plan'' Period* identifies objectives and goals for the development of the citric acid industry and calls for lending to support these objectives and goals. *See* Citric Acid Investigation ID Memo at ''Policy Lending,'' and Citric Acid First Review ID Memo at ''Shandong Province Policy Loans Program.'' Moreover, loan documents, reviewed by the Department in the first administrative review, stated that because the food-use citric acid industry ''has characteristics of capital and technology concentration and belongs to high and new technology * * * the State always takes positive policy to encourage its development.'' *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 33219, 33228 (June 8, 2011) (*Citric Acid First Review Prelim*), unchanged in the final results.

On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[60] Therefore, consistent with the *Citric Acid Investigation* and *Citric Acid First Review,* we preliminarily find that Shandong Province policy loans from state-owned commercial banks constitute financial contributions from ''authorities'' within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act. Further, pursuant to section 771(5)(E)(ii) of the Act, such financing provides a benefit equal to the difference between what the recipients paid on the loans and the amount they would have paid on comparable commercial loans. We also preliminarily find that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the Government of Shandong's policy to develop the citric acid industry.

RZBC Co., RZBC Juxian, and RZBC IE reported that they had loans and bank acceptance notes outstanding during the POR, which were provided by state-owned commercial banks. To calculate the benefit under this program, we compared the amount of interest each company paid on their outstanding loans to the amount of interest they would have paid on comparable commercial loans. *See* 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the ''Benchmarks and Discount Rates'' section above. We have attributed benefits under this program to the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (exclusive of inter-company sales), as discussed in the ''Attribution of Subsidies'' section above. On this basis, we preliminarily find that the RZBC Companies received a countervailable subsidy of 0.40 percent *ad valorem.*

B. Export Seller's Credit for High- and New-Technology Products

RZBC IE also reported having outstanding loans from the Export-Import Bank of China (EXIM) during the POR, which were provided under this program. In the underlying investigation and *Citric Acid First Review,* the Department found that loans under this program conferred a countervailable subsidy. *See* Citric Acid Investigation ID Memo at ''Policy Lending,'' and Citric Acid First Review ID Memo at ''Export Seller's Credit for High- and New-Technology Products.''

On the record of the instant review, the GOC reported that that there were no changes to the program during the POR.[61] Therefore, consistent with the *Citric Acid Investigation* and *Citric Acid First Review,* we preliminarily find that the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)–(B) of the Act.

To calculate the benefit under this program, we compared the amount of interest RZBC IE paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. *See* 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the ''Benchmarks and Discount Rates'' section above. We divided the total benefit amount by the RZBC Companies' export sales during the POR. On this basis, we preliminarily find that the RZBC Companies received a countervailable subsidy of 0.74 percent *ad valorem.*

C. Reduced Income Tax Rate for High or New Technology Enterprises

In the *Citric Acid First Review,* the Department found this program to be countervailable. *See* Citric Acid First Review ID Memo at ''Reduced Income Tax Rate for High or New Technology Enterprises.'' As discussed in the preliminary results of the first review, Article 28.2 of the Enterprise Income Tax Law (EITL) authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises (HNTEs). *See Citric Acid First Review Prelim,* 76 FR at 33229–30. The criteria and procedures for identifying eligible HTNEs are provided in the *Measures on Recognition of High and New Technology Enterprises* (GUOKEFAHUO {2008} No. 172) (*Measures on Recognition of HNTEs*) and the *Guidance on Administration of Recognizing High and New Technology Enterprises* (GUOKEFA HUO {2008} No. 362). *Id.* Article 8 of the *Measures on Recognition of HNTEs* provides that the science and technology administrative departments of each province, autonomous region, and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HTNEs in their respective jurisdictions. *Id.*

The annex of the *Measures on Recognition of HNTEs* lists eight high-

[60] *See* GOC's IQR at II–2.

[61] *Id.* at II–3.

and new-technology areas selected for the State's ''primary support'': (1) Electronics and Information Technology; (2) Biology and New Medicine Technology; (3) Aerospace Industry; (4) New Materials Technology; (5) High-tech Service Industry; (6) New Energy and Energy-Saving Technology; (7) Resources and Environmental Technology; and (8) High-tech Transformation of Traditional Industries. *Id.*

On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[62] RZBC Co. and RZBC Juxian reported that they received tax savings under this program on their 2009 income tax returns filed during the POR.

Consistent with the *Citric Acid First Review,* we preliminarily find that the reduced income tax rate paid by RZBC Co. and RZBC Juxian is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily find, consistent with the *Citric Acid First Review,* that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs* and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that RZBC Co. and RZBC Juxian would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid. We treated the income tax savings realized by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POR by the consolidated sales (excluding inter-company sales) for RZBC Co., RZBC Juxian, and RZBC IE for the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we preliminarily find that the RZBC Companies received a countervailable subsidy of 0.91 percent *ad valorem.*

[62] *Id.* at II–6, 7.

D. Income Tax Credits on Purchases of Domestically Produced Equipment

In the underlying investigation and *Citric Acid First Review,* the Department found that this program provided countervailable subsidies. *See* Citric Acid Investigation ID Memo at ''Income Tax Credits on Purchases of Domestically Produced Equipment,'' and Citric Acid First Review ID Memo at ''Income Tax Credits on Purchases of Domestically Produced Equipment.''

As discussed in the preliminary results of the first reivew, according to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation* {*Projects*} (CAI SHU ZI {1999} No. 290), a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. *See Citric Acid First Review Prelim,* 76 FR 33230. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year. *Id.*

On the record of the instant review, the GOC reported that that there were no changes to this program during the POR.[63] RZBC Co. and RZBC Juxian reported that they received tax savings under this program on their 2009 income tax returns filed during the POR.

Consistent with the prior segments of this proceeding and prior CVD determinations,[64] we preliminarily find that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily find that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

We treated the income tax savings enjoyed by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies' tax savings by the consolidated sales (excluding inter-company sales) for RZBC Co., RZBC Juxian, and RZBC IE for the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we preliminarily find that the RZBC Companies received a countervailable subsidy of 1.36 percent *ad valorem.*

[63] *Id.* at II–4.

[64] *See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*), and accompanying Issues and Decision Memorandum (OCTG Decision Memorandum) at 18.

E. Provision of Sulfuric Acid for LTAR

The Department is examining the provision of sulfuric acid to the RZBC Companies. In the first administrative review of this order, the Department found that this program provides countervailable subsidies. *See* Citric Acid First Review ID Memo at ''Provision of Sulfuric Acid for LTAR.''

In the July 26, 2011, initial questionnaire issued to the GOC in this review, we informed the GOC that the Department would not reevaluate the countervailability of this program. However, if there were any changes to the operation of the program during the POR, then the GOC was instructed to explain the changes and answer all relevant questions in Appendix 1.[65] In its September 27, 2011, initial questionnaire response, the GOC did not report any changes to the operation of the program during the POR and did not answer the questions in Appendix 1.[66] As such, the Department continues to find that this program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, we are relying on AFA to determine that one producer of sulfuric acid, from whom the RZBC Companies made purchases, is an ''authority'' within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily find that the RZBC Companies received a financial contribution in the form of the provision of a good. *See* section 771(5)(D)(iii) of the Act.

In the *Citric Acid First Review,* the Department found that actual transaction prices for sulfuric acid in China are significantly distorted by the government's involvement in the market. As such, we determined that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determined that import prices into the PRC cannot serve as a benchmark. *See* Citric Acid First Review ID Memo at ''Provision of Sulfuric Acid for LTAR.'' No new evidence has presented in this review that would call into question that finding. Accordingly, to determine

[65] *See* Department's Initial Questionnaire Issued to the GOC (July 26, 2011) at ''Provision of Sulfuric Acid for LTAR.''

[66] *See* GOC's IQR at II–9 and II–10.

whether the provision of sulfuric acid conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the *Citric Acid First Review,* we applied a tier two benchmark, *i.e.,* world market prices available to purchasers in the PRC (*see* 19 CFR 351.511(a)(2)(ii)).

Petitioners placed on the record export values for sulfuric acid from Canada, the European Union (EU), Thailand, India, and the United States for the year 2010, taken from trade statistics compiled by Canadian Customs, Eurostat, Thai Customs, U.S. International Trade Commission, and Global Trade Atlas.[67]

The average of the export prices provided by the Petitioners represents an average of commercially available world market prices for sulfuric acid that would be available to purchasers in the PRC. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate a single benchmark by month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we averaged the international freight rates from Canada, the EU, Thailand, India, and the United States to Shanghai, submitted by Petitioners.[68] We also added inland freight in the PRC based on the RZBC Companies' sulfuric acid purchase information,[69] import duties as reported by the GOC, and the VAT applicable to imports of sulfuric acid into the PRC.[70] Both RZBC Co. and RZBC Juxian reported the prices that they paid for sulfuric acid inclusive of inland freight and VAT.

To derive the benchmark, we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[71]

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for sulfuric acid, we preliminarily find that the GOC provided sulfuric acid for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid. *See* 19 CFR 351.511(a). To calculate the benefit, we took the difference between the delivered world market price and the price that the companies paid for sulfuric acid, including delivery charges, and divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (exclusive of inter-company sales). On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 1.29 percent *ad valorem* in 2010.

F. Provision of Steam Coal for LTAR

The Department is examining whether the RZBC Companies purchase steam coal for LTAR during the POR. On the record of the instant review, the GOC reported that the RZBC Companies purchased steam coal from state-owned enterprises during the POR.[72] Therefore, we preliminarily determine that the RZBC Companies received a financial contribution from government authorities in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

Regarding specificity, in the final results of the first administrative review, the Department was not able to determine whether steam coal is provided to a specific industry or enterprise or group of industries or enterprises because of insufficient evidence. *See* Citric Acid First Review ID Memo at Comment 6. The Department stated that it would revisit the *de facto* specificity of this program in a future review. *Id.* As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, we are relying on AFA to preliminarily determine that the provision of steam coal for LTAR is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the industries that used/consumed steam coal and the associated volume data for the years 2008, 2009, and 2010.

To determine whether the government's provision of steam coal conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, we relied on 19 CFR 351.511(a)(2) to identify an appropriate, market-determined benchmark for measuring the adequacy of remuneration. Potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.,* actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada,* the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at ''Market-Based Benchmark'' section.

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble:* ''Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative tier two in the hierarchy.'' *See Preamble,* 63 FR 65377. The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. *Id.*

In the instant review, we are relying on the facts available regarding the general coal industry to determine whether the PRC steam coal market is distorted by the involvement of the GOC. As discussed in the ''Use of Facts Otherwise Available and Adverse Inferences,'' section above, the GOC reported that Chinese wholly state-owned or state controlled coal producers accounted for 60.59, 61.94, and 59.13 percent of gross industry revenue in 2008, 2009, and 2010,

[67] *See* Petitioners' Submission of Factual Information (November 17, 2011) (Petitioners' Factual Information) at 3–4 and Exhibit 4. Where we could, we extracted from the pricing data export prices to China.

[68] *See* Petitioners' Factual Information at 4–5 and Exhibit 5.

[69] *See* RZBC Companies' SQR (February 6, 2012) at Exhibit 10 (RZBC Co.) and Exhibit 2 (RZBC Juxian).

[70] For import duties and VAT, *see* GOC's Third SQR (March 23, 2012) at 3.

[71] *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*), and accompanying Issues and Decision Memorandum (PC Strand Decision Memorandum) at Comment 13.

[72] *See* GOC's IQR at II–9.

respectively.[73] The fact that Chinese state-owned enterprises were responsible for such a large percentage of domestic production volume, as reflected in their share of gross industry revenue, makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. *Id.* For this reason, we preliminarily determine that domestic prices charged by privately-owned steam coal producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices.

Turning to tier two benchmarks, *i.e.,* world market prices available to purchasers in the PRC, we received steam coal benchmark pricing data from Petitioners.[74] Petitioners submitted monthly steam coal prices for January 2010, through December 2010, reported by the International Monetary Fund (IMF) for Australia (Newcastle) and from the Platts International Coal Report (Platts Report) for Colombia, Poland, Russia, Australia (Gladstone), Japan and Korea.[75] The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, where more than one benchmark price was submitted for a given month, we averaged those prices to calculate the single benchmark price for that month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners. Petitioners placed on the record ocean freight pricing data from Platts and the Baltic Panamax Index, for the POR, pertaining to shipments of steam coal from various world ports (in Australia, Colombia, Poland, and Russia) to Qingdao, China.[76] We averaged the international freight rates to derive the amount included in our benchmark.

For inland freight, we relied on information submitted by Petitioners, who provided inland freight charges based on the transportation cost of steam coal calculated from the Qingdao Port to the respondent's location.[77] To derive the monthly inland freight charges, Petitioners used data published by Haver Analytics and the 2010 average freight costs of another energy producer in China.[78] Petitioners first divided the average freight cost per metric ton by the average cost of rail transportation per metric ton kilometer to determine the average distance shipped. Petitioners next divided the monthly average freight charge by the average distance shipped to determine the monthly average freight charge per metric ton kilometer. Petitioners then multiplied that rate by the kilometer distance between Qingdao and RZBC and added 17 percent VAT to arrive at the inland freight charges, which we include in the monthly benchmark prices.[79]

Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of steam coal into the PRC as reported by the GOC.[80] We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. *See, e.g.,* PC Strand Decision Memorandum at Comment 13.

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for steam coal during the POR, we preliminarily find that the GOC provided steam coal for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid. *See* 19 CFR 351.511(a). To calculate the benefit, we took the difference between the delivered world market price and the price that the companies paid for steam coal, including delivery charges, and divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales). On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.19 percent *ad valorem* in 2010.

G. Science and Technology Export Innovation Support

According to the RZBC Group it received a subsidy from Rizhao City, Donggang District, the purpose of which is to encourage export development.[81]

Because the financial assistance was pursuant to, ''Rizhao City Financial Support for Encouraging Export Development{s} Policy,'' we preliminarily determine that the program is specific within the meaning of section 771(5A)(B) of the Act. We preliminarily determine that the grants received by RZBC Group constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

The grant that RZBC Group received during the POR was less than 0.5 percent of the exports sales for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable export subsidy of 0.01 percent *ad valorem* in 2010.

H. Donggang Finance Bureau IPO Preparation Subsidy

RZBC Group reported that it received a grant from Rizhao City Donggang District during the POR because it was preparing to make an initial public offering.[82]

We preliminarily determine that the grant received by RZBC Group constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to firms undertaking an initial public offering, we preliminarily determine the grants to be specific under section 771(5A)(D)(i) of the Act.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.02 percent *ad valorem.*

I. Shandong Province Science and Technology Development Fund

The GOC reported that this program was established in 2004, pursuant to the *Provisional Measures on Shandong*

[73] *See* GOC Part A SQR at 2.

[74] *See* Petitioners' Factual Information at 2 and Exhibit 1.

[75] *Id.*

[76] *Id.* at 2–3 and Exhibit 2.

[77] *Id.* at 3 and Exhibit 3.

[78] *Id.*

[79] *Id.*

[80] *See* GOC's Third SQR at 3.

[81] RZBC Companies' March 2, 2012 supplemental questionnaire response (SQR) at Exhibit 6.

[82] *See* RZBC Companies' IQR at ''RZBC Group'' page III–23.

Province Applied Technology Research and Development Fund (the Provisional Measures), to facilitate the development of science and technology in Shandong Province.[83] The program is jointly administered by the Shandong Province Department of Finance and Shandong Province Science and Technology Department.[84]

The GOC provided a copy of *the Provisional Measures* which, at Article 2, states that the fund is to promote technological development and strengthen technological application.[85] As stated in Article 8, the fund will cover the project fees and plan management fees, *i.e.,* labor, equipment, energy, and travel costs.[86]

RZBC Co. reported that it received a subsidy under this program during the POR. The GOC stated that RZBC Co. received assistance for its ''continuous-analog-moving-bed lactic acid production technology'' project.[87]

We preliminary find that the grants received by RZBC Co. under Shandong Province's Applied Technology Research and Development Fund constitute a financial contribution, in the form of a direct transfer of funds from the government, which bestows a benefit equal to the amount of the grant within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily find that, because the receipt of assistance under the program is limited in law to certain enterprises, *i.e.,* companies with science and technological development projects, the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem.*

J. First Industrial Enterprises Development Budget in District Level

RZBC Co. reported that it received a grant from Donggang District Economic and Trade Bureau and the Donggang District Financial Bureau during the POR because it promoted the development of the industrial enterprises in the district.[88] RZBC Co. stated that the company applied and underwent the approval process in order to receive the funds.

We preliminarily determine that the grant received by RZBC Co. constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.02 percent *ad valorem.*

K. First and Second Industrial Enterprises Development Budget in City Level

According to RZBC Co., it received grants from Rizhao City, the purpose of which is to encourage technical improvement and innovation. Each grant is linked to a specific area of achievement and the approval documents name the companies that received the grants. We preliminarily determine that the grants received by RZBC Co. constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance. To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.04 percent *ad valorem.*

L. Award for Contribution to City and People

RZBC Co. reported that it received a grant from Rizhao City during the POR because of the company's outstanding contribution to the commercial development of the district.[89] The company did not apply for this grant.

We preliminarily determine that the grant received by RZBC Co. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

The grant that RZBC Co. received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem.*

M. Award for Enterprise Technology Improvement Project

RZBC Co. reported that it received a grant from Rizhao City during the POR because it operated a technology improvement project.[90] RZBC Co. stated that the company did not apply for this grant program.

We preliminarily determine that the grant received by RZBC Co. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to firms operating technology improvement projects within the city,

[83] *See* GOC's First SQR—Part II (February 29, 2012) at 9.

[84] *Id.*

[85] *Id.* at Exhibit 2.

[86] *Id.*

[87] *Id.* at 12.

[88] *Id.* at III–24 and Exhibit 14 of RZBC Companies' March 2, 2012 supplemental questionnaire response (SQR).

[89] *See* RZBC Companies' IQR at III–28.

[90] *Id.* at III–30.

we preliminarily determine the grants to be specific under section 771(5A)(D)(i) of the Act.

The grant that RZBC Co. received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem.*

N. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River[91]

The Department found this program to be countervailable in the *Citric Acid First Review. See* Citric Acid First Review ID Memo at ''Other Subsidies Received by RZBC'' and ''Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River.'' On the record of the instant review, the GOC stated that it does not challenge the Department's countervailable finding for this program.[92] RZBC Juxian reported that it received a benefit under this program during the POR for a sewage treatment project.[93]

This program was established pursuant to the State Council's *Comprehensive Work Plan on Energy Conservation and Emission Reduction* (Guo Fa 2007 No. 7115) and the State Council's mandate to ''strengthen pollution control of Three Rivers, Three Lakes, and the Songhua River.'' *Id.* The program is administered by the Shandong Finance Department and the Shandong Environmental Protection Bureau. *Id.* The purpose of the program is to enhance pollution control efforts by financing projects affecting the Huaihe River, Haihe River, Liaohe River, Taihu Lake, Chaohu Lake, Dianchi Lake, and the Songhua River. *Id.*

Because the fund is limited to enterprises located in these designated areas, the Department determined in the first administrative review that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act. *Id.* The Department also found that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they provide a benefit in the amount of the grant under 19 CFR 351.504(a). *Id.* at ''Other Subsidies Received by RZBC.''

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.16 percent *ad valorem.*

O. Shandong Self-Innovation Subsidy

The GOC reported that this program was established in 2007, pursuant to the *Measures on Shandong Province Self-Innovation Results Commercialization Special Fund (the Measures),* to promote the commercialization of self-innovation results to facilitate the development of high technology industries with intellectual property rights, to guide economic growth and to improve the competitiveness of Shandong Province.[94] The program is jointly administered by the Shandong Province Department of Finance and Shandong Province Science and Technology Department.[95]

The GOC provided a copy of *the Measures* which, at Article 8, states that the fund is to strictly adhere to the strategic plan of Shandong Province's medium- and long-term technology development plan and focus on the development of 15 high-tech industry groups.[96] As stated in Article 10, depending on the characteristics of the project and enterprise, assistance under the fund consists of direct funding of projects, equity investment, discount loans, financial rewards, and reimbursable aid.[97]

RZBC Juxian reported that it received a subsidy under this program during the POR.[98] The GOC stated that RZBC Juxian received assistance for its ''citric acid bio-manufacturing key technology development and application'' project.[99]

We preliminarily find that the grant received by RZBC Juxian under Shandong Province's Self-Innovation Results Commercialization Special Fund constitutes a financial contribution, in the form of a direct transfer of funds from the government, which bestows a benefit equal to the amount of the grant within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily find that, because the receipt of assistance under the program is limited in law to certain enterprises, *i.e.,* 15 high-tech industry groups, the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the grant to the POR, the year of receipt. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.03 percent *ad valorem.*

P. Enterprise Development Supporting Fund From Zibo City Financial Bureau

In *Citric Acid First Review,* the Department found that Sisha, RZBC Co.'s prior cross-owned parent company, received a countervailable subsidy under this program in 2003. *See* Citric Acid First Review ID Memo at ''Enterprise Development Fund from Zibo City Financial Bureau.'' The Department determined to use Sisha's consolidated sales as reported by Sisha as the denominator for the 2003 allocation test pursuant to 19 CFR 351.524(b)(2). *Id.* We found that the 2003 grant was greater than 0.5 percent of the reported consolidated sales for 2003. *Id.* Thus, because the 2003 grant was a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 10-year AUL.

Because RZBC Co. and Sisha ceased to be cross-owned after March 2008, we applied a Sisha/RZBC Co. sales ratio to compute the benefit attributable to the RZBC Companies during the POR; this approach is consistent with the Department's decision in *Citric Acid First Review. Id.* We then divided that benefit amount by RZBC Co.'s, RZBC IE's, and RZBC Juxian's total combined sales (excluding inter-company sales) for 2010 to obtain the *ad valorem* subsidy rate. On this basis, we preliminary find that the RZBC Companies received a countervailable subsidy of 0.07 percent *ad valorem.*

[91] In its questionnaire response, RZBC Juxian referred to this program as ''Resource Conservation and Environmental Protection.'' *See* RZBC Companies' IQR at ''RZBC Juxian'' page III–20.

[92] *See* GOC's SQR (February 29, 2012) at 2.

[93] *See* RZBC Companies' IQR at ''RZBC Juxian'' page III–19 through III–21, and March 2, 2012, SQR at ''RZBC Juxian'' Exhibit 20.

[94] *See* GOC's First SQR—Part II (February 29, 2012) at 2.

[95] *Id.* at 3.

[96] *Id.* at Exhibit 1.

[97] *Id.* at Exhibit 1.

[98] *See* RZBC Companies' IQR at ''RZBC Juxian'' page III–24 and III–25.

[99] *See* GOC's First SQR—Part II at 6.

II. Programs Preliminarily Determined Not To Provide Countervailable Benefits During the POR

A. Award of Financial Construction

RZBC Juxian reported that it received a benefit under this program during the POR.[100] We preliminarily determine that the benefit from this program results in a net subsidy rate that is less than 0.005 percent *ad valorem.* Consistent with our past practice, we preliminarily have not included this program in our net countervailing duty rate calculations. *See, e.g.,* Coated Paper Decision Memorandum at ''Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;'' *see also Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum (Steel Wheels Decision Memorandum) at ''Income Tax Reductions for Firms Located in the Shanghai Pudong New District.''

III. Programs Preliminarily Determined Not To Be Used [101]

We preliminarily find that the RZBC Companies did not use the following programs during the POR:

Reduced Income Tax Rates to Foreign Invested Enterprises (FIEs) Based on Location
Reduced Income Tax Rate for Tech or Knowledge Intensive FIEs
Two Free, Three Half Tax Program for FIEs
Local Income Tax Exemption & Reduction Program for Productive FIEs
VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
Famous Brands—Yixing City
Anqui City Energy & Water Savings Grant
Land for LTAR in Anqui Economic Development Zone
Land-Use Rights Extension in Yixing City
National Government Policy Lending
Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products
International Market Development Fund Grants for Small and Medium Enterprises
Fund for Energy-saving Technological Innovation
Jiangsu Province Energy Conservation and Emissions Reduction Program
Rizhao City: Subsidies to Encourage Enterprise Expansion
Rizhao City: Subsidy for Antidumping Investigations
Rizhao City: Special Fund for Enterprise Development
Rizhao City: Technological Innovation Grants
Rizhao City: Technology Research and Development Fund
Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers
Shandong Province: Subsidy for Antidumping Investigations
Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology
Shandong Province: Environmental Protection Industry R&D Funds
Shandong Province: Waste Water Treatment Subsidies
Yixing City: Leading Enterprise Program
Yixing City: Tai Lake Water Improvement Program
Loans Provided to the Northeast Revitalization Program
State Key Technology Renovation Project Fund
National Level Grants to Loss-making State-Owned Enterprises (SOEs)
Income Tax Exemption Program for Export-Oriented FIEs
Tax Benefits to FIEs for Certain Reinvestment of Profits
Preferential Income Tax Rate for Research and Development for FIEs
Preferential Tax Programs for Encouraged Industries
Preferential Tax Policies for Township Enterprises
Provincial Level Grants to Loss-making SOEs
Reduced Income Tax Rates for Encouraged Industries in Anhui Province
Provision of Land for Less Than Adequate Remuneration in Anhui Province
Funds for Outward Expansion of Industries in Guangdong Province
Income Tax Exemption for FIEs Located in Jiangsu Province
Administration Fee Exemption in the Yixing Economic Development Zone (YEDZ)
Tax Grants, Rebates, and Credits in the YEDZ
Provision of Construction Services in the YEDZ for LTAR
Grants to FIEs for Projects in the YEDZ
Provision of Electricity in the YEDZ for LTAR
Provision of Water in the YEDZ for LTAR
Provision of Land in the YEDZ for LTAR
Provision of Land to SOEs for LTAR
Torch Program—Grant
Discounted Loans for Export-Oriented Industries
Provision of Land in the Zhuqiao Key Open Park for LTAR
Special Funds for Energy Saving and Recycling Program
Water Resource Reimbursement Program
Shandong Province: Energy Saving Award
VAT and Import Duty Exemptions on Imported Equipment
Ecology Compensation Subsidy Funds [102]

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for the RZBC Companies, the only producer/exporter covered by this administrative review. We preliminarily determine that the total estimated net countervailable subsidy rate for the RZBC Companies is 5.27 percent *ad valorem* for 2010.

If these preliminary results are adopted in our final results of this review, 15 days after publication of the final results of this review the Department will instruct CBP to liquidate shipments of subject merchandise by the RZBC Companies entered or withdrawn from warehouse, for consumption from January 1, 2010, through December 31, 2010, at the applicable rate.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated for year 2010. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Case and rebuttal briefs must be submitted to the Department electronically using IA ACCESS. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice by electronically filing the request via IA ACCESS. Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[100] *See* RZBC Companies' IQR at ''RZBC Juxian'' page III–22 and III–23.

[101] In this section, we refer to programs preliminarily found to be not used by the RZBC Companies.

[102] This program discovered during the course of the review was expensed prior to the POR.

Dated: May 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13585 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–869]

Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of large residential washers (washing machines) from the Republic of Korea (Korea). For information on the subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Justin M. Neuman or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0486 and (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On January 19, 2012, the Department initiated a countervailing duty (CVD) investigation of washing machines from Korea.[1] In the *Initiation Notice,* the Department selected Samsung Electronics Co., Ltd. (Samsung), LG Electronics, Inc. (LG), and Daewoo Electronics Corporation (Daewoo) as the company respondents in this investigation because the petition identified them as the producers in Korea that exported washing machines to the United States, and because there was no information indicating that there are other Korean producers/exporters. We invited interested parties to comment on our respondent selection within five days of the publication of the initiation notice (*i.e.,* by February 1, 2012). We received none.

On February 15, 2012, the Department issued the CVD questionnaire (including government and company sections) to the Government of Korea (GOK). On March 28, 2012, Daewoo submitted a letter to the Department stating that it would not participate in this investigation. On April 9, 2012, the GOK, Samsung, and LG submitted their questionnaire responses. On April 13, 2012, Samsung submitted corrections to some tax-related information and translation errors submitted as part of its response to the initial questionnaire. On April 23, 2012, the Department received comments from the petitioner regarding these questionnaire responses, and on April 26, 2012, the petitioner filed comments regarding the letter submitted by Daewoo. On April 25, 2012, the Department issued supplemental questionnaires to Samsung and LG, followed by a supplemental questionnaire issued to the GOK on April 26, 2012. Samsung and LG submitted responses to their supplemental questionnaires on May 10, 2012. The GOK submitted its response on May 7, 2012. The petitioner submitted comments regarding the GOK's questionnaire response on May 14, 2012, and also submitted comments regarding the responses of Samsung and LG on May 21, 2012.

On March 1, 2012, at the request of the petitioner,[2] the Department postponed the preliminary determination until May 28, 2012.[3] On May 18, 2012, the Department issued a letter to the GOK, Samsung, and LG requesting that they place the verification reports and the Final Calculation Memoranda from *Bottom Mount Refrigerators* on the record of this investigation.[4] On May 22, 2012, Samsung and LG submitted the requested documents. The GOK provided the requested documents on May 24, 2012.

Alignment of Final CVD Determination With Final AD Determination

On the same day the Department initiated this CVD investigation, the Department also initiated AD investigations of washing machines from Korea and Mexico.[5] The CVD investigation and the AD investigations cover the same merchandise. On May 10, 2012, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (Act), the petitioner requested alignment of the final CVD determination with the final AD determination of washing machines from Korea. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than October 10, 2012, unless postponed.

Injury Test

Because Korea is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On February 10, 2012, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea of subject merchandise.[6]

Scope of the Investigation

The products covered by this investigation are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large

[1] *See Large Residential Washers From the Republic of Korea: Initiation of Countervailing Duty Investigation,* 77 FR 4279 (January 27, 2012) (*Initiation Notice*). The petitioner in this investigation is Whirlpool Corporation.

[2] *See* Letter from Whirlpool Corporation, ''Postponement of Preliminary Determination,'' dated February 28, 2012.

[3] *See Large Residential Washers From the Republic of Korea: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 77 FR 13559 (March 7, 2012) (because May 28 falls on a federal holiday, the determination is being issued on the next business day, May 29, 2012).

[4] *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 17410 (March 26, 2012) and accompanying Issues and Decision Memorandum (*Bottom Mount Refrigerators*).

[5] *See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 77 FR 4007 (January 26, 2012).

[6] *See Large Residential Washers From Korea and Mexico,* 77 FR 9700 (February 17, 2012); and USITC Publication 4306, Large Residential Washers from Korea and Mexico: Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Preliminary) (February 2012).

residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs [7] designed for use in large residential washers which incorporate, at a minimum: (a) A tub; and (b) a seal; (3) all assembled baskets [8] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper; [9] (b) a base; and (c) a drive hub; [10] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1)(a) It contains payment system electronics; [11] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners; [12] *or*

(2)(a) It contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[13] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

The products subject to this investigation are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, in our *Initiation Notice,* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.[14] On May 17, 2012, the petitioner filed a request to exclude from the scope of the investigations top-load washing machines with a rated capacity less than 3.7 cubic feet. Although the petitioner's scope request fell outside of our prescribed window for the submission of scope comments, it is the Department's practice to consider such requests made by the petitioner when there appears to be no impediment to enforceability by U.S. Customs and Border Protection (CBP).[15] Samsung and LG filed letters opposing the petitioner's position on the scope issue on May 23, 2012, and May 24, 2012, respectively.

The Department is currently evaluating the petitioner's scope request, as well as the comments of Samsung and LG, and will issue its decision regarding the scope of the investigations no later than the date of the preliminary determination in the companion AD investigation. That decision will be placed on the record of this CVD investigation, and all parties will have the opportunity to comment.

Period of Investigation

The period for which we are measuring subsidies, *i.e.,* the period of investigation (POI), is January 1, 2011, through December 31, 2011.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia,* necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of this preliminary determination, we find it necessary to apply facts available, with an adverse inference to Daewoo.

As explained above in the ''Case History'' section, the Department selected Daewoo as a mandatory company respondent. As a result of Daewoo's declared intention not to participate in this investigation and its decision not to respond to the initial questionnaire, we find that Daewoo has withheld information that has been requested and has failed to provide information within the deadlines established. Further, by not responding to the questionnaire, Daewoo significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(1), (2)(A), (B) and (C) of the Act, we are basing the CVD rate for Daewoo on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted,

[7] A ''tub'' is the part of the washer designed to hold water.

[8] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[9] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[10] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[11] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[12] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[13] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

[14] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997), and *Initiation Notice,* 77 FR at 4279.

[15] *See, e.g., Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977, 33979 (June 16, 2008). *See also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand from Mexico,* 68 FR 42378, 42379–80 (July 17, 2003).

pursuant to section 776(b) of the Act because by deciding not to respond to the initial questionnaire, Daewoo did not cooperate to the best of its ability in this investigation. Accordingly, we preliminarily find that adverse facts available (AFA) is warranted to ensure that Daewoo does not obtain a more favorable result than had it fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [16] The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [17]

It is the Department's practice in CVD proceedings to compute a total AFA rate for the non-cooperating company using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[18] Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero.[19] If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for the same or for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[20]

On this basis, we preliminarily determine the AFA subsidy rate for Daewoo to be 70.58 percent *ad valorem.* This rate does not include a rate for either the ''Korea Trade Insurance Corporation (K–SURE)—Short-Term Export Credit Insurance'' or ''GOK Supplier Support Fund Tax Deduction'' programs because we have preliminarily determined that the K–SURE program is not countervailable during the POI, and that the ''GOK Supplier Support Fund Tax Deduction'' program cannot be used until 2012, after the POI. For a detailed discussion of the AFA rates selected for each program under investigation, *see* ''Memorandum to the File from Milton Koch, Re: Application of Adverse Facts Available to Daewoo Electronics Corporation,'' dated May 29, 2012.

Subsidies Valuation Information

A. Cross-Ownership and Attribution of Subsidies

The Department's regulations state that cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of other corporation(s) in essentially the same ways it can use its own assets.[21] This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

The preamble to the Department's regulations further clarifies the Department's cross-ownership standard.[22] According to the *CVD Preamble,* relationships captured by the cross-ownership definition include those where the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (including subsidy benefits) of the other corporation in essentially the same way it can use its own assets (including subsidy benefits). The cross-ownership standard does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a ''golden share'' may also result in cross-ownership.[23]

As such, the Department's regulations make it clear that we must examine the facts presented in each case in order to determine whether cross-ownership exists. In accordance with 19 CFR 351.525(b)(6)(iv), if the Department determines that the suppliers of inputs primarily dedicated to the production of the downstream product are cross-owned with the producers/exporters under investigation, the Department will attribute the subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

Samsung has reported that, prior to the POI, the production of washing machines was performed by its cross-owned subsidiary, Samsung Gwangju Electronics Co., Ltd. (SGEC), in which Samsung held a 94.25 percent ownership interest.[24] Effective January 1, 2011, SGEC was merged into Samsung and all washing machines are now produced directly within Samsung. When SGEC was merged into Samsung, Samsung assumed all of the assets and liabilities of SGEC, including SGEC's tax liability for the 2010 tax year that was identified in the tax return filed in 2011. Samsung explained that, although the SGEC tax return filed in 2011 was

[16] *See, e.g., Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 76 FR 1971 (Jan. 11, 2011); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[17] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

[18] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at ''Application of Facts Available, Including the Application of Adverse Inferences''). *See also Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum (Aluminum Extrusions from the PRC Decision Memorandum) at ''Application of Adverse Inferences: Non-Cooperative Companies.''

[19] There is an exception to this approach for income tax exemption and reduction programs; because there are no such programs in this investigation, the exception is not applicable here.

[20] *See* Aluminum Extrusions from the PRC Decision Memorandum at ''Application of Adverse Inferences: Non-Cooperative Companies''; *see also, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum at ''Selection of the Adverse Facts Available Rate.''

[21] *See* 19 CFR 351.525(b)(6)(vi).

[22] *See Countervailing Duties; Final Rule,* 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

[23] *See id.*

[24] *See* Samsung's April 9, 2012 response at footnote 6.

prepared and filed under the name of SGEC, the tax liability was borne by Samsung. As well, we must determine whether any non-recurring benefits that SGEC received over the average useful life (AUL) period are attributable to Samsung. We have previously examined the relationship between Samsung and SGEC to determine whether it meets the definition of cross-ownership such that we will identify, measure, and attribute subsidies granted to the cross-owned companies to the entity exporting subject merchandise, and concluded that Samsung and SGEC are cross-owned within the definition provided in 19 CFR 351.525(b)(6)(vi).[25] In that investigation, we found that SGEC was virtually wholly-owned by Samsung during 2010, and therefore Samsung was able to ''use and direct the individual assets of'' SGEC in ''essentially the same ways it can use its own assets.''[26] Furthermore, Samsung was intrinsically involved with the production, sales, and marketing of the subject merchandise. As such, we find that over the AUL period preceding the POI, Samsung and SGEC were cross-owned, and all non-recurring subsidies to SGEC are properly attributable to Samsung pursuant to 19 CFR 351.525(b)(6)(i). As such, for purposes of this preliminary determination, we are examining subsidies received by SGEC over the AUL and attributing any benefits allocated to the POI to the total sales of Samsung.

In addition, Samsung has also identified two domestic cross-owned companies that provide it with services related to the production of subject merchandise. Samsung Electronics Logitech (SEL) is a wholly-owned non-producing subsidiary of Samsung that provides logistics management and transportation services for Samsung's merchandise, including washing machines. Samsung Electronics Service (SES) is a non-producing subsidiary of Samsung which provides after-sale warranty services in Korea. Based on the information provided by Samsung, we preliminarily determine that SEL and SES are cross-owned with Samsung in accordance with 19 CFR 351.525(b)(6)(vi). These companies were wholly- or virtually wholly-owned by Samsung during the POI, and therefore Samsung was able to ''use and direct the individual assets of'' these companies in ''essentially the same ways it can use its own assets.''[27] As such, any countervailable subsidies that we identify and measure as conferred on SEL or SES are being treated as a subsidy to Samsung. This approach is consistent with the analysis contemplated by the *CVD Preamble:*

> Analogous to the situation of a holding or parent company is the situation where a government provides a subsidy to a non-producing subsidiary (*e.g.,* a financial subsidiary) and there are no conditions on how the money is to be used. Consistent with our treatment of subsidies to holding companies, we would attribute a subsidy to a non-producing subsidiary to the consolidated sales of the corporate group that includes the non-producing subsidiary. *See, e.g., Certain Steel Products from Belgium,* 58 FR 37273, 37282 (July 9, 1993).[28]

With regard to holding companies, the regulations permit the attribution of subsidies conferred on a holding company to the consolidated sales of the holding company (that includes the respondent producer).[29] Similarly, the regulations permit the attribution of subsidies to cross-owned, non-producing subsidiaries like SEL or SES. Accordingly, the subsidies received by these companies have been appropriately attributed to Samsung.

LG has reported that two of its input producers, LG Chemical and Kum Ah Steel, are cross-owned via their shared membership in the LG Group. The LG Group, in turn, is headed by a holding company, LG Corporation, which owns 33.2 percent of LG. According to LG, LG Chemical is an input producer and a member of the LG Group as a subsidiary of LG Corporation, its largest shareholder, which holds 33.53 percent of the company's outstanding shares. LG identified Kum Ah Steel as a producer and seller of steel products. Kum Ah Steel is 51 percent owned by LG International (LGI), of which LG Corporation owns 27.6 percent.

LG has acknowledged that LG, LG Chemical, and Kum Ah Steel share common ownership through LG Corporation, the holding company of the LG Group, and information on the record substantiates this claim. Furthermore, LG has reported that LGI is Kum Ah Steel's majority shareholder. Based on this information, we preliminarily determine that LG Chemical and Kum Ah Steel are cross-owned with LG, through LG Corporation, in accordance with 19 CFR 351.525(b)(6)(vi). According to LG, LG Corporation is only a holding company with no sales of its own, and it received no assistance from the programs under investigation.[30]

In response to our initial questionnaire, LG reported that ''(n)o company with which LGE shares cross-ownership supplied LGE with any input that is primarily dedicated to the production of the downstream product, *i.e.,* large residential washers.''[31] In its initial questionnaire response, LG reported that LG Chemical's and Kum Ah Steel's sales of inputs to LG, as a proportion of their total sales, are not large and the majority of LG Chemical's and Kum Ah Steel's products are sold to companies other than LG.[32] Moreover, information on the record does not indicate that the input products provided by LG Chemical and Kum Ah Steel are primarily dedicated to the production of the downstream product. On this basis, we preliminarily determine that the inputs produced by LG Chemical and Kum Ah Steel are not primarily dedicated to the production of the downstream product within the meaning of 19 CFR 351.525(b)(6)(iv). In the *CVD Preamble,* the Department indicates that ''it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles.''[33] Analogous to this example from the *CVD Preamble,* we find it would not be appropriate to attribute subsidies provided to LG Chemical and Kum Ah Steel to LG because the materials they produce are used in the production of many different products in different industries, and because LG is not their primary or sole customer.

In addition, LG has identified two cross-owned services providers: ServeOne Inc. (ServeOne), a cross-owned company that purchases goods from input producers and resells them to LG for use in the production of subject merchandise; and Hi Business Logistics Co., Ltd. (HBL), which is responsible for arranging and coordinating the transportation of subject merchandise destined for export. According to information provided by LG, ServeOne is a wholly-owned non-producing subsidiary of LG Corporation. ServeOne's Maintenance, Repair, Operation business unit is the division of ServeOne responsible for selling inputs to LG. ServeOne does not produce these inputs, instead purchasing them from other suppliers/producers and then reselling them to LG. HBL is a wholly-owned subsidiary of LG.

LG has acknowledged that LG and ServeOne share common ownership

[25] *See Bottom Mount Refrigerators* and accompanying Issues and Decision Memorandum at 3.

[26] *See* 19 CFR 351.525(b)(6)(vi).

[27] *See id.*

[28] *See CVD Preamble,* 63 FR at 65402.

[29] *See* 19 CFR 351.525(b)(6)(iii).

[30] *See* LG's April 9, 2012 response at 12.

[31] *See* LG's April 9, 2012 response at 16.

[32] *See* LG's April 9, 2012 response at Exhibit 24.

[33] *See CVD Preamble,* 63 FR at 65401.

through their parent company LG Corporation, and information on the record substantiates this claim.[34] In addition, LG identified HBL as its wholly-owned non-producing subsidiary. Based on this information, we preliminarily determine that ServeOne and HBL are cross-owned with LG in accordance with 19 CFR 351.525(b)(6)(vi). As such, any countervailable subsidies that we identify and measure as conferred on ServeOne or HBL will be treated as a subsidy to LG. This approach is consistent with the analysis contemplated by the *CVD Preamble,* as discussed above.

LG has reported that ServeOne used some of the programs under investigation, but that HBL did not receive subsidies under any of the programs under investigation during the POI or AUL. Accordingly, we have attributed to LG the subsidies received by its non-producing subsidiary, ServeOne.

B. Cross-Ownership With Input Suppliers

As we did in *Bottom Mount Refrigerators,* we have examined, based on information on the record, whether Samsung and LG are in a position to exercise effective control over their input suppliers such that cross-ownership arises within the meaning of 19 CFR 351.525(b)(6)(vi), and whether subsidies received by those input suppliers are attributable to the respondents.[35]

We are examining whether the respondent companies are cross-owned with their input suppliers, and whether the inputs supplied are primarily dedicated to the production of the downstream product. In our questionnaires, we requested that the respondents identify all of their input suppliers, any suppliers that are affiliated in accordance with section 771(33) of the Act, and any suppliers that are cross-owned in accordance with 19 CFR 351.525(b)(6)(vi). Further, we asked them to describe in detail the nature of the relationships with their suppliers, including whether they are sole suppliers, whether there is a supply or purchase agreement, and whether there are financial relationships beyond the purchase or sale of goods. Our questionnaires also asked about the companies' relationships with their suppliers, their supply agreements, and whether the inputs supplied account for a majority of the suppliers' business. We also requested detailed information regarding family relationships, and common board members and managers between the respondents and their suppliers.

Samsung reported that it was not cross-owned with any of its domestic input suppliers in accordance with 19 CFR 351.525(b)(6)(vi). In its initial questionnaire response Samsung provided a copy of the standard supply agreement that it uses with its suppliers. We have reviewed this standard supply agreement and find that the language in the clauses therein provides no clear indication of the type of control by Samsung over its input suppliers that would rise to the level of cross-ownership. The definition of control in the regulations provides a high standard of control, akin to the control normally vested when there is majority voting ownership interest between two corporations.[36] The *CVD Preamble* recognizes that this type of control can also be vested in entities that hold a large minority voting interest or ''golden share.'' [37] Thus, while we recognize that control as defined by our regulations can be exercised by means other than ownership, the definition of what constitutes control does not change regardless of how that control is exercised. Cross-ownership exists where one corporation has the ability to use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. Our review of the language in the agreement between Samsung and its suppliers does not indicate that Samsung has this level of control over its suppliers' assets.

In its initial questionnaire response, Samsung also provided extensive information about its input suppliers' sales to Samsung. In a few instances, Samsung's purchases accounted for a significant majority of a particular supplier's sales. In addition, in some cases, Samsung has provided technical assistance to its suppliers. As well, some Samsung suppliers have also received loans from a joint fund between the Industrial Bank of Korea (IBK) and Samsung worth Korean won one trillion. Samsung has also identified the members of its board of directors and stated that ''no member of the Samsung founding family and no director, executive or senior manager of a Samsung Group company holds a director, executive or senior manager position or an ownership stake in a supplier company that is not a cross-owned company.'' [38] While there appear to be close supplier relationships between Samsung and some of its suppliers, as evidenced by the provision of technical assistance and of loans in conjunction with its purchases, and, in a few circumstances, purchases of a significant majority of the suppliers' production, we find that these factors do not give rise to the type or level of control required by our regulations to find cross-ownership because they do not demonstrate that Samsung can use or direct the assets of these suppliers as if they were Samsung's own assets. Thus, we preliminarily determine that Samsung is not cross-owned with any of its non-Samsung Group input suppliers within the meaning of 19 CFR 351.525(b)(6)(vi).

As discussed above, LG identified two input suppliers, LG Chemical and Kum Ah Steel, as being cross-owned, but stated that the inputs provided by these suppliers are not primarily dedicated to the production of washing machines. Our findings with respect to these two cross-owned input suppliers are discussed above. In addition, LG identified its unaffiliated input suppliers and provided a copy of the standard supply agreement that governs its relationships with its suppliers. We have reviewed this standard supply agreement and find that the language in the clauses therein provides no clear indication of the type of control by LG over its input suppliers that would rise to the level of cross-ownership. There is no language in the agreement between LG and its suppliers that supports a conclusion LG has met the high threshold for control over its suppliers' assets that is required by our regulations for the agreement to demonstrate cross-ownership.

LG also provided information showing the portion of each of the supplier's sales that is made to LG (LG researched the total sales of its suppliers using public information to comply with our request for this information).[39] In a few instances, LG's purchases accounted for a significant majority of a particular supplier's sales. In addition, in some cases, LG has provided direct financial support to its suppliers, in the form of loans for production facility improvements.[40] Certain record information indicates that close supplier relationships may exist between LG and

[34] LG has reported that ''all companies in the LG Group are ultimately controlled by LG Corporation or its majority shareholders, and all companies in the LG Group are affiliated and cross-owned.'' *See* LG's April 9, 2012 response at 15.

[35] *See Bottom Mount Refrigerators* and accompanying Issues and Decision Memorandum at ''Cross-Ownership and Attribution of Subsidies.'' *See also* the Initiation Checklist.

[36] *See* 19 CFR 351.525(b)(6)(vi).

[37] *See CVD Preamble,* 63 FR at 65401.

[38] *See* Samsung's April 9, 2012 response at 16–17.

[39] *See* LG's May 10, 2012 response at Exhibit 43.

[40] *See* LG's May 10, 2012 response at 12.

some of its suppliers, such as the provision of loans in conjunction with LG's purchases, which, in a few circumstances, constitute a significant majority of the suppliers' production. However these factors do not give rise to control as required by our regulations because there is no evidence that these factors allow LG to use or direct the assets of these suppliers as if they were LG's own assets.

Finally, we are not finding cross-ownership to exist between LG and its unaffiliated input suppliers based on any common ownership, management or family ties. LG stated in reference to its unaffiliated input suppliers accounting for 80 percent of its input purchases by value that no directors, officers or executives from any LG Group company serve as directors, officers or executives on any of these unaffiliated companies. LG provided information on the family ties between LG and these companies indicating that distant relations of the LG Group's founding Koo family held executive positions in these companies.[41] However, we find that these family relationships are too attenuated from the current ownership of the LG Group to find that they are indicative of cross-ownership between LG and these input suppliers. Thus, we preliminarily determine that LG is not cross-owned with any of its non-LG Group input suppliers within the meaning of 19 CFR 351.525(b)(6)(vi).

C. Benchmark Interest Rate for Short-Term Loans

Section 771(5)(E)(ii) of the Act states that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,'' indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient ''could actually obtain on the market'' the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department ''may use a national average interest rate for comparable commercial loans,'' pursuant to 19 CFR 351.505(a)(3)(ii). For the ''Korea Development Bank (KDB)/IBK Short-Term Discounted Loans for Export Receivables'' program, an analysis of any benefit conferred by loans from KDB or IBK to the respondents requires a comparison of interest actually paid to interest that would have been paid using a benchmark interest rate.[42]

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government-provided short-term loan program, the preference would be to use a company-specific annual average of interest rates of comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. LG has reported receiving KDB and IBK short-term loans. LG also reported receiving loans from commercial banks that are comparable commercial loans within the meaning of 19 CFR 351.505(a)(2)(i). We preliminarily determine that the information provided by LG about its commercial loans satisfies the preference expressed in 19 CFR 351.505(a)(2)(iv). As such, we have used LG's commercial loans to calculate a benchmark interest rate that represents a company-specific annual average interest rate.[43]

Samsung also received loans under the KDB and IBK short-term loan program. We requested that Samsung provide us with information on its short-term loans that are comparable to the government program loans. Samsung provided information about commercial loans from only one bank. Based on the information in its financial statement, the company apparently received comparable loans from more than one commercial bank. Because information on the record indicates that Samsung had other comparable short-term loans during the POI, Samsung has not provided all of the information about comparable commercial loans that would provide an appropriate basis for an interest rate benchmark as provided in 19 CFR 351.505(a)(2). Therefore, for purposes of this preliminary determination, we have selected a national average interest rate as a benchmark for Samsung using appropriate public sources pursuant to 19 CFR 351.505(a)(3)(ii).[44] We intend to gather additional information on all of Samsung's comparable short-term commercial loans and will reconsider the benchmark issue in our final determination.

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we presume the allocation period for non-recurring subsidies to be the AUL prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL shown in the tables and the company-specific AUL, or the country-wide AUL for the industry under investigation, is significant, pursuant to 19 CFR 351.524(d)(2)(i) and (ii). For assets used to manufacture washing machines, the IRS tables prescribe an AUL of 10 years. Because neither the respondent companies nor the GOK has disputed the AUL of 10 years, the Department is using an AUL of 10 years in this investigation.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Income Tax Programs Under the Restriction of Special Taxation Act (RSTA) Article 10

1. Research, Supply, or Workforce Development Investment Tax Deductions for ''New Growth Engines'' Under RSTA Article 10(1)(1)

The GOK provided information showing that this program was first introduced in 2010, through the amendment of the RSTA, for the purpose of facilitating Korean corporations' investments in their respective research and development (R&D) activities relating to the New Growth Engine program. The statutory basis for this program is Article 10(1)(1) of the RSTA. Paragraph 1 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(1) of the RSTA and Appendix 7 of the Enforcement Decree sets forth a list of eligible technologies that are covered by the New Growth Engine program. According to the GOK, the goal of the New Growth Engine program is to boost general national economic activities. RSTA Article 10(1)(1) offers a credit towards taxes payable by a corporation with respect to the costs of researchers and administrative personnel engaged in R&D activities related to eligible technologies listed in Appendix 7 of the

[41] *See* LG's April 9, 2012 response at Exhibit 26.

[42] *See* 19 CFR 351.505(a)(1).

[43] *See* ''Memorandum to the File from Justin M. Neuman, Re: Calculations for LG Electronics, Inc. for the Preliminary Determination,'' dated May 29, 2012 (LG Preliminary Calculation Memorandum).

[44] *See* ''Memorandum to the File from Justin M. Neuman, Re: Calculations for Samsung Electronics Co., Ltd. for the Preliminary Determination'' dated May 29, 2012 (Samsung Preliminary Calculation Memorandum).

Enforcement Decree and for samples, parts, and raw materials used in the course of such R&D activities.

Only Samsung reported receiving a tax credit under Article 10(1)(1) of the RSTA during the POI. The language of the implementing provisions and the related appendices for this tax program limits eligibility for the use of this program to a limited list of ''new growth engines.'' Therefore, we preliminarily determine that the provision of this tax benefit is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act to companies investing in ''new growth engines'' technology.

The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, effectively, the amount of the tax credit claimed on the tax return filed during the POI, pursuant to 19 CFR 351.509(a)(1).

The tax credit provided under this program is a recurring benefit, because income taxes are due annually. Thus, the benefit is allocated to the year in which it is received.[45] To calculate the benefit to Samsung from the tax credit under this program, we divided the tax credit claimed under this program on the tax return filed during the POI by the company's total sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on Samsung's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[46]

2. Research, Supply, or Workforce Development Expense Tax Deductions for ''Core Technologies'' Under RSTA Article 10(1)(2)

The GOK has provided information showing that this program was first introduced in 2010, through the amendment of the RSTA, for the purpose of facilitating Korean corporations' investments in their respective R&D activities relating to core technologies covered by the New Growth Engine program. The statutory basis for this program is Article 10(1)(2) of the RSTA. Paragraph 2 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(2) of the RSTA and Appendix 8 of the Enforcement Decree sets forth a list of ''core technologies'' that are covered by the New Growth Engine program. The program is designed to facilitate the R&D activities within the context of the New Growth Engine program. According to the GOK, the goal of the New Growth Engine program is to boost general national economic activities. RSTA Article 10(1)(2) offers a credit towards taxes payable by a corporation with respect to the costs of researchers and administrative personnel engaged in R&D activities related to ''core technologies'' listed in Appendix 8 of the Enforcement Decree and for samples, parts, and raw materials used in the course of such R&D activities.

Only Samsung reported receiving a tax credit under Article 10(1)(2) of the RSTA on the tax return filed during the POI. The language of the implementing provisions and the related appendices for this tax program limits eligibility for the use of this program to a limited list of ''core technologies.'' Therefore, we preliminarily determine that the provision of this tax benefit is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act to companies investing in ''core technologies.''

The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, effectively, the amount of the tax credit claimed on the tax return filed during the POI, pursuant to 19 CFR 351.509(a)(1).

The tax credit provided under this program is a recurring benefit, because income taxes are due annually. Thus, the benefit is allocated to the year in which it is received.[47] To calculate the benefit to Samsung from the tax credit used, we divided the tax credit claimed under this program during the POI by the company's total sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on Samsung's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[48]

3. Tax Reduction for Research and Manpower Development: RSTA 10(1)(3)

The GOK reported that this income tax reduction program aims to facilitate Korean corporations' investments in their respective R&D activities, and thus boost general national economic activities in all sectors. According to the GOK, this tax reduction provision was first introduced in 1982 under the Tax Exemption and Reduction Control Law. The GOK reported that all Korean corporations, both large companies and small and medium enterprises (SMEs), are eligible to use this program as long as they satisfy the requirements set forth in the statute.

According to the GOK, an applicant corporation can take a credit toward corporate tax with respect to its investment for the purpose of general research and manpower development. Under this program, companies can claim a credit toward taxes payable for eligible expenditures on research and human resources development. Companies can calculate their tax credit as either 40 percent of the difference between the eligible expenditures in the tax year and the average of the prior four years, or a maximum of six percent of the eligible expenditures in the current tax year. The GOK provided the relevant law authorizing the credit: a copy of Article 10(1)(3) of the RSTA that was in effect during the 2010 tax year, as well as the implementing law, paragraphs 3, 4, 5 and 6 of Article 9 of the Enforcement Decree of the RSTA. The GOK stated that the selection of a recipient and provision of support under Article 10(1)(3) are not contingent upon export performance.

Samsung reported that it, as well as SGEC, SES, and SEL received tax credits under Article 10(1)(3) of the RSTA on the tax returns filed during the POI. LG did not claim this tax credit on the tax return it filed during the POI, but reported that ServeOne claimed the credit on the tax return it filed during the POI.

The GOK explained that the information we requested in order to analyze *de facto* specificity was not available for the POI. We therefore analyzed information from the prior year to evaluate *de facto* specificity and we preliminarily determine that the tax credits under this program were provided disproportionately to Samsung and LG pursuant to section

[45] *See* 19 CFR 351.524(a).

[46] *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review,* 74 FR 20923 (May 6, 2009) (*HRS from India*), and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[47] *See* 19 CFR 351.524(a).

[48] *See, e.g., HRS from India,* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

771(5A)(D)(iii)(III) of the Act.[49] This is consistent with our finding in *Bottom Mount Refrigerators.*

The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, effectively, the amount of the tax credit claimed on the tax return filed during the POI, pursuant to 19 CFR 351.509(a)(1).

The tax credits provided under this program are recurring benefits, because income taxes are due annually. Thus, the benefit is allocated to the year in which it is received.[50] Consistent with 19 CFR 351.525(b)(6)(i), to calculate the countervailable subsidy from the tax credits received by Samsung and SGEC, the tax credits for each corporate entity were summed and divided by Samsung's total sales during the POI. In calculating the rate for Samsung, we included the benefits to SES and SEL, consistent with the *CVD Preamble.*[51] We therefore preliminarily determine a countervailable subsidy of 0.49 percent *ad valorem* for Samsung. To calculate the benefit to LG, we divided ServeOne's tax credits by the sum of ServeOne's sales of products during the POI and LG's total FOB sales net of intercompany sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on LG's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for LG.[52]

B. RSTA Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities

According to the GOK, this program was introduced in the Korean tax code in the predecessor of the RSTA to facilitate Korean corporations' investments in energy utilization facilities.[53] The underlying rationale for the introduction and maintenance of the program is that the enhancement of energy efficiency in the business sectors may help enhance the efficiency in the general national economy. The eligible types of facilities are identified in Article 22(2) of the RSTA.

The statutory basis for this program is Article 25(2) of the RSTA, Article 22(2) of the Enforcement Decree of the RSTA, and Article 13(2) of the Enforcement Regulation of RSTA. Under the program, the GOK explained that corporations that have made investments in facilities to enhance energy utilization efficiency or produce renewable energy resources, in accordance with the RSTA decree and regulation, are entitled to a credit toward taxes payable in the amount of 10 percent of the eligible investment. Once it is established that the requirements under the laws and regulations are satisfied, the provision of support under this program is automatic. If a company is in a tax loss situation in a particular tax year, the company is permitted to carry forward the applicable credit under this program for five years. The relevant tax law pertaining to loss carry-forward is Article 144(1) of the RSTA. The GOK agency that administers this program is the Ministry of Strategy and Finance. Samsung claimed a tax credit under this program on its tax returns filed during the POI. LG reported that it did not use this program on the tax return filed during the POI.

In *Bottom Mount Refrigerators,* we found this program *de facto* specific because information provided by the GOK indicated that the actual recipients that claimed tax credits under RSTA Article 25(2) were limited in number, pursuant to section 771(5A)(D)(iii)(I) of the Act.[54] Similarly, the information provided by the GOK on this record shows that only a limited number of companies claimed this tax credit in 2010, for the 2009 tax year, the most recent year for which the GOK was able to provide information.[55] Therefore, we find this program to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed. To calculate the benefit to Samsung from the tax credit used, we divided the tax credit claimed under this program during the POI by the company's total sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on Samsung's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[56]

C. GOK Facilities Investment Support: Article 26 of the RSTA

The GOK reported that the program provides a credit towards taxes payable in the amount of seven percent of eligible investments in facilities. The GOK provided the relevant law authorizing the credit that was in effect during the 2010 tax year, Article 26 of the RSTA, as well as the implementing law, Article 23 of the Enforcement Decree of the RSTA. Article 23(1) of the Enforcement Decree limits eligibility for the program to ''business assets out of overcrowding control region of the Seoul Metropolitan Area'' (*sic*).

Because information provided by the GOK indicates that the tax credits under this program are limited by law to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy, we preliminarily find that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act.[57] The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, pursuant to 19 CFR 351.509(a)(1).

Samsung reported that it, SGEC, and SEL received tax credits under Article 26 of the RSTA on the tax returns filed during the POI. In addition, LG reported that ServeOne received a tax credit under this program on the tax return filed during the POI. Consistent with 19 CFR 351.525(b)(6)(i), to calculate the countervailable subsidy from the tax

[49] *See* the Samsung and LG Preliminary Calculation Memoranda at Attachments 7 and 5, respectively.

[50] *See* 19 CFR 351.524(a).

[51] *See CVD Preamble,* 63 FR at 65402.

[52] *See, e.g., HRS from India* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[53] *See* the GOK's April 9, 2012 questionnaire response at 121 of the Appendices Volume.

[54] *See Bottom Mount Refrigerators,* and accompanying Issues and Decision Memorandum, at ''RSTA Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities.''

[55] *See* Samsung Preliminary Calculation Memorandum.

[56] *See, e.g., HRS from India,* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[57] *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at the ''Provision of Electricity for Less than Adequate Remuneration'' section (where eligibility for a program was limited to users outside the Bangkok metropolitan area, we found the subsidy to be regionally specific under section 771(5A)(D)(iv) of the Act).

credits received by Samsung and SGEC, the tax credits for each corporate entity were summed and divided by Samsung's total sales during the POI. In calculating the rate for Samsung, we included the benefit to SEL, consistent with the *CVD Preamble*.[58] We preliminarily determine a countervailable subsidy of 0.71 percent *ad valorem* for Samsung. To calculate the benefit to LG from the tax credit received by ServeOne, we divided ServeOne's tax credits by the sum of ServeOne's sales of products during the POI and LG's total FOB sales net of intercompany sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on LG's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for LG.[59]

D. Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions Under Article 276 of the Local Tax Act

According to the GOK, this tax program was introduced for the purpose of supporting the establishment of production facilities by corporations within the Gwangju City area so as to boost general economic activities in the region and to diversify the structure of the local economy by offering tax reductions and exemptions for certain companies located within designated industrial complexes. The current statutory basis for this program is Article 78 of the Special Local Tax Treatment Control Act, although it was previously administered under Article 276 of the Local Tax Act. Companies that newly establish or expand facilities within an industrial complex are exempt from property, education, acquisition, and registration taxes. Further, capital gains on the land and buildings of such companies are exempt from property taxes for five years from the establishment or expansion of the facilities. According to the GOK, liability for the education tax arises when the property tax is imposed and paid, and is set at 20 percent of the property tax. Although this is a program authorized by national law, it is administered at the local level by the Gwangju City government. The GOK provided the relevant sections of the City Tax Exemption and Reduction Ordinance of Gwangju City which shows Article 78 is administered by the Gwangju City government.

The Department has previously determined that the tax exemptions under Article 276 of the Local Tax Act are specific in accordance with section 771(5A)(D)(iv) of the Act because this program limits these tax exemptions to enterprises located in specific regions; provides a financial contribution in the form of revenue foregone in accordance with section 771(5)(D)(ii) of the Act; and provides a benefit in the amount of the tax exemptions in accordance with 19 CFR 351.509(a)(1).[60] There is no new information or evidence of changed circumstances that warrants the reconsideration of that determination. Only Samsung reported receiving these exemptions.

Because certain of these exemptions are triggered by a single event, the purchase of property, we consider the exemptions from acquisition and registration taxes to provide non-recurring benefits, in accordance with 19 CFR 351.524(b). For each year over the 10-year AUL period (the POI, *i.e.,* 2011, and the prior nine years), in which Samsung or SGEC claimed exemptions from acquisition and registration taxes, we examined the exemptions claimed to determine whether they exceeded 0.5 percent of the company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt. None of the exemptions claimed by Samsung or SGEC over the AUL period met the prerequisite for allocation over time; as such, the only attributable benefits are those benefits received by Samsung during the POI. The exemptions from real property tax provided under this program are recurring benefits, because the property taxes are otherwise due to be paid on an annual basis, and the exemption is granted for a five-year period. Thus, the benefit is allocated to the year in which it is received.[61] The benefit to Samsung during the POI from the property tax exemption is the value of the real property tax that would have been due, as well as the related education tax, exempted during the POI.

Samsung also reported that, as a result of the exemption from acquisition and registration taxes, they are subject to an additional tax under the Act on Special Rural Development. This tax is assessed at 10 percent of the exempted acquisition tax amount and 20 percent of the exempted registration tax amount. We have examined the assessment of the Special Rural Development Tax in light of the provisions of section 771(6) of the Act, which provides that the Department may subtract an amount from the countervailable subsidy amounts related to application fees, the loss of value of the subsidy resulting from a deferral required by the government, and any export taxes imposed by the government specifically to offset countervailing duties imposed by the United States. Because the statute explicitly limits recognizable offsets to those three items, we find that the Special Rural Development Tax does not meet the statutory requirement to be recognized by the Department as an offset to the countervailable exemption of acquisition and registration taxes. Furthermore as provided in 19 CFR 351.503(e), when calculating the amount of the benefit, the Department does not consider the tax consequences of the benefit.[62]

To calculate the countervailable subsidy from the four tax exemptions provided under this program to Samsung, we added the value of exemptions of acquisition and registration tax received during the POI to the value of exemptions of real property tax and education tax received during the POI. We divided the resulting benefit by Samsung's total sales during the POI. However, the calculation of the subsidy from these exemptions results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on Samsung's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[63]

E. GOK Subsidies for ''Green Technology R&D'' and Its Commercialization

According to the GOK, technology is a crucial factor in promoting and achieving green growth in all economic sectors and, thus, the development of relevant green technology has been regarded as the main pillar of the country's Green Growth policy. The technology development component is one of the important factors of the government's five-year Green Growth Plan, which was adopted by the GOK in

[58] *See CVD Preamble,* 63 FR at 65402.

[59] *See, e.g., HRS from India,* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[60] *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination,* 72 FR 60639 (October 25, 2007) and accompanying Issues and Decision Memorandum at 12. *See also Bottom Mount Refrigerators* and accompanying Issues and Decision Memorandum at 22.

[61] *See* 19 CFR 351.524(a).

[62] *See Bottom Mount Refrigerators* and accompanying Issues and Decision Memorandum at 24.

[63] *See, e.g., HRS from India,* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

January 2009. Under the plan, the GOK has selected 27 core technologies for support. The Ministry of Knowledge Economy (MKE) is involved in this program and provides support to Green Technology R&D. This program provides for the establishment and enforcement of measures to facilitate research, development and commercialization of green technology, including financial support for these activities. Support is provided to approved applicants in the form of grants. The MKE determines the eligibility of the applicants for support under this program, consulting with affiliated research institutions when technological evaluation and confirmation are necessary. The GOK reported that the approval of the applicants is based on the merits of each application, which must be in accordance with the requirements set by the law and MKE's internal guidelines. According to the GOK, the provision of support under the program is automatic as long as the budgets earmarked for this program are available.

Both Samsung and LG reported receiving grants under this program. Samsung reported receiving assistance for 10 R&D projects under this program, but stated that ''none of the projects involve subject merchandise directly or involves technologies related to subject merchandise or its production.'' [64] Samsung has also provided the application and approval documents related to the projects for which it received assistance from 2009 through 2011.[65] In *Bottom Mount Refrigerators,* we found that all but one project was tied to non-subject merchandise. Based on the Samsung verification report that was submitted on the record of this investigation,[66] and an examination of the application and approval documents provided by Samsung, we preliminarily determine that one project relates broadly to numerous types of products, including subject merchandise. Therefore, the grants provided for that project are not tied to any particular merchandise, subject or non-subject.[67]

LG reported that from 2009 through 2011, it received a number of grants under the Green Technology R&D program. Of these grants, LG has identified the ''Development of Smart Grid Technology for Electronic Devices'' (Smart Grid) project, as being the only project for which it received grants that are applicable to subject merchandise. LG received grants for this project in 2009, 2010, and 2011. According to LG, the focus of this project is to make home appliances function in a more energy efficient manner. LG identified three of its business units that make products that can incorporate Smart Grid technology: Home Appliances, Air Conditioning, and Home Electronics. Because washing machines are classified as home appliances, we preliminarily determine that the grant LG received for the development of Smart Grid technology is tied at the point of approval to the development of home appliances, which include washing machines.[68] For the remaining projects, LG has provided approval documentation from the GOK indicating that grants for these projects are tied at the point of approval to the development of non-subject merchandise. Therefore, we preliminarily determine that grants received under the Green Technology R&D program by LG for projects, other than the Smart Grid technology project, are not countervailable.

The Department has previously determined that grants under the Green Technology R&D program are countervailable subsidies because financial assistance under this program is expressly limited by law to 27 core technologies related to ''Green Technology,'' and is therefore *de jure* specific under section 771(5A)(D)(i) of the Act, while the grants constitute a direct transfer of funds under section 771(5)(D)(i) of the Act and provide a benefit in the amount of the grant, in accordance with 19 CFR 351.504(a).[69] There is no new information or evidence of changed circumstances that warrants the reconsideration of that determination.

Although the GOK has indicated that this program should be considered to provide recurring benefits, we determine that the grants provided under this program are non-recurring, in accordance with 19 CFR 351.524(c), which provides that the Department will normally treat grants as non-recurring subsidies; the GOK, Samsung, and LG have not provided any evidence that would warrant treating the grants as recurring. Accordingly, for Samsung, we examined the grants provided under the relevant project that Samsung received in years prior to the POI to determine whether they exceed 0.5 percent of the company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt.[70] Since the grants received by Samsung did not meet the 0.5 percent test, the grants received in each year are appropriately expensed in the year of receipt. Therefore, the benefit under this program is the amount of the grant provided under the relevant project received by Samsung in 2011, the POI. However, the calculation of the subsidy from this grant results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on the overall subsidy rate for Samsung. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[71]

We also examined the Smart Grid technology grants that LG received in 2009, 2010, and 2011 to determine whether they exceeded 0.5 percent of the company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt.[72] Since the Smart Grid technology grants reported by LG did not meet the 0.5 percent test, the grants received in each year are appropriately expensed in the year of receipt. Therefore, the benefit under this program is the amount of the Smart Grid technology grants received by LG in 2011, the POI. We divided the benefit received by LG in 2011 from the Smart Grid technology grant by LG's FOB sales of washing machines during the POI.[73] On this basis, we preliminarily determine the countervailable subsidy provided to LG under this program to be 0.22 percent *ad valorem.*

[64] *See* Samsung's April 9, 2012 response at page 2 of Exhibit 17.

[65] *See* Samsung's April 9, 2012 response at Exhibits 17C and 17D, respectively.

[66] *See* Samsung's May 22, 2012 response.

[67] *See* 19 CFR 351.525(b)(5)(i).

[68] *See* 19 CFR 351.525(b)(5)(i).

[69] *See Bottom Mount Refrigerators* and accompanying Issues and Decision Memorandum at 27.

[70] *See* 19 CFR 351.524(b)(2).

[71] *See, e.g., HRS from India,* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[72] *See* 19 CFR 351.524(b)(2).

[73] In LG's April 9, 2012 response, at Exhibit 28, LG stated that its ''Smart Grid'' technology grant is related to home appliances. However, when asked to provide a denominator based on LG's FOB sales of home appliances, LG provided a figure that includes the sales of its Home Appliance, Air Conditioning, and Home Electronics business units. *See* LG's May 10, 2012 response at 16. Since the documentation provided does not indicate the products to which this grant is related, and, even assuming *arguendo,* that the grant was provided to develop Smart Grid technology for home appliances, the denominator provided by LG includes more than home appliances, based on the common definition of home appliances (*see* the LG Preliminary Calculation Memorandum). Based on the information in the record to date regarding the applicability of Smart Grid technology, and the products to which the R&D grants may be tied, we do not agree with LG that this is the appropriate denominator. Therefore, for the purposes of this preliminary determination, we have used LG's total sales of washing machines as the denominator, and will continue to gather information about this grant and the products to which benefit may be tied and should be attributed.

F. GOK 21st Century Frontier and Other R&D Programs

The 21st Century Frontier R&D program was introduced by the GOK in 1999 to facilitate development of core technologies that can be applied in a broad range of industries across all business sectors of Korea. According to the GOK, this program provides long-term loans to eligible companies in the form of a matching fund, *i.e.,* the selected company first pledges the commitment of its own funds for the R&D projects that are covered by this program and then the GOK provides a matching fund. The matching fund is provided by the Ministry of Education, Science and Technology (MEST) or by the MKE, depending on the nature of the project. The GOK explained that, although the rule for the government's provision of the matching fund is to provide the same amount of money as pledged by the applicant, the specific amount of the government's matching funds varies depending upon the nature of the project and the financial condition of the applicant. The recipient company is given a three-, five- or 10-year development period which is stipulated in the contract with MEST or MKE. If the development is successfully completed, the recipient company is required to repay the amount of the original assistance from the government. There is no interest applied to the GOK's matching funds.

The GOK reported that a total of 22 projects have been launched since 1999 under this program. Among these, the GOK identified only projects that could be relevant to washing machines, the Information Display R&D Center project that started in 2002 and is administered by the MKE.

The Information Display R&D Center project has three sub-projects of which two, the LCD and PDP display projects, were completed in June 2005. The third sub-project, the future display development project, is composed of two segments: the first segment was completed in March 2008; the second segment started in June 2008 and is due to be completed in May 2012. The key criterion governing eligibility is whether the applicant possesses the research capability and adequate human resources sufficient to successfully carry out the task required by the research project. The MKE looks into the technological profiles and previous development records of the applicant in the information display area, which form the basis for the MKE's review and approval of applications. The statutory bases for this program are Article 7 of the Technology Development Promotion Act, and Article 15 of the Enforcement Decree of the Act.

In *DRAMS from Korea* and *Bottom Mount Refrigerators,* the Department investigated the 21st Century Frontier R&D program and determined that the project area is the appropriate level of analysis for determining whether the program is specific. The Department has previously determined that grants under the ''Information Display R&D Center'' project area are *de jure* specific under section 771(5A)(D)(i) of the Act because assistance under this project is limited to information display technologies. Further, we have previously determined that such grants constitute a direct transfer of funds under section 771(5)(D)(i) of the Act and provide a benefit in the amount of the grant, in accordance with 19 CFR 351.504(a).[74] There is no new information or evidence of changed circumstances that warrants the reconsideration of this determination, and we find our prior analysis equally applicable to the record of this POI.

We consider the grants to be non-recurring benefits, in accordance with 19 CFR 351.524(c). Both Samsung and LG reported receiving grants under this project. For each year over the 10-year AUL period (the POI, *i.e.,* 2011, and the prior nine years), in which Samsung received financial assistance, we checked whether the amounts received exceeded 0.5 percent of the company's sales in that year in order to determine whether the benefits should be allocated over time or to the year of receipt. None of the grants reported over the AUL period met the prerequisite for allocation over time. Therefore, we expensed all grants to the year of receipt. Thus, to calculate the subsidy, we summed all grants received in the POI and divided the resulting benefit by the company's total sales during the POI. However, the calculation of the subsidy from these grants results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on the overall subsidy rate for Samsung. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[75]

We examined the documentation provided by LG regarding the grants received from 2002–2004, and find that the assistance is related to the development of plasma display televisions 70 inches or greater in size. Thus, we preliminarily determine that grants to LG under this program do not benefit the production of subject merchandise. This is consistent with our finding in *Bottom Mount Refrigerators,* where we examined grants for the same project.

G. Support for SME ''Green Partnerships''

According to the GOK, the ''Support for SME 'Green Partnerships''' program was first introduced in 2003 in an effort to introduce a mechanism through which large corporations could provide SMEs with their expertise and know-how regarding environmentally friendly business management, clean production technology, and cultivation of necessary human resources. These partnerships between large corporations and SMEs allow SMEs to accumulate expertise and technologies that enable them to produce parts and materials in an environmentally friendly manner. Partnerships are jointly funded by the MKE and participating large corporations on a project-by-project basis. Large corporations who participate in the program provide funds, to which the MKE provides a matching fund. Funds are deposited in the account of the large corporation, and it is from this account that a large corporation transfers funds to participating SMEs. According to the GOK, large corporations cannot themselves use or otherwise transfer funds in the account. It is the responsibility of the large corporation to take on the role of project manager, and to provide participating SMEs with its expertise and knowhow for establishing environmentally friendly business practices. The GOK reported that since the program began in 2003 and, through the POI, 35 large enterprises have participated in this program to provide assistance to 970 SMEs.

LG reported receiving funds under this program during the POI, as well as in 2006 and 2007. Samsung reported that it did not use the program during the POI, but that it did receive funds under this program in 2006 and 2007. Because funds under the ''Support for SME 'Green Partnerships' '' program are, according to the GOK, only provided to ''large corporations,'' we preliminarily determine that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Funds provided under the ''Support for SME 'Green Partnerships' '' program constitute a financial contribution in the

[74] *See, e.g., Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea,* 68 FR 37122 (June 23, 2003) (*DRAMS from Korea*) and accompanying Issues and Decision Memorandum at Comment 27. *See also Bottom Mount Refrigerators* and accompanying Issues and Decision Memorandum at 29.

[75] *See, e.g., HRS from India,* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

form of a grant within the meaning of section 771(5)(D)(i) of the Act. A benefit exists in the amount of the grant provided in accordance with 19 CFR 351.504(a).

Furthermore, we determine that the grants provided under this program are non-recurring, in accordance with 19 CFR 351.524(c), which provides that the Department will normally treat grants as non-recurring subsidies; the GOK, Samsung, and LG have not provided any information that would warrant treating the grants as recurring. Accordingly, we examined the grants that Samsung and LG received for the years 2006 and 2007 to determine whether they exceeded 0.5 percent of each company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt.[76] Since the grants reported by Samsung and LG did not meet the 0.5 percent test, the grants received are appropriately expensed in the year of receipt. Because Samsung did not receive grants during the POI, there is no benefit to Samsung during the POI. To calculate the benefit to LG for the grant received by LG during the POI, we divided the amount of the grant received by LG during the POI by the company's total sales during that year. However, the calculation of the subsidy from this grant results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on LG's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for LG.[77]

H. Korea Development Bank (KDB) and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables

The KDB and the IBK provide support to exporters by offering short-term export financing in the form of discounted Documents against Acceptance (D/A). According to the GOK, KDB and IBK operate both D/A and ''open account export transaction'' (O/A) financing. These types of financing are designed to meet the needs of KDB and IBK clients for early receipt of discounted receivables prior to their maturity. D/A and O/A financing are based on the credit ratings of the exporter, as well as contracts between importers and exporters. In a D/A transaction, the exporter first loads contracted goods for shipment per the contract between the exporter and the importer, and then presents the bank with the bill of exchange and the relevant shipping documents specified in the draft to receive a loan from the bank in the amount of the discounted value of the invoice, repayable when the borrower receives payment from its customer. In an O/A transaction, the exporter effectively receives advance payment on its export receivables by selling them to the bank at a discount prior to receiving payment by the importer. The exporter pays the bank a ''fee'' that is effectively a discount rate of interest for the advance payment. In this arrangement, the bank is repaid when the importer pays the bank directly the full value of the invoice; the exporter no longer bears the liability of non-payment from the importer.

The Department has previously determined that loans provided under this program are specific because they are contingent upon export performance, in accordance with sections 771(5A)(A) and (B) of the Act, that loans from KDB and IBK constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, and that such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent of any difference between the amount of interest the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.[78]

LG and Samsung reported using this program during the POI. LG reported having loans from IBK outstanding during the POI that were tied only to exports of subject merchandise to the United States.[79] Thus, to calculate the benefit for LG, for each IBK loan tied to subject merchandise, we compared the amount of interest paid on the IBK loans to the amount of interest that would be paid on a comparable commercial loan in accordance with 19 CFR 351.505(a).[80] Where the interest actually paid on the IBK loans was less than the interest that would have been payable at the benchmark rate, the difference is the benefit. For all IBK loans, the interest that LG actually paid was greater than the interest that would have been paid at the benchmark interest rate. Therefore, there is no benefit to LG from the IBK loans it received during the POI. Samsung also reported using the program and provided information about individual KDB and IBK loans received during the POI. However, information provided by Samsung indicates that loans it received under this program are not tied at the point of bestowal to specific merchandise.

Thus, we are measuring the benefit from all of Samsung's IBK and KDB loans, for exports of all products to all markets, and we are attributing that benefit to Samsung's total export sales. Because Samsung did not provide sufficient information on its comparable commercial short-term loans, we calculated the benefit for Samsung from the loans outstanding during the POI by comparing the amount of interest paid on the KDB and IBK loans, to the amount of interest that would have been paid using a benchmark selected according to the hierarchy discussed in the ''Benchmark Interest Rate for Short-Term Loans'' section, above.[81] Because these loans are made on a discounted basis (*i.e.,* interest is paid up-front at the time the loans are received), where necessary, we converted the nominal short-term interest rate benchmark to an effective discount rate. We compared the interest paid by Samsung to the interest payments, on a loan-by-loan basis, that Samsung would have paid at the benchmark interest rate. Where the actual interest paid was less than the interest that would have been payable at the benchmark rate, the benefit is the difference. We then summed the differences for each loan and divided this aggregate benefit by the company's total export sales during the POI. However, the calculation of the subsidy from these loans results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on the overall subsidy rate for Samsung. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[82]

II. Program Preliminarily Determined To Be Not Countervailable During the POI

A. Korea Trade Insurance Corporation (K–SURE)—Short-Term Export Credit Insurance

The Korean Export Insurance Corporation (KEIC) was established in 1992 to administer export and import insurance programs for the purpose of facilitating Korean manufacturers'

[76] *See* 19 CFR 351.524(b)(2).

[77] *See, e.g., HRS from India,* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[78] *See Bottom Mount Refrigerators* and accompanying Issues and Decision Memorandum at 13.

[79] LG reported that none of the KDB loans it received that were outstanding during the POI were tied only to exports of subject merchandise to the United States.

[80] *See* ''Subsidies Valuation Information'' section, above.

[81] *See* the Samsung Preliminary Calculation Memorandum.

[82] *See, e.g., HRS from India,* and accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

participation in global trade. The KEIC became K–SURE in 2010. The Department initiated on K–SURE's short-term export insurance program which is designed to cover an exporter or letter of credit-issuing bank from the non-payment risk in transactions that have a payment period of less than two years. Under this program, insurance policies issued to Korean companies provide protection from risks such as payment refusal and buyer's breach of contract. According to the GOK, K–SURE determines premium rates by considering numerous factors, including the creditworthiness of the importing party and the terms of the policy.

To determine whether an export insurance program is countervailable, we must examine whether the premium rates charged are adequate to cover the program's long-term operating costs and losses.[83] In its questionnaire response, the GOK provided a summary of K–SURE's income and expenses compiled from K–SURE's financial statements with respect to its short-term export credit insurance program. The data contained K–SURE's income comprising premiums charged and claims recovered, and its expenses comprising claims paid and managing/operating expenses of the program. The GOK provided these data for the POI and all years during the AUL.[84] As required by the Department's regulation and discussed in the *CVD Preamble,* we have analyzed the data over the long term.[85] These data demonstrate that over the five-year period ending with the POI, K–SURE's short-term export credit insurance program was profitable as a result of its operations. Because of the net profitability over the period of five years, we find that the premiums charged by K–SURE are adequate to cover the long-term operating costs and losses of the program within the meaning of 19 CFR 351.520(a)(1). Thus, we preliminarily determine that this program is not countervailable during the POI. We also note that both Samsung and LG reported that they had no claims paid under this program related to exports of subject merchandise to the United States during the POI.

III. Programs Preliminarily Determined To Be Not Used by Participating Respondents

We preliminarily determine that the participating respondents, Samsung and LG, did not apply for or receive any benefits during the POI under the following programs:

A. GOK Supplier Support Fund Tax Deduction

We initiated an investigation of this program based on the petitioner showing that the GOK provides an income tax deduction under Article 8–3 of the RSTA in the amount of seven percent of contributions made by large corporations to supplier support funds, as well as income tax exemptions where a large enterprise makes cash or cash-equivalent payment to its SME suppliers to aid in their liquidity.

The GOK provided documentation showing that this program went into effect on January 1, 2011 with the introduction of Article 8–3 of the RSTA. Because this program went into effect in 2011, any benefits from this program would not be realized until the tax returns for 2011 are filed in 2012. In accordance with 19 CFR 351.509(b)(1), we recognize tax benefits as having been received the date that the recipient would otherwise have had to pay the taxes. Normally, this date will be the date on which the firm filed its tax return. The first time the tax benefits available under this program could be claimed is on the return for the 2011 tax year, which is filed in 2012, after the POI. Therefore, we preliminarily determine that this program could not be used by any Korean producers/exporters during the POI.

B. Daewoo Restructuring

1. *GOK-Directed Equity Infusions under the Daewoo Workout.*
2. *GOK-Directed Ongoing Preferential Lending under the Daewoo Workout.*

C. Korean Export-Import Bank Export Factoring

D. IBK Preferential Loans to Green Enterprises

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated separate subsidy rates for Samsung, LG, and Daewoo, the three producers/exporters of the subject merchandise. We have also calculated an all-others rate. Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, the only rate that is not *de minimis* or based entirely on AFA is the rate calculated for Samsung. Consequently, the rate calculated for Samsung is also assigned as the ''all-others'' rate. For Daewoo, which did not participate in this investigation, we have determined a rate based solely on AFA, in accordance with sections 776(a) and (b) of the Act.[86] The overall subsidy rates are summarized in the table below:

Manufacturer/Exporter	Subsidy rate
Samsung Electronics Co., Ltd.	1.20 percent *ad valorem.*
LG Electronics Inc.	0.22 percent *ad valorem* (*de minimis*).
Daewoo Electronics Corporation	70.58 percent *ad valorem.*
All Others Rate	1.20 percent *ad valorem.*

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from Korea, other than those exported by LG because LG's rate is *de minimis,* that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of the merchandise in the amounts indicated above.[87]

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our

[83] *See Bottom Mount Refrigerators* and accompanying Issues and Decision Memorandum at 13.

[84] *See* GOK's April 9, 2012 response at 79.

[85] *See* 19 CFR 351.520(a)(1) and the *CVD Preamble,* 63 FR at 65385.

[86] *See* the ''Use of Facts Otherwise Available and Adverse Inferences'' section of this notice.

[87] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the GOK and the respondents prior to making our final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. We will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to discuss the arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d). Any such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Parties should confirm, by telephone, the date, time, and place of the hearing 48 hours before the scheduled time.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: May 29, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13562 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Bay Watershed Education and Training Program National Evaluation System

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 6, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bronwen Rice, NOAA Office of Education, (202) 482–6797 or *Bronwen.Rice@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The NOAA Office of Education's Bay Watershed Education and Training (B–WET) program seeks to contribute to NOAA's mission by supporting education efforts to create an environmentally literate citizenry with the knowledge, attitudes, and skills needed to protect watersheds and related ocean, coastal, and Great Lakes ecosystems. B–WET currently funds projects in seven regions (California, Chesapeake Bay, Great Lakes, Gulf of Mexico, Hawaii, New England, and the Pacific Northwest). B–WET proposes to create an across-region, internal evaluation system to provide ongoing feedback on program implementation and outcomes to ensure maximum quality and efficiency of the B–WET program. The evaluation system will be sustained by B–WET staff with occasional assistance from an outside contractor.

B–WET awardees and the awardees' professional development teacher-participants will be asked to voluntarily complete an online survey form to provide evaluation data. One individual from each awardee organization will be asked to complete a form once per year of the award, and the teacher-participants will be asked to complete one form at the end of their professional development program. In addition, B–WET seeks approval of an item bank that awardees can choose to use to construct surveys for youth participants (ages 10–17) in B–WET-funded programs.

II. Method of Collection

Respondents will submit their information electronically on Web-based survey forms.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Not-for-profit institutions; individuals or households.

Estimated Number of Respondents: If NOAA B–WET is fully funded, approximately 125 not-for-profit awardees and 4,000 teachers will be invited to respond each year.

Estimated Time per Response: Awardee-respondents will complete an online survey in 30 minutes and teacher-respondents will complete an online survey in 20 minutes.

Estimated Total Annual Burden Hours: 1,396.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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: May 31, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–13561 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its 110th Scientific and Statistical Committee (SSC), Joint Advisory Panel, Pelagic and International Standing Committee, Executive and Budget Standing Committee, and 154th Council to take actions on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held June 19 through June 28, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates, times and agendas of the meetings. All meetings will be held in Honolulu.

ADDRESSES: The 110th SSC, Pelagic and International Standing Committee, Executive and Budget Standing Committee and Joint Advisory Panel meetings will be held at the Council office, 1164 Bishop Street, Honolulu, HI 96813; telephone: (808) 522–8220. The 154th Council meeting will be held at the Laniakea YWCA–Fuller Hall, 1040 Richards Street, Honolulu, HI 96813; telephone: (808) 538–7061. The Fishers Forum will be held at the Harbor View Center, 1129 North Nimitz Hwy (Pier 38), Honolulu, HI; telephone: (808) 983–1200.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will meet on June 19–21, 2012, between 8:30 a.m. and 5 p.m.; the Council's Joint Advisory Panel will meet on June 23, 2012 and June 25, 2012 between 9 a.m. and 5 p.m.; Pelagic and International Standing Committee will meet on June 25, 2012, from 10 a.m. to 12 noon; Executive and Budget Standing Committee will meet on June 25, 2012, between 12:30 p.m. and 3 p.m.; the 154th Council will meet on June 26–28, 2012. The 154th Council meeting will be held between 9 a.m. and 5:30 p.m. on June 26, 2012, between 8:30 a.m. and 5:30 p.m. on June 27, 2012, and between 8:30 a.m. and 4 p.m. on June 28, 2012. A Fishers Forum will be held in association with the 154th Council Meeting between 6 p.m. and 9 p.m. on Wednesday June 27, 2012.

In addition to the agenda items listed here, the SSC and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for 110th SSC Meeting

8:30 a.m.–5 p.m., Tuesday, June 19, 2012

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 109th SSC Meeting Recommendations
4. Report from the National Marine Fisheries Service Pacific Islands Fisheries Science Center Director
5. Program Planning
   - A. NMFS Science Plan
   - B. Cooperative Research Priorities
   - C. Fishery Data Collection Improvement Proposal
   - D. Territorial Essential Fish Habitat/Habitat Areas of Particular Concern (EFH/HAPC) review
   - E. Archipelagic Plan Team Report and Recommendations
   - F. National Bycatch Report update
   - G. Status of Stocks Report
   - H. Potential Revision of National Standard 1 Guidelines
   - I. Hawaii Plan Team Meeting Report and Recommendations
   - J. Council Coordination Committee (CCC) Meeting Report
   - K. Data Principles Meeting
   - L. Public Comment
   - M. SSC Discussion and Recommendations
6. Insular Fisheries
   - A. Territory Bottomfish Stock Assessments
   - B. Bottomfish Restricted Fishing Area (BRFA) Review
   - C. Acoustic Survey of Maui Bottomfish
   - D. Action Items
   - 1. Setting Acceptable Biological Catch (ABC) for Main Hawaiian Islands (MHI) Deep Seven Bottomfish
   - 2. Hawaii Bottomfish EFH and HAPC
   - E. Hawaii Plan Team Report
   - F. Public Comment
   - G. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Wednesday, June 20, 2012

7. Pelagic Fisheries
   - A. Action Item
   - 1. Amendment Options for Marianas Purse Seine Area Closure
   - B. American Samoa and Hawaii Longline Quarterly Reports
   - C. Post-Release Mortality of Marlins and Other Pelagic Fish
   - 1. Methods to Estimate Post-Release Mortality
   - 2. Post-Release Mortality in Striped and Blue Marlin
   - D. International Fisheries Meetings
   - 1. Eighth Regular Session of the Western and Central Pacific Fisheries Commission (WCPFC 8)
   - 2. Inter-American Tropical Tuna Commission (IATTC) General Advisory Committee (GAC) and Scientific Sub-committee (SAC) meetings
   - E. Pelagic Plan Team Report
   - F. Public Comment
   - G. SSC Discussion and Recommendations
8. Protected Species
   - A. Update on Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) Actions
   - 1. Report on NMFS Pacific Islands Regional Office (PIRO) Actions
   - 2. CCC Jeopardy Panel
   - B. Status Review Report of 82 Candidate Coral Species Petitioned Under the ESA
   - C. Marker Fish and Weak Hooks
   - D. Sea Turtle Advisory Committee Report and Recommendations
   - E. Public Comment
   - F. SSC Discussion and Recommendations

8:30 a.m.–5 p.m. Thursday, June 21, 2012

9. Other Business
   - A. 111th SSC Meeting
10. Summary of SSC Recommendations to the Council

Schedule and Agenda for the Joint Advisory Panel

9 a.m.–5 p.m., Saturday, June 23, 2012

1. Welcoming Remarks
2. Overview and Introductions
3. Review and Approval of the Agenda
4. Meeting Expectations
5. Reports on Fishery/Community Issues and Council Support
   A. American Samoa
   B. Guam
   C. Commonwealth of the Northern Mariana Islands (CNMI)
   D. Hawaii and Pacific Remote Island Areas (PRIAs)
6. Public Comment
7. Discussion and Recommendations
8. AP Training Workshops
   A. The Council, Its Programs, and New Initiatives
   B. Protected Species
   C. Data and Stock Assessments
   D. International Fisheries
   E. Communications and Outreach
   F. Public Commenting
   G. Advisory Panel Tackle-Box
   H. Discussion on How Council Can Help the Advisory Panel
9. Public Comment
10. Review of Recommendations

8 a.m.–5 p.m., Monday, June 25, 2012

11. Council Action Items
   A. Status Review of Report and Management of 82 Candidate Coral Species Petitioned Under ESA
   B. Hawaiian Green Sea Turtle Petition Finding
   C. North Pacific Humpback Whale Populations in Alaska
   D. Options for Marianas Purse Seine Area Closure
   E. Recommendations on Territorial Bigeye Tuna Catch Limits
   F. Recommendations on Main Hawaiian Islands Bottomfish Annual Catch Target
   G. Recommendations on Cooperative Research Priorities
   H. Public Comment
   I. Discussion and Recommendations
12. Fish Aggregation Device (FAD) Issue Workshop
   A. Introduction and Overview of FAD Issues in the Western Pacific Region
   B. Case Study of Local Government FAD Program-State of Hawaii
   C. Overview of FAD Permitting Process
   i. US Coast Guard
   ii. Army Corps of Engineers
   D. Council's Community FAD Projects
   E. Discussion on Private FAD Issues
   F. FADs as a Spatial Management Tool
   G. FAD Design and Locations
   H. Public Comment
   I. FAD Discussion and Recommendations
13. Other Business
14. Final Discussion and AP Recommendations

10 a.m.–12 noon, Monday, June 25, 2012

Pelagic and International Standing Committee Meeting

12:30 p.m.–3 p.m., Monday, June 25, 2012

Executive and Budget Standing Committee Meeting

Schedule and Agenda for Council Meeting

9 a.m.–5:30 p.m., Tuesday, June 26, 2012

1. Welcome and Introductions
2. Approval of the 154th Agenda
3. Approval of the 153rd Meeting Minutes
4. Executive Director's Report
5. Agency Reports
   A. National Marine Fisheries Service
   1. Pacific Islands Regional Office
   2. Pacific Islands Fisheries Science Center
   B. NOAA Regional Counsel
   C. National Marine Sanctuary Program
   D. U.S. Fish and Wildlife Service
   E. Enforcement
   1. U.S. Coast Guard
   2. NMFS Office for Law Enforcement
   3. NOAA General Counsel for Enforcement and Litigation
   F. Public Comment
   G. Council Discussion and Action
6. Program Planning and Research
   A. Cooperative Research Priorities (Action Item)
   B. Fishery Data Collection Improvement Proposal
   C. Territorial EFH/HAPC Review
   D. Report on Territory Bottomfish Stock Assessments
   E. Report on Open Ocean Marine Protected Areas (MPAs) for Highly Migratory Species (HMS)—PIRO Grant to Marine Conservation Institute
   F. Report on Education and Outreach Programs and Projects
   G. Advisory Group Recommendations
   1. Archipelagic Plan Team Report and Recommendations
   2. Hawaii Plan Team Report and Recommendations
   3. Data Principles Meeting Report
   4. Joint Advisory Panel Report and Recommendations
   H. SSC Recommendations
   I. CCC Recommendations
   1. Coastal and Marine Spatial Planning
   2. Stock Assessment
   3. National SSC Working Group
   4. Report on CCC 5-Year Priorities Research Recommendations
   5. Report on CCC Communications Recommendations
   6. Managing Our Nation's Fisheries III
   7. Electronic Monitoring
   8. Report on NMFS proposal to revise National Standard 1 Guidelines
   J. Public Hearing
   K. Council Discussion and Action
7. Public Comment on Non-Agenda Items

8:30 a.m.–5:30 p.m., Wednesday, June 27, 2012

8. Protected Species
   A. North Pacific Humpback Whale Population in Alaska
   B. CCC Jeopardy Panel Report
   C. Update ESA and MMPA Actions
   1. General Update on ESA and MMPA Actions
   2. Honu (Hawaiian Green Sea Turtle) ESA Petition Finding
   3. Update on Hawaiian Monk Seal Critical Habitat Revisions
   D. Status Review Report and Management Report of 82 Candidate Coral Species Petitioned under the ESA
   E. Value of Marker Bigeye Tuna in Relation to Proposed False Killer Whale Management Measure
   F. Advisory Group Recommendations
   1. Joint Advisory Panel Meeting Report and Recommendations
   2. Hawaii Regional Ecosystem Advisory Committee Report and Recommendations
   3. Sea Turtle Advisory Committee Report and Recommendations
   G. SSC Recommendations
   H. Public Comment
   I. Council Discussion and Action
9. American Samoa Archipelago
   A. Motu Lipoti
   B. Fono Report
   C. Enforcement Issues
   D. Community Activities and Issues
   1. Update on Community Fisheries Development
   E. American Samoa Marine Conservation Plan (Action Item)
   F. Education and Outreach Initiatives
   G. SSC Recommendations
   H. Public Hearing
   I. Council Discussion and Action
10. Marianas Archipelago
   A. Island Reports
   1. Arongo Flaeey
   2. Isla Informe
   B. Legislative Report
   1. CNMI
   2. Guam
   C. Enforcement Issues
   1. CNMI
   2. Guam
   D. Status of Guam Indigenous Fishing Rights Public Law 29–127

E. Community Activities and Issues
F. Education and Outreach Initiatives
G. Report of the Joint AP Meeting
H. SSC Recommendations
I. Public Comment
J. Council Discussion and Action
11. Pelagic & International Fisheries
A. Amendment Options for Marianas Purse Seine Area Closure (Action Item)
B. Recommendations on Territory Bigeye Tuna Catch Limits (Action Item)
C. Option for American Samoa Longline and Purse-Seine Landing Requirements (Action Item)
D. American Samoa and Hawaii Longline Quarterly Reports
E. International Fisheries Meetings
1. WCPFC 8
2. IATTC GAC/SAC
3. U.S. Report to the Tuna Commission
F. CCC Recommendation on International Fisheries Management
G. Pelagic Plan Team Report
H. SSC Discussion and Recommendations
I. Pelagic Standing Committee Report
J. Public Hearing
K. Council Discussion and Action

6 p.m.–9 p.m., Wednesday, June 27, 2012

Fishers Forum: Managing for the Recovery of the North Pacific Humpback Whale

8:30 a.m.–4 p.m., Thursday, June 28, 2012

12. Hawaii Archipelago and PRIAs
A. Moku Pepa
B. Legislative Report
C. Enforcement Report
D. Bottomfish
1. Report on BRFA Review
2. Update on Bottomfish Annual Catch Target
3. Recommendations on 2012–13 Main Hawaiian Islands Bottomfish Annual Catch Target (Action Item)
4. Hawaii EFH/HAPC (Action Item)
E. Community Projects, Activities and Issues
1. Status of Aha Moku Legislation
2. Report on Aha Moku Projects
F. Advisory Group Recommendations
1. Joint AP Meeting Report and Recommendations
2. Hawaii Plan Team Meeting Report and Recommendations
3. Hawaii REAC Report and Recommendations
G. SSC Recommendations
H. Public Hearing
I. Council Discussion and Action
13. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Freedom of Information Act (FOIA) Requests
D. Council Family Changes
1. Data Committee
2. SSC Term Limits
3. Plan Team
E. Meetings and Workshops
1. Council Coordination Committee Meeting Report and Follow-up
i. Consultation with General Accountability Office (GAO) regarding Moving NMFS to U.S. Fish and Wildlife Service
ii. 2013 Budget
F. Report on Department of Commerce (DOC) Office of the Inspector General (OIG) Review of the Fishery Management Process
G. Other Business
H. Standing Committee Recommendations
I. Public Comment
J. Council Discussion and Action
14. Other Business

Non-Emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 154th meeting. However, Council action on issues will be restricted to those issues specifically listed in this document and issues arising after publication of this document that requires 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.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 29, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–13282 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP18

Marine Mammals; File No. 14334

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that that the Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664 (Dr. Tara Riemer Jones, Responsible Party), has been issued a major amendment to Permit No. 14334–01.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On November 22, 2011, notice was published in the **Federal Register** (76 FR 72178) that a request to amend Permit No. 14334–01 to conduct research on Steller sea lions (*Eumetopias jubatus*) had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), 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 parts 222–226).

Permit No. 14334–02 authorizes (1) the addition of a respiratory stimulant drug prior to anesthesia to mitigate breath holding and decreased heart rate; (2) the use of additional dietary markers to individually identify feces for hormone analysis; (3) administration of deuterium oxide via a gastric tube and serial blood sampling to assess energy transfer from mother to pup during lactation; (4) reduced research sampling of aging sea lions; and (5) mortality or euthanasia of sea lions for health reasons not directly related to research. These changes are effective for the duration of the permit, which expires August 31, 2014.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS has determined that the activities proposed are consistent with the Preferred

Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit would not have a significant adverse impact on the human environment.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 24, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13569 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB110

Marine Mammals; File No. 17159

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Simon Nash, Parthenon Entertainment Ltd, 34 Whiteladies Road, Bristol, BS8 2LG, United Kingdom, to conduct commercial or educational photography on spinner dolphins (*Stenella longirostris*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On March 26, 2012, notice was published in the **Federal Register** (77 FR 17458) that a request for a permit to conduct commercial/educational photography on spinner dolphins had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216),

Permit No. 17159 authorizes Mr. Nash to take spinner dolphins during filming near Midway Atoll in the Pacific Ocean. Filming techniques include above water from a vessel, a pole-mounted underwater camera, and a waterproof camera used by a snorkeling cameraman. Up to 1,300 dolphins may be approached annually during filming activities. Footage will be used primarily for a television documentary about Hawaiian wildlife that would be aired on Animal Planet in the U.S. and elsewhere internationally. The initial filming period is scheduled for two weeks in June/July 2012. The permit expires on May 31, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 30, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13573 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA602

Marine Mammals; File No. 16019

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that GeoMarine, Inc. (Responsible Party: Suzanne Bates; Principal Investigator: Amy Whitt), 2201 K Avenue, Suite A2, Plano, TX 75074, has applied for an amendment to Scientific Research Permit No. 16109.

DATES: Written, telefaxed, or email comments must be received on or before July 5, 2012.

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 home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16109 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email 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 and Conservation 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: Joselyd Garcia-Reyes or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 16109 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (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).

Permit No. 16109, issued on May 3, 2012 (77 FR 27719), authorizes takes of 35 species of cetaceans, four species of pinnipeds, and five species of sea turtles from New Jersey to North Carolina for scientific research. The research involves harassment by vessel approach during shipboard transect surveys. Eleven of the 44 species targeted for research are listed as threatened or endangered: Blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*),

humpback whale (*Megaptera novaeangliae*), North Atlantic right whale (*Eubalaena glacialis*), sei whale (*B. borealis*), sperm whale (*Physeter macrocephalus*), green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), loggerhead sea turtle (*Caretta caretta*), Kemp's ridley sea turtle (*Lepidochelys kempii*), and leatherback sea turtle (*Dermochelys coriacea*). The permit expires May 15, 2017.

The permit holder is requesting the permit be amended to increase sei whale takes from 10 to 50 per year based on reviewer comments from the Notice of Receipt published on August 17, 2011 (76 FR 51001). The purpose of the take increase is to gain more information on sei whale habitat use and distribution.

An environmental assessment (EA) and Finding of No Significant Impact (FONSI) (signed May 1, 2012) prepared for the permit has analyzed the requested 50 sei whale annual takes. NMFS determined that 50 sei whale takes would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. The EA and FONSI are available upon request. A Biological Opinion was also prepared for the permit which analyzed 50 sei whale takes (signed May 1, 2012) and concluded that the research would not jeopardize threatened and endangered species or destroy or adversely modify critical habitat. However, the permit authorizes 10 annual takes of sei whales until a new FR notice could be published to allow the public opportunity to comment on the higher take number.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the amendment request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 30, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13575 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR52

Marine Mammals; File No. 14534

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 14534–01 has been issued to NOAA's Office of Science and Technology, Silver Spring, MD, (Brandon Southall, Ph.D.—Principal Investigator) for research on marine mammals.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301)427–8401.

SUPPLEMENTARY INFORMATION: On December 9, 2011, notice was published in the **Federal Register** (76 FR 76949) that the above-named applicant submitted a request for an amendment to Permit No. 14534–01 to conduct research on humpback whales (*Megaptera novaengliae*), minke whales (*Balaenoptera acutorostrata*), and killer whales (*Orcinus orca*). The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), 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 parts 222–226).

The amendment increases the take numbers for these three cetacean species, making them focal species under the permit, subject to tagging and intentional exposure to sound playbacks with associated behavioral observations. The location of the research is unchanged and remains focused in the waters within the U.S. Navy's Southern California Range Complex, and primarily near the vicinity of San Clemente Island. The amendment is valid through the original expiration date of the permit, July 31, 2015.

An environmental assessment (EA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on May 14, 2012.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 30, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13572 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA817

Marine Mammals; File No. 16124

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Sea World LLC, 9205 South Park Center Loop, Suite 400, Orlando, FL 32819 (Brad Andrews, Responsible Party), has been issued a permit to conduct research on and enhancement of captive Hawaiian monk seals (*Monachus schauinslandi*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Pacific Islands Region, NMFS, 1601 Kapiolani Boulevard, Room 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg,

Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On November 14, 2011, notice was published in the **Federal Register** (76 FR 70418) that a request for a permit to conduct research on and enhancement of the species identified above had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), 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 parts 222–226).

Permit No. 16124 authorizes Sea World LLC to maintain in captivity six non-releasable Hawaiian monk seals for research and enhancement purposes. Research includes a post-vaccination antibody response study using West Nile virus and canine distemper virus vaccinations. The seals will be displayed to the public incidental to the research program. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 24, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13566 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0060]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), Office of the Assistant Secretary of Defense (Reserve Affairs).

ACTION: Notice.

SUMMARY: In compliance with Section 350(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness (Reserve Affairs)) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 6, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to CNA Attn: Ms. Jennifer Atkin, 4825 Mark Center Drive, Alexandria, VA 22311–1850 or call (703) 824–2885.

Title; Associated Form; and OMB Number: How Differences in Pedagogical Methods Impact ChalleNGe Program Outcomes, OMB Control Number: 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain data on the pedagogical methods of National Guard Youth ChalleNGe program teachers. The data will be used by DoD to evaluate how differences in classroom teaching methods impact program outcomes. The data will also be used to identify those policies and techniques that are most effective so they may be shared program-wide.

Affected Public: Individuals or households.

Annual Burden Hours: 60 hours.

Number of Respondents: 180.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are teachers in the National Guard Youth ChalleNGe program. The ChalleNGe program, operated jointly by states and the state National Guard units, targets at-risk male and female youth ages 16–18. Today there are 34 programs in 28 states (plus Puerto Rico). Several states have multiple campuses. It is a 22-week residential program that includes instruction on academic subjects in an effort to help cadets attain a GED (General Education Development) credential. The program also focuses on noncognitive skills (those skills which are not academic in nature including motivation and perseverance) which have been shown to be a determining factor in educational and economic success. To date, no research has been done to assess differences in the pedagogical approaches of ChalleNGe teachers. This information collection will provide data on the various teaching methods and strategies employed by ChalleNGe academic staff. The data will be used to identify those strategies that lead to the most successful program outcomes.

Dated: May 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–13484 Filed 6–4–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0061]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), Office of the Assistant Secretary of Defense (Reserve Affairs).

ACTION: Notice.

SUMMARY: In compliance with Section 350(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness (Reserve Affairs)) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 6, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to CNA Attn: Ms. Jennifer Atkin, 4825 Mark Center Drive, Alexandria, VA 22311–1850 or call (703) 824–2885.

Title; Associated Form; and OMB Number: Impact of ChalleNGe on Participants' Noncognitive Skills, OMB Control Number: 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain data on the noncognitive skills of National Guard Youth ChalleNGe program participants at the beginning and the end of their participation in the program. The data will be used by DoD to evaluate whether the ChalleNGe program positively impacts participants' noncognitive skills. The data will also be used to determine whether there are program-specific differences in terms of the impact.

Affected Public: Individuals or households.

Annual Burden Hours: 334 hours.

Number of Respondents: 2,000 (1,200 for the initial survey plus 800 for the survey at the completion of the program).

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are cadets enrolled in the National Guard Youth ChalleNGe program. The ChalleNGe program, operated jointly by states and the state National Guard units, targets at-risk male and female youth ages 16–18. Today there are 34 programs in 28 states (plus Puerto Rico). Several states have multiple campuses. It is a 22-week residential program that includes instruction on academic subjects in an effort to help cadets attain a GED (General Education Development) credential. The program also focuses on noncognitive skills (those skills which are not academic in nature including motivation and perseverance) which have been shown to be a determining factor in educational and economic success. To date, no research has been done to assess the degree to which the ChalleNGe program improves participants' noncognitive skills. This information collection will provide data on the noncognitive skills of program participants both before and after their completion of the program. The data will be used to evaluate the program's effectiveness in this area.

Dated: May 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–13485 Filed 6–4–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, a meeting of the Defense Health Board (DHB) is announced.

DATES:

June 25, 2012

8:00 a.m.–8:45 a.m. (Administrative Working Meeting).
8:45 a.m.–12:00 p.m. (Closed Session).
12:00 p.m.–1:00 p.m. (Administrative Working Meeting).
1:00 p.m.–5:15 p.m. (Open Session).

June 26, 2012

8:00 a.m.–2:00 p.m. (Administrative Working Meeting).

ADDRESSES: The June 25 and 26 meeting will be held at 1425 Porter Street, Fort Detrick, Frederick, MD 21702–5011, in the Headquarters Conference Room for the closed session and the Dalrymple Conference Room for the open session.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Bader, Director, Defense Health Board, 7700 Arlington Blvd., Suite 5101, Falls Church, Virginia 22042, (703) 681–6653, Fax: (703) 681–9539, *Christine.bader@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: Additional information, including the agenda and electronic registration are available at the DHB Web site, *http://www.health.mil/dhb/default.cfm.* Anyone intending to attend is encouraged to register to ensure that adequate seating is available.

Purpose of the Meeting

The purpose of the meeting is to address and deliberate pending and new Board issues before the Board.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, in the interest of national security, the DoD has determined that the meeting on the morning of June 25, 2012 will be closed to the public. The Under Secretary of Defense (Personnel and Readiness), in consultation with the Office of the DoD General Counsel, has determined in writing that the public interest requires that the morning session on June 25,

2012 be closed to the public because it will concern matters listed in section 552b(c)(1) of title 5, United States Code. Specifically, the information presented meets criteria established by an Executive Order to be kept secret in the interest of national defense and foreign policy.

On the afternoon of June 25, 2012, the DHB will receive briefings on military health needs and priorities. The Board will vote on three potential recommended changes to the Tactical Combat Casualty Care Guidelines and one proposed recommendation on Research, Development, Test and Evaluation Priorities for Battlefield Trauma Care from the Trauma and Injury Subcommittee. Additionally, the Board will receive information briefs from the National Trauma Institute and U.S. Army Institute of Surgical Research.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the DHB meeting is open to the public from 1:00 p.m. to 5:15 p.m. on June 25, 2012.

Written Statements

Any member of the public wishing to provide comments to the DHB may do so in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (*see* **FOR FURTHER INFORMATION CONTACT**). Written statement should address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least 10 calendar days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the DHB President, and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the DHB.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–6670 by Friday, June 15, 2012.

Dated: May 31, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–13520 Filed 6–4–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice To Extend Public Comment Period for United States Air Force Modernizations and Enhancement of Ranges, Airspace, and Training Areas in the Joint Pacific Alaska Range Complex in Alaska Environmental Impact Statement

AGENCY: The United States Air Force, DoD.

ACTION: Notification of extension of public comment period.

SUMMARY: Alaskan Command (ALCOM), on behalf of the U.S. Air Force and U.S. Army is issuing this notice to advise the public of an extension to the public comment period. The initial Notice of Availability published in the **Federal Register** on March 30, 2012 (Vol. 77, No. 62/Notices/19282), requested public comments no later than June 7, 2012. ALCOM has extended the deadline for submitting public comments to July 9, 2012. All substantive comments on the Draft EIS received during the public comment period will be considered in the preparation of the Final EIS.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Capt Tania Bryan, ALCOM Public Affairs, 9480 Pease Avenue, Suite 120, JBER, AK 99506, ph: 907–552–0876.

Henry Williams Jr.,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–13570 Filed 6–4–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Corrected Intent To Grant a Partially Exclusive Patent License

AGENCY: The United States Air Force, DoD.

SUMMARY: This notice replaces the one published on May 18, 2012 in the **Federal Register** under Vol. 77 No. 97 Intent to Grant a Partially Exclusive Patent License. Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended; the Department of the Air Force announces its intention to grant SCADA Security Innovation, Inc., a Delaware corporation, having a place of business at 187 Ballardvale Street, Suite A195, Wilmington, Massachusetts 01887, a partially exclusive license, the exclusive portion limited to the field of cyber security for industrial control systems, in any right, title and interest the Air Force has in U.S. Patent Application No. 13/190,520, filed July 26, 2011, titled ''Using Software-based Decision Procedures to Control Instruction-level Execution'' by William B. Kimball.

FOR FURTHER INFORMATION CONTACT : The Air Force intends to grant a license for the patent application and resulting patents unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. D–14, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

Henry Williams Jr.,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–13568 Filed 6–4–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors; Correction

AGENCY: Department of Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** (77 FR 103) on May 29, 2012, concerning the partially closed meeting of the U.S. Naval Academy Board of Visitors. The document failed to publish before the 15-day statutory requirement.

Due to changing requirements beyond the control of the U.S. Naval Academy Board of Visitors or its Designated Federal Officer, the Board was unable to process the **Federal Register** notice for its June 11, 2012 meeting as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Travis Haire, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

Dated: May 29, 2012.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–13544 Filed 6–4–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Innovation and Improvement; School Leadership Program (SLP) Annual Performance Report

SUMMARY: The School Leadership Program (SLP) provides grants to assist high-need local educational agencies (LEAs) with recruiting, training, and retaining principals and assistant principals. The overall goals of the SLP are to assist high-need LEAs with (1) recruiting, preparing, and retaining new principals and assistant principals and (2) improving the skills and retention of currently practicing principals and assistant principals.

DATES: Interested persons are invited to submit comments on or before July 5, 2012.

ADDRESSES: Written 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. 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 04834. 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.

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, Privacy, Information and Records 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. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: School Leadership Program (SLP) Annual Performance Report.

OMB Control Number: 1855–0019.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 22.

Total Estimated Number of Annual Burden Hours: 880.

Abstract: The information in the SLP Annual Performance Report (APR) is collected in compliance with the Elementary and Secondary Education Act of 1965, as amended, Title II, Part A, Subpart 5; 20 U.S.C. 2151(b), the Government Performance and Results Act (GPRA) of 1993, Section 4 (1115), and the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253. EDGAR states that recipients of multi-year discretionary grants must submit an APR demonstrating that substantial progress has been made toward meeting the approved objectives of the project. In addition, discretionary grantees are required to report on their progress toward meeting the performance measures established for the U.S. Department of Education School Leadership Program. There are two GPRA performance objectives and six performance measures for SLP grantees. The objectives are (1) to recruit, prepare, and support individuals from education or other fields to become principals or assistant principals of schools in high-need LEAs and (2) to train and support principals and assistant principals from schools in high-need LEAs in order to improve their skills and increase retention. Most grantees will report on the GPRA measures for only one of the objectives because most grantees focus on either recruiting and training new principals and assistant principals or providing training to currently practicing principals and assistant principals. The SLP APR is a customized APR that goes beyond the ED 524B APR; this data collection is requested to facilitate the collection of more standardized and comprehensive data to address the program's GPRA measures, to improve the overall quality of data collected, and to increase the quality of data that can be used to inform policy decisions.

Dated: May 31, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–13533 Filed 6–4–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission, Meeting Cancellation

AGENCY: U.S. Department of Education.

ACTION: Notice; Advisory Committee Meeting Cancellation.

SUMMARY: The Department of Education gives notice of the cancellation of the Meeting of the Equity and Excellence Commission scheduled for June 4, 2012 and announced in the **Federal Register** on May 18, 2012 in Vol. 77 No. 97.

The meeting will be rescheduled for a date to be announced in the future.

FOR FURTHER INFORMATION CONTACT: Guy Johnson, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC

20202. Email: *equitycommission@ed.gov.* Telephone: (202) 453–6567.

John DiPaolo,

Chief of Staff, Assistant Secretary for Civil Rights, Office for Civil Rights.

[FR Doc. 2012–13499 Filed 6–4–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: As required by the Mercury Export Ban Act of 2008 (the Act), the Department of Energy (DOE) plans to identify a facility or facilities for the long-term management and storage of elemental mercury generated in the United States. To this end, DOE intends to prepare a supplement to the January 2011 *Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury* to analyze additional alternatives, in accordance with the National Environmental Policy Act (NEPA). This supplemental EIS (SEIS) will evaluate alternatives for a facility at and in the vicinity of the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico.

DATES: DOE invites public comment on the scope of this SEIS until July 5, 2012. The first scoping meeting will be held on June 26, 2012, from 5:30 p.m.–8 p.m., at the Skeen-Whitlock Building auditorium at the U.S. DOE, Carlsbad Field Office, 4021 National Parks Highway, Carlsbad, New Mexico 88220. An open house will be held on the same day at the same location from 4:30 p.m.–5:30 p.m. A second scoping meeting will be held on June 28, 2012, from 6 p.m.–8:30 p.m. at the Crowne Plaza Albuquerque, 1901 University Blvd. NE., Albuquerque, New Mexico 87102. An open house will be held on the same day at the same location from 4:30 p.m.–6 p.m.

ADDRESSES: Written comments on the scope of the SEIS should be sent to: Mr. David Levenstein, Document Manager, Office of Environmental Compliance (EM–11), U.S. Department of Energy, Post Office Box 2612, Germantown, Maryland 20874; to the Mercury Storage EIS Web site at *http://mercurystorageeis.com/;* or via email to *David.Levenstein@em.doe.gov.*

This Notice will be available on the Internet at *http://www.energy.gov/NEPA/* and on the project Web site at *http://mercurystorageeis.com/.*

FOR FURTHER INFORMATION CONTACT: To request further information about the SEIS or the Mercury Storage EIS, or to be placed on the SEIS distribution list, use any of the methods (mail, Web site, or email) listed under **ADDRESSES** above. In requesting a copy of the Draft SEIS, please specify a request for a paper copy of the Summary only; a paper copy of the full SEIS; the full SEIS on a computer CD; or any combination thereof.

For general information concerning DOE's NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, either by telephone at (202) 586–4600, by fax at (202) 586–7031, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Mercury Export Ban Act of 2008 (Pub. L. 110–414) amends the Toxic Substances Control Act (TSCA) (15 U.S.C. 2605(f)) to prohibit the sale, distribution, or transfer by Federal agencies to any other Federal agency, any state or local government agency, or any private individual or entity, of any elemental mercury under the control or jurisdiction of a Federal agency (with certain limited exceptions). It also amends TSCA (15 U.S.C. 2611(c)) to prohibit the export of elemental mercury from the U.S. effective January 1, 2013 (subject to certain essential use exemptions). Section 5 of the Act, *Long-Term Storage,* directs DOE to designate a facility or facilities for the long-term management and storage of elemental mercury generated within the U.S. Pursuant to this law, this facility is required to be operational and ready to accept custody of any elemental mercury generated within the U.S. by January 1, 2013. The Act also requires DOE to assess fees based upon the *pro rata* costs of long-term management and storage of elemental mercury delivered to the facility or facilities.

The sources of elemental mercury in the U.S. include mercury used in the chlorine and caustic soda manufacturing process (i.e., chlor-alkali industry), reclaimed from recycling and waste recovery activities, and generated as a byproduct of the gold mining process. In addition, DOE's National Nuclear Security Administration stores approximately 1,200 metric tons of elemental mercury at the Oak Ridge Reservation in Tennessee.

To evaluate the range of reasonable alternatives for siting, constructing and operating a facility or facilities to meet its obligations under the Act, DOE prepared the Mercury Storage EIS (DOE/EIS–0423) in accordance with NEPA and its implementing regulations (40 CFR parts 1500–1508 and 10 CFR part 1021) and issued the Mercury Storage Final EIS in January 2011 (76 FR 5156). DOE estimated that up to approximately 10,000 metric tons of elemental mercury would need to be managed and stored at the DOE facility during the 40-year period of analysis. These estimates do not include approximately 4,400 metric tons of elemental mercury that the Department of Defense (DOD) stores at its facility in Hawthorne, Nevada.

Purpose and Need for Action

As indicated in the Mercury Storage EIS, DOE needs to designate a facility for the long-term management and storage of elemental mercury generated within the U.S., as required by the Act.

Proposed Action

As also indicated in the Mercury Storage EIS, DOE proposes to construct one or more new facilities and/or select one or more existing facilities (including modification as needed) for the long-term management and storage of elemental mercury in accordance with the Act. Facilities to be constructed as well as existing or modified facilities must comply with applicable requirements of section 5(d) of the Act, *Management Standards for a Facility,* including the requirements of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), and other permitting requirements.

Proposed Alternatives

The Mercury Storage EIS evaluated seven candidate locations for the elemental mercury storage facility, as well as the No Action Alternative. Those candidate locations are: DOE Grand Junction Disposal site near Grand Junction, Colorado; DOE Hanford site near Richland, Washington; Hawthorne Army Depot near Hawthorne, Nevada; DOE Idaho National Laboratory near Idaho Falls, Idaho; DOE Kansas City Plant in Kansas City, Missouri; DOE Savannah River Site near Aiken, South Carolina; and Waste Control Specialists, LLC, site near Andrews, Texas.

Since publication of the Final Mercury Storage EIS, DOE has reconsidered the range of reasonable alternatives evaluated in that EIS. Accordingly, DOE now proposes to evaluate two additional locations for a long-term mercury storage facility, both

near the Waste Isolation Pilot Plant (WIPP), which DOE operates for disposal of defense transuranic waste. One of the additional locations to be evaluated is in Section 20, Township 22 South, Range 31 East within the land subject to the WIPP Land Withdrawal Act (Pub. L. 102–579) as amended (Act), across the WIPP access road from the WIPP facility. The second is in the vicinity of WIPP, but outside of the lands withdrawn by the Act, in Section 10, Township 22 South, Range 31 East, approximately 3½ miles north of the WIPP facility. Through development of the SEIS, DOE will evaluate the cumulative impacts of constructing and operating a facility for long-term management and storage of elemental mercury with the ongoing and planned operations of WIPP for disposal of defense transuranic waste, as well as the potential disposal of greater-than-Class C waste (*Draft Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-level Radioactive Waste and GTCC–Like Waste* (GTCC EIS, DOE/EIS–0375, February 2011). The locations to be evaluated in the SEIS would be suitable for an above-ground storage facility.

Identification of Environmental Issues

DOE proposes to analyze the potential environmental impacts of the two additional alternatives for management and storage of elemental mercury as they apply to the following:

- Land use and visual resources.
- Geology, soils, and geologic hazards, including seismicity.
- Water resources (surface water and groundwater).
- Meteorology, air quality and noise.
- Ecological resources (terrestrial resources, wetlands and aquatic resources, and species that are Federal- or state-listed as threatened, endangered, or of special concern).
- Cultural and paleontological resources such as prehistoric, historic, or Native American sites.
- Site infrastructure.
- Waste management.
- Occupational and public health and safety, including from construction, operations, facility accidents, transportation, and intentional destructive acts.
- Ecological risk.
- Socioeconomic impacts on potentially affected communities.
- Environmental Justice (i.e., whether long-term mercury management and storage activities have a disproportionately high and adverse effect on minority and low-income populations).
- Facility closure.
- Cumulative impacts, including global commons cumulative impacts, i.e., ozone depletion and climate change.
- Potential mitigation measures.
- Unavoidable adverse environmental impacts.
- Irreversible and irretrievable commitments of resources.
- Relationship between short-term uses of the environment and maintenance and enhancement of long-term productivity.

Public Participation in the SEIS Process

NEPA implementing regulations require an early and open process for determining the scope of an EIS (or SEIS) and for identifying the significant issues related to the proposed action. To ensure that the full range of issues related to the proposed action are addressed, DOE invites Federal agencies, state, local, and tribal governments, and the general public to comment on the scope of the SEIS, including identification of reasonable alternatives and specific issues to be addressed. DOE will hold a public scoping meeting in Carlsbad, New Mexico, on June 26, 2012, and in Albuquerque, New Mexico, on June 28, 2012, as previously described (see **DATES**).

Issued in Washington, DC, on May 24, 2012.

Mark A. Gilbertson,

Deputy Assistant Secretary for Site Restoration.

[FR Doc. 2012–13614 Filed 6–4–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

May 30, 2012.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–754–000.
Applicants: Arkansas Electric Cooperative Corp., Hot Spring Power Company, LLC.
Description: Petition for Waiver of Gas Regulations of Arkansas Electric Cooperative Corporation and Hot Spring Power Company, LLC in RP12–754.
Filed Date: 5/25/12.
Accession Number: 20120525–5153.
Comments Due: 5 p.m. ET 6/6/12.

Docket Numbers: RP12–755–000.
Applicants: MarkWest Pioneer, LLC.
Description: MarkWest Pioneer—Quarterly FRP Filing to be effective 7/1/2012.
Filed Date: 5/29/12.
Accession Number: 20120529–5201.
Comments Due: 5 p.m. ET 6/11/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: CP10–16–001.
Applicants: Cadeville Gas Storage LLC.
Description: Abbreviated amendment of Cadeville Gas Storage LLC under CP10–16.
Filed Date: 5/15/12.
Accession Number: 20120515–5240.
Comments Due: 5 p.m. ET 6/4/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13552 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–748–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: AGT Negotiated Rate—Taunton 66667 to be effective 6/1/2012.
Filed Date: 5/24/12.

Accession Number: 20120524–5062.
Comments Due: 5 p.m. ET 6/5/12.

Docket Numbers: RP12–749–000.
Applicants: Pine Needle LNG Company, LLC.
Description: Revisions to Rate Schedule LNG–1 and General Terms & Conditions to be effective 6/25/2012.
Filed Date: 5/24/12.
Accession Number: 20120524–5133.
Comments Due: 5 p.m. ET 6/5/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated May 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13551 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–105–000.
Applicants: Eurus Combine Hills I LLC, Oasis Power Partners, LLC, Crescent Ridge LLC, Eurus Combine Hills II LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Crescent Ridge LLC, Sagebrush.
Description: Application for Authorization of Transaction Pursuant to Section 203 of the Federal Power Act and Request for Expedited Consideration and Waivers of Eurus Combine Hills I LLC, *et al.*
Filed Date: 5/25/12.
Accession Number: 20120525–5101.
Comments Due: 5 p.m. ET 6/15/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1847–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Clean-Up to Inter. Procedures Under Sch. 22–23 of ISO OATT to be effective 7/25/2012.
Filed Date: 5/25/12.
Accession Number: 20120525–5063.
Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER12–1848–000.
Applicants: High Trail Wind Farm, LLC.
Description: High Trail Wind Farm, LLC submits tariff filing per 35: High Trail Wind Farm First Revised MBR to be effective 5/26/2012.
Filed Date: 5/25/12.
Accession Number: 20120525–5072.
Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER12–1849–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Attachment AD–SWPA 2012 Agreement to be effective 5/1/2012.
Filed Date: 5/25/12.
Accession Number: 20120525–5073.
Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER12–1850–000.
Applicants: Old Trail Wind Farm, LLC.
Description: Old Trail Wind Farm, LLC submits tariff filing per 35: Old Trail Wind Farm First Revised MBR to be effective 5/26/2012.
Filed Date: 5/25/12.
Accession Number: 20120525–5078.
Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER12–1851–000.
Applicants: PPL Electric Utilities Corporation.
Description: PPL Electric Utilities Corporation Notice of Cancellation Rate Schedule No. 112 and Service Agreement No. 596.
Filed Date: 5/24/12.
Accession Number: 20120524–5202.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1852–000.
Applicants: ArcLight Energy Marketing, LLC.
Description: ArcLight Energy Marketing, LLC submits tariff filing per 35.13(a)(2)(iii: AEM First Revised MBR to be effective 6/1/2012.
Filed Date: 5/25/12.
Accession Number: 20120525–5088.
Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER12–1853–000.
Applicants: Black Bear Hydro Partners, LLC.
Description: Black Bear Hydro Partners, LLC submits tariff filing per 35.13(a)(2)(iii: Black Bear Hydro First Revised MBR to be effective 6/1/2012.
Filed Date: 5/25/12.
Accession Number: 20120525–5098.
Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER12–1854–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation.
Filed Date: 5/24/12.
Accession Number: 20120524–5205
Comments Due: 5 p.m. ET 6/14/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13550 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–427–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 05–24–12 CMMPA Settlement to be effective 5/24/2012.
Filed Date: 5/24/12.
Accession Number: 20120524–5191.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1525–001.
Applicants: NRG Solar Alpine LLC.
Description: Supplement to Application for Market-Based Rate Authority to be effective 6/11/2012.

Filed Date: 5/24/12.
Accession Number: 20120524–5000.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1655–000; ER12–1656–000.
Applicants: Lea Power Partners, LLC, Waterside Power, LLC.
Description: Supplemental Notice to Notice of Change in Status of Waterside Power, LLC *et al.*
Filed Date: 5/24/12.
Accession Number: 20120524–5141.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1842–000.
Applicants: The Finerty Group, Inc.
Description: Baseline new to be effective 5/25/2012.
Filed Date: 5/24/12.
Accession Number: 20120524–5138.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1843–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Certificate of Concurrence to be effective 7/12/2012.
Filed Date: 5/24/12.
Accession Number: 20120524–5142.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1844–000.
Applicants: PJM Interconnection, L.L.C.
Description: Ministerial filing to incorporate FERC accepted revisions effective May 15, 2012 to be effective 5/15/2012.
Filed Date: 5/24/12.
Accession Number: 20120524–5144.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1845–000.
Applicants: AEP Texas North Company.
Description: TNC-BayWa r.e Mozart, LLC Amd. #1 to IA to be effective 4/26/2012.
Filed Date: 5/24/12.
Accession Number: 20120524–5145.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1846–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii: Certificate of Concurrence to be effective 7/10/2012.
Filed Date: 5/24/12.
Accession Number: 20120524–5160.
Comments Due: 5 p.m. ET 6/14/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–31–000.
Applicants: American Transmission Company LLC, ATC Management Inc.
Description: Supplement to Section 204 Application of American Transmission Company LLC, et al.
Filed Date: 5/24/12.
Accession Number: 20120524–5151.
Comments Due: 5 p.m. ET 6/4/12.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD12–3–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Interpretation to Reliability Standard CIP–006—Cyber Security—Physical Security of Critical Cyber Assets.
Filed Date: 5/23/12.
Accession Number: 20120523–5182.
Comment Date: 5 p.m. ET 6/13/12.

Docket Numbers: RR12–10–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Renewals of the Compliance Monitoring, *et al.*
Filed Date: 05/24/2012.
Accession Number: 20120524–5139.
Comment Date: 5 p.m. ET 6/14/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13549 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1126–004; ER08–1128–004 ER08–1129–004; ER08–1130–004; ER08–1131–004; ER08–1134–004; ER08–1135–004; ER08–1136–004; ER08–1137–004; ER08–1139–004.
Applicants: Georgia-Pacific Brewton LLC, Brunswick Cellulose, Inc., Georgia-Pacific Cedar Springs LLC, Georgia-Pacific Consumer Operations LLC, Georgia-Pacific Consumer Products LP, Georgia-Pacific LLC, Georgia-Pacific Monticello LLC, Leaf River Cellulose, LLC.
Description: Supplemental Triennial Market Power Filing on behalf of the Georgia-Pacific Entities in the Southeast.
Filed Date: 5/23/12.
Accession Number: 20120523–5180.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: ER11–4452–001.
Applicants: Buy Energy Direct LLC.
Description: Buy Energy Direct LLC submits tariff filing per 35: COMPLIANCE BASE LINE TARIFF to be effective 9/7/2011.
Filed Date: 5/23/12.
Accession Number: 20120523–5125.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: ER12–430–002.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Amendatory Filing to Attachment AE Review and Assessment of Resource Plans to be effective 5/24/2012.
Filed Date: 5/23/12.
Accession Number: 20120523–5159.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: ER12–1833–000.
Applicants: PJM Interconnection, L.L.C.
Description: First Revised Service Agreement No. 2922; Queue No. W2–090 to be effective 5/1/2011.
Filed Date: 5/23/12.
Accession Number: 20120523–5073.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: ER12–1833–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Errata to correct Metadata to First Revised SA No. 2922 in ER12–1833 to be effective 5/1/2012.
Filed Date: 5/23/12.
Accession Number: 20120523–5160.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: ER12–1834–000.
Applicants: Vermont Electric Power Company, Inc.
Description: Vermont Electric Power Company, Inc. submits tariff filing per 35.1: Vermont True Up Agreement to be effective 7/23/2012.
Filed Date: 5/23/12.
Accession Number: 20120523–5154.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: ER12–1835–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: G604 Amended GIA to be effective 5/24/2012.
Filed Date: 5/23/12.
Accession Number: 20120523–5155.
Comments Due: 5 p.m. ET 6/13/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13548 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–69–000.
Applicants: Shooting Star Wind Project, LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Shooting Star Wind Project, LLC.
Filed Date: 5/22/12.
Accession Number: 20120522–5163.
Comments Due: 5 p.m. ET 6/12/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1571–001.
Applicants: Verso Bucksport LLC.
Description: Verso Bucksport LLC's Supplement to Market-Based Rate Application.
Filed Date: 5/15/12.
Accession Number: 20120515–5129.
Comments Due: 5 p.m. ET 6/5/12.

Docket Numbers: ER12–1827–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: J053 GIA refile to be effective 5/23/2012.
Filed Date: 5/22/12.
Accession Number: 20120522–5142.
Comments Due: 5 p.m. ET 6/12/12.

Docket Numbers: ER12–1828–000.
Applicants: KCP&L Greater Missouri Operations Company.
Description: RS 134, Joint Operating Agreement (KCP&L) to be effective 12/31/9998.
Filed Date: 5/22/12.
Accession Number: 20120522–5147.
Comments Due: 5 p.m. ET 6/12/12.

Docket Numbers: ER12–1829–000.
Applicants: Shooting Star Wind Project, LLC.
Description: Application for Market-Based Rate Authorization to be effective 7/21/2012.
Filed Date: 5/22/12.
Accession Number: 20120522–5164.
Comments Due: 5 p.m. ET 6/12/12.

Docket Numbers: ER12–1830–000.
Applicants: San Diego Gas & Electric Company.
Description: Campo Verde Solar EP Agreement to be effective 5/19/2012.
Filed Date: 5/22/12.
Accession Number: 20120522–5165.
Comments Due: 5 p.m. ET 6/12/12.

Docket Numbers: ER12–1831–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Schindler 3 E&P Agreement to be effective 5/21/2012.
Filed Date: 5/22/12.
Accession Number: 20120522–5175.
Comments Due: 5 p.m. ET 6/12/12.

Docket Numbers: ER12–1832–000.
Applicants: Lucky Corridor, LLC.
Description: Application of Lucky Corridor, LLC for Authorization to Sell Transmission Rights and Service at Negotiated Rates.
Filed Date: 5/22/12.
Accession Number: 20120522–5189.
Comments Due: 5 p.m. ET 6/12/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13547 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–104–000.
Applicants: The Narragansett Electric Company.
Description: Application Pursuant to Section 203 of the Federal Power Act for Authorization to Acquire Interconnection Facilities and Request for Expedited Treatment and Certain Waivers of The Narragansett Electric Company.
Filed Date: 5/24/12.
Accession Number: 20120524–5123.
Comments Due: 5 p.m. ET 6/14/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3322–002.
Applicants: PJM Interconnection, L.L.C.
Description: PJM response to data request of the Office of Energy Market Regulation, dated May 9, 2012.
Filed Date: 5/23/12.
Accession Number: 20120523–5148.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: ER12–91–003.
Applicants: PJM Interconnection, L.L.C., Duke Energy Kentucky, Inc., Duke Energy Ohio, Inc.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing per Order dated 4/24/2012 in ER12–91 and ER12–92 to be effective 1/1/2012.
Filed Date: 5/24/12.
Accession Number: 20120524–5114.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–92–003.
Applicants: PJM Interconnection, L.L.C., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35:

Compliance Filing per Order dated 4/24/2012 in ER12–91 & ER12–92 to be effective N/A.

Filed Date: 5/24/12.

Accession Number: 20120524–5115.

Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1525–001.

Applicants: NRG Solar Alpine LLC.

Description: Supplement to Application for Market-Based Rate Authority to be effective 6/11/2012.

Filed Date: 5/24/12.

Accession Number: 20120524–5000.

Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1836–000.

Applicants: Louisville Gas and Electric Company.

Description: EKPC NITSA Revisions to be effective 5/25/2012.

Filed Date: 5/24/12.

Accession Number: 20120524–5061.

Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1837–000.

Applicants: Duke Energy Ohio, Inc., Midwest Independent Transmission System Operator, Inc.

Description: Duke Cancellation filing to be effective 1/1/2012.

Filed Date: 5/24/12.

Accession Number: 20120524–5085.

Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1838–000.

Applicants: Horse Butte Wind I LLC.

Description: Application of Horse Butte Wind I LLC for Order Accepting MBR Tariff to be effective 12/31/9998.

Filed Date: 5/24/12.

Accession Number: 20120524–5099.

Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1839–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. Cancellation of various Interconnection Agreements, Transmission Service Agreements and Exhibit WDS.

Filed Date: 5/24/12.

Accession Number: 20120524–5122.

Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1840–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii: Certificate of Concurrence to be effective 7/13/2012.

Filed Date: 5/24/12.

Accession Number: 20120524–5127.

Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1841–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii: Certificate of Concurrence to be effective 7/11/2012.

Filed Date: 5/24/12.

Accession Number: 20120524–5137.

Comments Due: 5 p.m. ET 6/14/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13546 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2156–002.

Applicants: Consumers Energy Company.

Description: Correction to April 19, 2012 Supplement to Prior Refund Report Filings.

Filed Date: 5/25/12.

Accession Number: 20120525–5155.

Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER11–2664–002.

Applicants: Powerex Corp.

Description: Response of Powerex Corp. to Commission Staff Request for Additional Information.

Filed Date: 5/25/12.

Accession Number: 20120525–5136.

Comments Due: 5 p.m. ET 6/5/12.

Docket Numbers: ER11–2664–002.

Applicants: Powerex Corp.

Description: Errata to Response of Powerex Corp. to Commission Staff Request for Additional Information and Request for Shortened Comment Period.

Filed Date: 5/29/12.

Accession Number: 20120529–5128.

Comments Due: 5 p.m. ET 6/5/12.

Docket Numbers: ER12–1855–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2012–05–25 TPP–GIP Tariff Amendment Filing to be effective 7/25/2012.

Filed Date: 5/25/12.

Accession Number: 20120525–5128.

Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER12–1856–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2012–05–25 CAISO Order 741 Central Counterparty Comp Filing to be effective 9/1/2012.

Filed Date: 5/25/12.

Accession Number: 20120525–5129.

Comments Due: 5 p.m. ET 6/15/12.

Docket Numbers: ER12–1857–000.

Applicants: Louisville Gas and Electric Company.

Description: EKPC NITSA Errata to be effective 5/25/2012.

Filed Date: 5/29/12.

Accession Number: 20120529–5076.

Comments Due: 5 p.m. ET 6/19/12.

Docket Numbers: ER12–1858–000.

Applicants: PJM Interconnection, L.L.C., American Transmission Systems, Incorporation.

Description: ATSI submits Original PJM SA No. 3316 T.I.A. between ATSI & West Penn to be effective 5/1/2012.

Filed Date: 5/29/12.

Accession Number: 20120529–5093.

Comments Due: 5 p.m. ET 6/19/12.

Docket Numbers: ER12–1859–000.

Applicants: AEP Texas Central Company.

Description: 20120529 TCC–Anacacho System Upgrade Agreement to be effective 4/30/2012.

Filed Date: 5/29/12.

Accession Number: 20120529–5114.

Comments Due: 5 p.m. ET 6/19/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–35–000.

Applicants: Consumers Energy Company.

Description: Amendment to Application of Consumers Energy Company.

Filed Date: 5/25/12.

Accession Number: 20120525–5141.

Comments Due: 5 p.m. ET 6/4/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13545 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Project No. 2230–044 Alaska]

City and Borough of Sitka, AK; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 **Federal Register** 47897), Commission staff has reviewed the City and Borough of Sitka's (City of Sitka's) application for a capacity-related amendment to the license for the Blue Lake Hydroelectric Project (FERC Project No. 2230) and has prepared a final environmental assessment (EA). The project is located on Sawmill Creek, formerly the Medvetche River, in the Borough of Sitka, Alaska. The project currently occupies a total of 1,676 acres of federal lands administered by the U.S. Department of Agriculture, Forest Service, and under the City of Sitka's proposal, it would occupy 1,798 acres of federal lands.

The final EA contains the Commission staff's analysis of the potential environmental effects of the proposed modifications to the project and the addition of new generating capacity and the conclusion that authorizing the amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room 2–A of the Commission's offices at 888 First Street NE., Washington, DC 20426. The final EA also may be viewed on the Commission's Internet Web site at (*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. Additional information about the project is available from the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676; for TTY contact (202) 502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Steven Sachs by telephone at 202–502–8666 or by email at *Steven.Sachs@ferc.gov.*

Dated: May 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13539 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1829–000]

Shooting Star Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Shooting Star Wind Project, LLC'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 June 18, 2012.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13506 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1825–000]

EDF Industrial Power Services (CA), LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EDF Industrial Power Services (CA), LLC'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 June 18, 2012.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13505 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1838–000]

Horse Butte Wind I LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Horse Butte Wind I LLC'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 June 18, 2012.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13507 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1842–000]

The Finerty Group, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of The Finerty Group, 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 June 18, 2012.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13508 Filed 6–4–12; 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

The Federal Energy Regulatory Commission (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

June 6, 2012–June 7, 2012

This meeting will be held at the Hyatt French Quarter, 800 Iberville Street, New Orleans, Louisiana.

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. EL08–60	*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. EL10–55	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL10–65	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL11–34	Midwest Independent System Transmission Operator, Inc.
Docket No. EL11–63	*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. ER09–833	Entergy Services, Inc.
Docket No. ER09–1224	Entergy Services, Inc.
Docket No. ER10–794	Entergy Services, Inc.
Docket No. ER10–1350	Entergy Services, Inc.
Docket No. ER10–1676	Entergy Services, Inc.
Docket No. ER10–2001	Entergy Arkansas, Inc.
Docket No. ER10–3357	Entergy Arkansas, Inc.
Docket No. ER11–2131	Entergy Arkansas, Inc.
Docket No. ER11–2132	Entergy Gulf States, Louisiana, LLC
Docket No. ER11–2133	Entergy Gulf States, 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. ER11–3156	Entergy Arkansas, Inc.
Docket No. ER11–3657	Entergy Arkansas, Inc.
Docket No. ER12–480	Midwest Independent Transmission System Operator, 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.*

Dated: May 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13540 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. UL11–1–000]

Turlock Irrigation District; Notice of Availability of Navigability Report for the Tuolumne River, Request for Comments, and Notice of Pending Jurisdictional Inquiry

On June 10, 2011, the Federal Energy Regulatory Commission (Commission) received an inquiry from the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, concerning the status of the unlicensed La Grange Hydroelectric Project. The project is located on the Tuolumne River near the town of La Grange in Tuolumne County, California.

As part of its review, Commission staff is investigating the jurisdictional status of the project and has prepared a navigability report for the Tuolumne River. Before making its decision, staff will accept and consider comments on the navigability report. Comments may be filed no later July 2, 2012.

Section 23(b)(1) of the Federal Power Act (FPA) requires a Commission license for the construction, operation, or maintenance of hydropower projects which: (1) Are located on navigable waters of the United States; (2) occupy public lands or reservations of the United States; (3) utilize the surplus

water or water power from a federal dam;[1] or (4) are located on non-navigable streams over which Congress has jurisdiction under its authority to regulate interstate and foreign commerce, would affect the interests of interstate or foreign commerce (such as by connection to the interstate electrical grid, and are constructed or enlarged after August 26, 1935.

A stream is navigable under section 3(8) of the FPA if: (1) It is currently being used or is suitable for use, or (2) it has been used or was suitable for use in the past, or (3) it could be made suitable for use in the future by reasonable improvements, to transport persons or property in interstate or foreign commerce. Navigability under section 3(8) of the FPA is not destroyed by obstructions or disuse of many years; personal or private use may be sufficient to demonstrate the availability of the river for commercial navigation; and the seasonal floatation of logs is sufficient to determine that a river is navigable.

Comments are invited on the staff's navigability report. Copies of this navigability report are on file with the Commission and are available for public inspection. This navigability report may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, UL11–1, excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

Please file your response with the Commission's Secretary by July 2, 2012. All comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link. If unable to be filed electronically, comments may be paper-filed. To paper-file, an original and eight copies should be filed with: Secretary, Mail Code PJ–12, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site at *http://www.ferc.gov.filing-comments.asp.*

[1] Licensing is not required under conditions 1, 2, or 3 above if the project is constructed, operated, and maintained in accordance with the terms of a valid federal permit issued prior to June 10, 1920.

Please include the docket number (UL11–1–000) on any filing.

For further information, please contact Henry Ecton at (202) 502–8768.

Dated: May 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13504 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–463–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on May 17, 2012 Transcontinental Gas Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP12–463–000, a Prior Notice request pursuant to Sections 157.205, 157.208, and 157.210 of the Commission's Regulations under the Natural Gas Act, and Transco's blanket certificate issued in Docket No. CP82–426, for authorization to replace two existing Ansaldo electric motors with two new electric motors at Transco's existing Compressor Station 205 in Princeton, New Jersey (Compressor Station 205). Specifically, Transco proposes to replace two 7,000 horsepower high speed electric motors and associated variable frequency drives for units 1 and 2 with two new Siemens electric motors with new variable frequency drives that will be certificated and operated at 7,000 horsepower each, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact *FERC at FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Bela Patel, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251, or call (713) 215–2659.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and ill not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. 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.

Dated: May 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13509 Filed 6–4–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9681–3; EPA–HQ–ORD–2012–0358]

An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska—Peer Review Panel Members and Charge Questions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: EPA is announcing the peer review panel members assembled by an independent contractor to evaluate the draft document titled, ''*An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska''* (EPA–910–R–12–004a–c). EPA is also announcing a three week public comment period for the draft charge questions to be provided to the peer review panel. The assessment was prepared by the U.S. EPA's Region 10 Office (Pacific Northwest and Alaska), EPA's Office of Water, and EPA's Office of Research and Development. The U.S. EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources.

DATES: The public comment period begins June 5, 2012, and ends June 26, 2012. Comments should be in writing and must be received by EPA by June 26, 2012.

Availability: Draft charge questions are provided below. Copies of the draft charge questions are also available via the Internet on the EPA Region 10 Bristol Bay Web site at *www.epa.gov/bristolbay.* The draft document ''*An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska''* is also available on the Internet on the EPA Region 10 Bristol Bay Web site at *www.epa.gov/bristolbay.* A limited number of paper copies of the draft charge questions are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and title, ''*Peer Review Charge Questions on An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.''*

Comments on the draft charge questions may be submitted electronically via *www.regulations.gov*, by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *ORD.Docket@epa.gov.*

For technical information concerning the report, contact Judy Smith; telephone: 503–326–6994; facsimile: 503–326–3399; or email: *r10bristolbay@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project

The U.S. EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources. The U.S. EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making. The Web site that describes the project is *www.epa.gov/bristolbay.*

EPA released the draft assessment for the purposes of public comment and peer review on May 18, 2012. Consistent with guidelines for the peer review of highly influential scientific assessments, EPA asked a contractor (Versar, Inc.) to assemble a panel of experts to evaluate the draft report. Versar evaluated the 86 candidates nominated during a previous public comment period (February 24, 2012 to March 16, 2012) and sought other experts to complete this peer review panel. The twelve peer review panel members are as follows:

Mr. David Atkins, Watershed Environmental, LLC.—Expertise in mining and hydrology.

Mr. Steve Buckley, WHPacific/NANA Alaska—Expertise in mining and seismology.

Dr. Courtney Carothers—Expertise in indigenous Alaskan cultures.

Dr. Dennis Dauble, Washington State University—Expertise in fisheries biology and wildlife ecology.

Dr. Gordon Reeves, USDA Pacific NW Research Station—Expertise in fisheries biology and aquatic biology.

Dr. Charles Slaughter, University of Idaho—Expertise in hydrology.

Dr. John Stednick, Colorado State University—Expertise in hydrology and biogeochemistry.

Dr. Roy Stein, Ohio State University—Expertise in fisheries and aquatic biology.

Dr. William Stubblefield, Oregon State University—Expertise in aquatic biology and ecotoxicology.

Dr. Dirk van Zyl, University of British Columbia—Expertise in mining and biogeochemistry.

Dr. Phyllis Weber Scannel—Expertise in aquatic ecology and ecotoxicology.

Dr. Paul Whitney—Expertise in wildlife ecology and ecotoxicology.

The peer review panel will be provided with draft charge questions to guide their evaluation of the draft assessment. These draft charge questions are designed to focus reviewers on specific aspects of the report. EPA is seeking comments from the public on the draft charge questions and welcome input on additional charge questions consistent with the objectives of the assessment. The draft charge questions are as follows:

(1) The assessment brought together information to characterize the ecological, geological, and cultural resources of the Nushagak and Kvichak watersheds. Was this characterization accurate? Was any significant literature missed that would be useful to complete this characterization?

(2) A formal mine plan or application is not available for the porphyry copper deposits in the Bristol Bay watershed. EPA developed a hypothetical mine scenario for its risk assessment. Given the type and location of copper deposits in the watershed, was this hypothetical mine scenario realistic? Has EPA appropriately bounded the magnitude of potential mine activities with the minimum and maximum mine sizes used in the scenario? Is there significant literature not referenced that would be useful to refine the mine scenario?

(3) EPA assumed two potential modes for mining operations: A no-failure mode of operation and a mode outlining one or more types of failures. The no-failure operation mode assumes best practical engineering and mitigation practices are in place and in optimal operating condition. Is the no-failure mode of operation adequately described? Is the choice of engineering and mitigation practices reasonable and consistent with current practices?

(4) Are the potential risks to salmonid fish due to habitat loss and modification and water quantity/quality changes appropriately characterized and described for the no-failure mode of operation? Does the assessment appropriately describe the risks to salmonid fish due to operation of a transportation corridor under the no-failure mode of operation?

(5) Do the failures outlined in the assessment reasonably represent potential system failures that could occur at a mine of the type and size outlined in the mine scenario? Is there a significant type of failure that is not described? Are the assumed risks of failures appropriate?

(6) Does the assessment appropriately characterize risks to salmonid fish due to a potential failure of water and leachate collection and treatment from the mine site? If not, what suggestions do you have for improving this part of the assessment?

(7) Does the assessment appropriately characterize risks to salmonid fish due to culvert failures along the transportation corridor? If not, what suggestions do you have for improving this part of the assessment?

(8) Does the assessment appropriately characterize risks to salmonid fish due to pipeline failures? If not, what suggestions do you have for improving this part of the assessment?

(9) Does the assessment appropriately characterize risks to salmonid fish due to a potential tailings dam failure? If not, what suggestions do you have for improving this part of the assessment?

(10) Does the assessment appropriately characterize risks to wildlife and human cultures due to risks to fish? If not, what suggestions do you have for improving this part of the assessment?

(11) Does the assessment appropriately describe the potential for cumulative risk from multiple mines?

(12) Does the assessment identify the uncertainties and limitations associated with the mine scenario and the identified risks?

The preferred method to submit comments on the draft peer review charge is through the docket, which is described below. This docket is separate from the docket collecting public comments on the draft assessment itself. The EPA will evaluate comments received on these draft charge questions. Charge questions will be finalized and provided to EPA's independent contractor, Versar, Inc., who will convene the expert panel for independent external peer review.

The external peer review panel meeting is scheduled to be held in Anchorage, AK on August 7, 8, and 9, 2012. The public will be invited to attend on August 7 and 8, 2012. Further information regarding the external peer review panel meeting will be announced at a later date in the **Federal Register**.

II. How to Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2012–0358, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email: ORD.Docket@epa.gov*. Include the docket number EPA–HQ–ORD–2012–0358 in the subject line of the message.
- *Fax:* 202–566–9744.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 28221T), Docket # EPA–HQ–ORD–2012–0358, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2012–0358. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and 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 *www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *www.regulations.gov_index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 30, 2012.

Darrel A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–13431 Filed 6–4–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9680–7]

Changes to the Central Data Exchange System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Cross-Media Electronic Reporting Regulation (CROMERR), this notice announces EPA's plan to change its Central Data Exchange (CDX) system, as described in this notice.

DATES: EPA's changes to CDX are effective August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Tina Chen, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop MC–2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–0248, *Chen.Tina@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the Code of Federal Regulations (CFR). CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and provides requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart B of CROMERR sets requirements for electronic reporting to

EPA that may be used to satisfy a federal environmental reporting requirement. Specifically, section 3.10 of subpart B requires that electronic documents be submitted to an appropriate EPA electronic document receiving system that has been designated by the Administrator. Additionally, where a paper document must bear a signature under an existing regulation, CROMERR requires that an electronic document that substitutes for the paper document must be signed with a valid electronic signature.

Generally, EPA's designated electronic document receiving system is CDX, which is consistent with the standards for electronic document receiving systems set forth in CROMERR § 3.2000(b) of subpart D. CDX, developed and maintained by the Office of Environmental Information, serves as EPA's gateway for receiving documents electronically from the reporting community. CDX streamlines and consolidates EPA's reporting by offering the reporting community faster, easier, and more secure submission options through a single venue. As a cornerstone of EPA's efforts to advance electronic government, CDX supports electronic submission of environmental data for air, water, waste, and toxic programs from thousands of regulated entities. In developing CROMERR, EPA recognized that CDX would be subject to change over time and that such changes could affect regulated entities that participate in electronic reporting. Therefore, CROMERR subpart B requires EPA to provide notice when the Agency plans to change CDX hardware, software, or services. Section 3.20 of the regulation distinguishes four categories of CDX changes: *Significant, Other, De minimis or Transparent and Emergency* changes.

Today's notice announces EPA's plans to take advantage of opportunities offered by evolving technologies to improve CDX services by modernizing the user registration process and providing additional user functionality. This change is considered an *Other Change* under § 3.20(a)(2) of the regulation and requires EPA to provide notice to CDX users at least sixty (60) days in advance of implementation. Specific changes include:

- New user-friendly features that will make CDX registration easier, such as the ability to search for reporting programs and organizations, and activate accounts via email;
- Additional ''My CDX'' user profile functions, such as the ability to change an account password from the user profile page, a standardized list of security questions, and automated reminders for account password expiration; and
- New user profile page ''Alerts'' and ''News and Updates'' sections that will provide CDX users with timely general system information, as well as program specific information.

In accordance with 40 CFR 3.20(a)(2), EPA is providing this notice to CDX users at least sixty (60) days in advance of implementation of the changes described above.

Dated: May 29, 2012.

Connie Dwyer,

Director, Information Exchange and Services Division.

[FR Doc. 2012–13541 Filed 6–4–12; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Extension Without Change: Demographic Information on Applicants for Federal Employment.

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it is submitting to the Office of Management and Budget (OMB) a request for a one-year extension of the Demographic Information on Applicants, OMB No. 3046–0046.

DATES: Written comments on this notice must be submitted on or before July 5, 2012.

ADDRESSES: A copy of this ICR and applicable supporting documentation submitted to OMB for review may be obtained from: Veta P. Hurst, Senior Attorney, (202) 663–4498, Office of Federal Operations, 131 M Street NE., Washington, DC 20507. Comments on this final notice must be submitted to Chad Lallemand in the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *Chad_A._Lallemand@omb.eop.gov*. Comments should also be sent to Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE., Suite 6NE03F, Washington, DC 20507. Written comments of six or fewer pages may be faxed to the Executive Secretariat at (202) 663–4114. (There is no toll free fax number.) Receipt of facsimile transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers.)

FOR FURTHER INFORMATION CONTACT: Veta Hurst, Federal Sector Programs, Office of Federal Operations, 131 M Street NE., Washington, DC 20507, (202) 663–4498 (voice); (202) 663–4593 (TTY). Copies of this notice are available in the following alternate formats: Large print, braille, electronic computer disk, and audiotape. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

SUPPLEMENTARY INFORMATION: The 60-day notice was published in the **Federal Register** on February 21, 2012, allowing for a 60-day public comment period. No comments were received.

Overview of Information Collection

Collection Title: Demographic Information on Applicants.

OMB Control No.: 3046–0046.

Description of Affected Public: Individuals submitting applications for federal employment.

Number of Responses: 26,854,281.

Estimated Time per Respondent: 3 minutes.

Total Burden Hours: 1,342,714 [(26,854,281x3)/60].

Federal Cost: None.

Abstract: Under section 717 of Title VII and 501 of the Rehabilitation Act, the Commission is charged with reviewing and approving federal agencies plans to affirmatively address potential discrimination before it occurs. Pursuant to such oversight responsibilities, the Commission has established systems to monitor compliance with Title VII and the Rehabilitation Act by requiring federal agencies to evaluate their employment practices through the collection and analysis of data on the race, national origin, sex and disability status of applicants for both permanent and temporary employment.

While several federal agencies (or components of such agencies) have obtained OMB approval for the use of forms collecting data on the race, national origin, sex and disability status of applicants, it is not an efficient use of government resources for each federal agency to separately seek OMB approval. Accordingly, in order to avoid unnecessary duplication of effort and a

proliferation of forms, the EEOC seeks approval of a form to be used by federal agencies.

Response by applicants is optional. The information obtained will be used by federal agencies only for evaluating whether an agency's recruitment activities are effectively reaching all segments of the relevant labor pool and whether the agency's selection procedures allow all applicants to compete on a level-playing field regardless of race, national origin, or sex. The voluntary responses are treated in a highly confidential manner and play no part in the selection. The information is not provided to any panel rating the applications, to selecting officials, to anyone who can affect the application or to the public. Rather, the information is used in summary form to determine trends over many selections within a given occupational or organization area. No information from the form is entered into an official personnel file.

Burden Statement: In fiscal year 2011, EEOC gathered data from the 59 federal agencies required to collect applicant data. Based on the agency responses, we expect that 26,854,281 applicants will be asked to complete the form.

Because of the predominant use of online application systems, which require only pointing and clicking on the selected responses, and because the form requests only eight questions regarding basic information, the EEOC estimates that an applicant can complete the form in approximately 3 minutes or less.

OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission'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 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: May 29, 2012.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2012–13521 Filed 6–4–12; 8:45 am]

BILLING CODE 6570–01–P

EXPORT-IMPORT BANK

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice.

SUMMARY: The Advisory Committee was established November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

DATES: Friday, June 8, 2012 from 11:00 a.m. to 3:00 p.m. A break for lunch will be at the expense of the attendee. Security processing will be necessary for reentry into the building.

ADDRESSES: The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: For further information, contact Susan Houser, Room 1273, 811 Vermont Ave. NW., Washington, DC 20571, (202) 565–3232.

SUPPLEMENTARY INFORMATION: Agenda items include a briefing of the Advisory Committee members regarding the progress of the Bank's Second Quarter, its legislative status and the competitiveness report results.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Susan Houser to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 4, 2011, Susan Houser, Room 1273, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 565–3232.

Angela Mariana Freyre,

Senior Vice President and General Counsel.

[FR Doc. 2012–12918 Filed 6–4–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: LOST COAST COMMUNICATIONS, INC., Station KHUM, Facility ID 33653, BPH–20120511AFX, From GARBERVILLE, CA, To CUTTEN, CA; SSR COMMUNICATIONS, INC., Station NEW, Facility ID 190455, BNPH–20120427ABN, From BORDELONVILLE, LA, To WASHINGTON, MS.

DATES: The agency must receive comments on or before August 6, 2012.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2012–13495 Filed 6–4–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire

the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 2012.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Northfield Bancorp, MHC, and Northfield Bancorp, both in Staten Island, New York; to acquire Flatbush Federal Bancorp, MHC, and Flatbush Federal Bancorp, Inc., and thereby acquire Flatbush Federal Savings and Loan Association, all in Brooklyn, New York.

Board of Governors of the Federal Reserve System, May 31, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–13525 Filed 6–4–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9350]

Graco, Inc.; Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 2, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Graco, Dkt. No. 9350'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/gracoitwconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Peter Richman (202–326–2563), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 31, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 2, 2012. Write ''Graco, Dkt. No. 9350'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/gracoitwconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Graco, Dkt. No. 9350'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington,

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 2, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission''), subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders, containing both a Proposed Decision and Order (''Proposed Order'') and an Order To Hold Separate and Maintain Assets, with Graco, Inc. (''Graco''), Illinois Tool Works Inc., and ITW Finishing LLC (''ITW''), collectively referred to as the Respondents, to resolve an Administrative Complaint issued by the Commission on December 15, 2011. The Complaint alleged that Graco's proposed acquisition of ITW would substantially reduce competition in various markets for industrial liquid finishing equipment in North America. The proposed acquisition would harm industrial liquid finishing equipment customers by resulting in higher prices and less choice in the relevant markets. The Proposed Order requires Graco to divest all overlapping ITW businesses and to hold those assets separate pending that divestiture. The Proposed Order is for settlement purposes only and tailored to remedy the effects of Graco's proposed acquisition of ITW.

The Commission has placed the Proposed Order on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during the comment period will become part of the public record. After thirty days, the Commission will review the Proposed Order and comments received and will decide whether it should withdraw from the Agreement or make final the Proposed Order.

I. The Commission's Complaint

The Federal Trade Commission voted 4–0 to issue an Administrative Complaint against Respondents on December 15, 2011.[2] Graco is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. Illinois Tool Works Inc. is a Delaware corporation with its principal place of business in Glenview, Illinois. Illinois Tool Works Inc., at the time of the Commission's Complaint, wholly owned ITW, a Delaware limited liability company with its principal place of business in Glenview, Illinois.[3] Graco and ITW manufacture and sell industrial liquid finishing equipment throughout North America and the world. Industrial manufacturers use industrial liquid finishing equipment to apply paint and other coatings to all kinds of finished goods, including automobiles, office furniture, and home appliances.

The Complaint alleged that Graco's proposed acquisition of ITW would harm competition in five specific product markets: The manufacture and sale of (1) liquid finishing pumps for industrial uses; (2) liquid finishing spray guns, which apply paint and other liquid coatings to surfaces in industrial uses; (3) proportioners, which mix and blend paint with catalysts and other liquids before applying the coating in industrial uses; (4) circulation pumps for paint systems in automotive assembly plants; and (5) industrial liquid finishing equipment for resale.

The Complaint charged that if the proposed acquisition were completed, the combined firm would control a dominant share of all North American sales of industrial liquid finishing equipment and create a monopoly for circulation pumps used in paint systems in the automobile industry.

The Complaint also alleged that the proposed transaction would end the close competition between Graco and ITW, its largest competitor, reduce or eliminate the substantial one-time price breaks or other discounts both firms offer to distributors, and lessen Graco's incentives to develop new products after the merger. The competition lost by the acquisition could not be easily replaced, as Exel North America, the firm in the market with a distant third place in sales, as well as other fringe firms, lack the brand acceptance and distribution to challenge a combined Graco/ITW. Significant hurdles and barriers would also deter new competitors from entering the markets.

II. The Agreement Containing Consent Orders

The purpose of the Proposed Order is to ensure the continuation of ITW's liquid finishing business assets as an ongoing, viable business operating in the same relevant markets in which they were competing at the time Graco announced the proposed acquisition, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's Complaint. In order to do that, the Proposed Order requires Graco to divest ITW's liquid finishing business assets, including the Binks, DeVilbiss, Ransburg, and BGK brands, no later than 180 days after the date the Proposed Order becomes final, to a Commission-approved Acquirer. If Graco has not divested ITW's liquid finishing business assets within 180 days, the Commission may appoint a trustee to divest ITW's liquid finishing business assets in a manner that satisfies the requirements of the Proposed Order.

The divestiture maintains that status quo ante in the markets alleged in the Commission's Complaint. The Proposed Order permits Graco to complete its acquisition of ITW, but requires it to hold the businesses containing ITW's industrial liquid finishing equipment assets separate and to maintain them while it looks for a buyer for the assets to be divested. The Order to Hold Separate and Maintain Assets will protect the competitive status quo during this process.

The Proposed Order requires Graco, or the divestiture trustee, if appointed, to file periodic reports detailing efforts to divest the assets and the status of that undertaking. Commission representatives may have reasonable access to Graco's business records related to compliance with the Proposed Order.

III. Opportunity for Public Comment

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Order to aid the

[2] *http://ftc.gov/os/adjpro/d9350/111215gracoadmincmpt.pdf.*

[3] On March 13, 2012, the Secretary withdrew the Commission's administrative challenge to Graco's acquisition of ITW in order to consider Graco's proposed settlement. Graco agreed to an Agreement Containing Consent Orders requiring it to hold separate all of the ITW liquid finishing businesses and to divest up to all of the hold-separate assets to a Commission-approved acquirer. On March 27, the Commission issued an Order to Hold Separate and Maintain Assets (''Hold Separate'') covering the ITW liquid finishing equipment businesses worldwide, allowing Graco to close on the Acquisition but to retain and integrate only the ITW powder finishing assets. The Commission deferred voting to accept the Consent Agreement to allow staff an opportunity to investigate whether a narrower divestiture package would fully remedy the competitive harm alleged in the Complaint. *http://ftc.gov/opa/2012/03/graco.shtm.*

Commission in its determination of whether it should make final the Proposed Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission, Commisioner Ohlhausen not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2012–13625 Filed 6–4–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New; 60-day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: Children's Health Insurance Program Reauthorization Act (CHIPRA) 10-State Evaluation, Telephone Interviews with State CHIP Program Administrators—OMB No. 0990–NEW—Assistant Secretary for Planning and Evaluation.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting the Office of Management and Budget (OMB) approval on a new collection to interview Children's Health Insurance Program (CHIP) administrators in all 50 States and the District of Columbia. These roughly 1 hour interviews, conducted by phone, will focus on understanding changes in the CHIP program since 2006, the role the CHIP Reauthorization Act (CHIPRA) of 2009 (Pub. L. 111–3) has played in influencing State CHIP programs, preparations for implementing the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), and State views on the future of CHIP. Going beyond facts and basic descriptive information, it will gather insights about the rationale behind State decisions and about issues requiring future attention. The information gathered will supplement two other data collection efforts which received clearance on December 12, 2011 (a survey of CHIP and Medicaid enrollees and disenrollees and case studies in 10 states, reference number 201110–0990–006, OMB control number 0990–0384). Data will only be collected once from the CHIP program administrators. We are seeking a 1 year approval period.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Telephone Interview Discussion Guide.	State CHIP Program Administrators [a] ...	77	1	1	77
Total	.....	77	1	1	77

[a] This includes one respondent per State in the 25 States with only a separate CHIP program or a Medicaid expansion CHIP program, and two respondents per State in the 26 States with combination programs.

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2012–13492 Filed 6–4–12; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Group on Prevention, Health Promotion, and Integrative and Public Health; Notice of Meeting

AGENCY: Office of the Surgeon General of the United States Public Health Service, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a web meeting is scheduled to be held for the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the ''Advisory Group''). The web meeting will be open to the public. The agenda will include the review and approval of the Second Report of the Advisory Group. Additional information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.healthcare.gov/prevention/nphpphc/advisorygrp/index.html.*

DATES: The meeting will be held on June 25, 2012 from 2:30 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held online via WebEx software. Please note that webinar technology will be utilized that will allow you to call in to audio and simultaneously view the informational slides on your computer as they are presented. For detailed instructions about how to make sure that your windows computer and browser are set up for WebEx and to register for the meeting, please email the designated point of contact for the

Advisory Group at *prevention.council@hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, 200 Independence Ave. SW., Hubert H. Humphrey Building, Room 701H, Washington, DC 20001; 202–205–9517; *prevention.council@hhs.gov*.

SUPPLEMENTARY INFORMATION: On June 10, 2010, the President issued Executive Order 13544 to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. This legislation mandated that the Advisory Group was to be established within the Department of Health and Human Services. The charter for the Advisory Group was approved by the Secretary of Health and Human Services on June 23, 2010; the charter was filed with the appropriate Congressional committees and Library of Congress on June 24, 2010. The Advisory Group has been established as a non-discretionary Federal advisory committee.

The Advisory Group has been established to provide recommendations and advice to the National Prevention, Health Promotion and Public Health Council (the ''Council''). The Advisory Group shall provide assistance to the Council in carrying out its mission.

The Advisory Group membership shall consist of not more than 25 non-Federal members to be appointed by the President. The membership shall include a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine. There are currently 22 members of the Advisory Group. This will be the sixth meeting of the Advisory Group.

Public attendance at the web meeting is limited. Members of the public who wish to attend the web meeting must register by 12:00 p.m. EST June 19, 2012. Individuals should notify the designated contact to register for public attendance at *prevention.council@hhs.gov*. Individuals who plan to attend the web meeting and need special assistance and/or accommodations should notify the designated contact for the Advisory Group. The public will have opportunity to provide electronic written comments to the Advisory Group on the June 25, 2012 during the web meeting. Any member of the public who wishes to have printed material distributed to the Advisory Group for this scheduled web meeting should submit material to the designated point of contact for the Advisory Group no later than 12:00 p.m. EST June 14, 2012.

Dated: May 25, 2012.

Corinne M. Graffunder,

Alternate Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health, Office of the Surgeon General.

[FR Doc. 2012–13493 Filed 6–4–12; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10320]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title:* Health Care Reform Insurance Web Portal Requirements 45 CFR part 159; *Use:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

This information collection is mandated by Sections 1103 and 10102 of The Patient Protection and Affordability Care Act, Public Law 111–148 (ACA). Once all of the information is collected from insurance issuers of major medical health insurance (hereon referred to as issuers) and other affected parties, it will be displayed at *http://www.healthcare.gov*. Issuers are required to provide information quarterly, and healthcare.gov will be updated on a periodic schedule during each quarter. The information provided will help the general public make educated decisions about organizations providing private health care insurance.

In accordance with the provisions of the ACA referenced above, the U.S. Department of Health and Human Services created a Web site called healthcare.gov to meet these and other provisions of the law, and data collection was conducted for six months based upon an emergency information collection request. The interim final rule published on May 5, 2010 served as the emergency **Federal Register** Notice for the prior Information Collection Request (ICR). The Office of Management and Budget (OMB) reviewed this ICR under emergency processing and approved the ICR on April 30, 2010. The CCIIO will be submitting a new ICR to OMB for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

CCIIO is currently updating a system (hereon referred to as web portal) where State Departments of Insurance and issuers may log in using a custom user ID and password validation. The States may be asked to provide information on issuers in their State and various Web sites maintained for consumers. The issuers will be tasked with providing information on their major medical insurance products and plans. They will ultimately be given the choice to download a basic information template to enter data then upload into the web portal; to manually enter data within the web portal itself; or to submit .xml files containing their information. Once the

States and issuers submit their data, they will receive an email notifying them of any errors, and that their submission was received.

CCIIO is mandating the issuers verify and update their information on a quarterly basis and is requesting that States verify State-submitted information on an annual basis. In the event that an issuer enhances its existing plans, proposes new plans, or deactivates plans, the organization would be required to update the information in the web portal. Changes occurring during the three month quarterly periods will be allowed utilizing effective dates for both the plans and rates associated with the plans.

Information that is to be collected from State high risk pools will be collected from The National Association of State Comprehensive Health Insurance Plans (NASCHIP) at this time. Updates to this information may be submitted voluntarily. The estimated hour burden on issuers for the Plan Finder data collection in the first year is estimated as 90,400 total burden hours, or 113 hours per organization. This estimate is based on an assumed average of 450 individual plan issuers and 700 small group plan issuers per each of the four quarterly collections. It includes 30 hours per organization for training and communication. Additionally, for each of the issuers it includes 11 hours of preparation time, one hour of login and upload time, two hours of troubleshooting and data review and one half hour for attestation per organization per quarterly refresh. The estimated hour burden on the States is informed by the fact that they have already submitted the data once and only need to update. The overall hours estimate is 575, or 11.5 per Department of Insurance. This is premised on 2 hours of training and communication, 8 hours for data collection, and one half hour of submission.

Form Number: CMS–10320 (OMB#: 0938–1086); *Frequency:* Reporting—Annually/Quarterly; *Affected Public:* Health insurance issuers in the individual and small group markets; *Number of Respondents:* 801; *Total Annual Responses:* 3,051; *Total Annual Hours:* 90,400. (For policy questions regarding this collection contact Joe Mercer at 301–492–4265. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by August 6, 2012.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 30, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–13480 Filed 6–1–12; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Study of Coordination of Tribal TANF and Child Welfare Services.

OMB No.: New Collection.

Description: Study of Coordination of Tribal TANF and Child Welfare Services is sponsored by the Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families of the U.S. Department of Health and Human Services. The study examines the approaches and strategies utilized by tribes and tribal organizations that were awarded the grants for Coordination of Tribal TANF and Child Welfare Services to Tribal Families at Risk of Child Abuse or Neglect.

The descriptive study of these programs that serve tribal communities will document the way in which the tribal grantees are creating and adapting culturally relevant and appropriate approaches, systems, and programs to increase coordination and enhance service delivery to address child abuse and neglect. The study will also document challenges faced and lessons learned to inform the field of practice as well as policymakers and funders at various levels.

The proposed information collection activities consist of semi-structured interviews, conducted at each of the 14 tribal communities, and a grantee feedback survey on the usefulness of periodically held cross-grantee learning events.

Respondents: Program director(s), tribal TANF and child welfare staff and supervisors, program partners, and tribal leaders or elders. The information collection does not include direct interaction with individuals or families that receive the services.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total Annual burden hours
Interview Protocol for Program Staff	9	3	1.5	41
Interview Protocol for TANF and CW Staff	19	3	1	57
Interview Protocol for Tribal or Community Partners	9	3	.75	20
Interview Protocol for Tribal Leaders or Elders	9	3	1	27
Feedback Form for Community of Learning Events	10	5	.15	8
Estimated Total Annual Burden Hours:				153

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register.

Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: May 29, 2012.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2012–13490 Filed 6–4–12; 8:45 am]

BILLING CODE 4184–35–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Announcement of the Publication of Funding Opportunity Announcements Under the Runaway and Homeless Youth Act

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), ACF, HHS.

ACTION: Funding Opportunity Announcements for the Basic Center Program (BCP), Transitional Living Program (TLP)/Maternity Group Homes (MGH) are now available for application.

CFDA Number: 93.623, 93.550

Statutory Authority: Runaway and Homeless Youth Act, 42 U.S.C. sections 5701–5752, as amended by the Reconnecting Homeless Youth Act of 2008 Pub. L. 110–378.

SUMMARY: As required under 45 CFR 1351.17, ACF, ACYF, FYSB announces the publication of the following Funding Opportunity Announcements (FOAs) to the ACF Funding Opportunities Web site (*http://www.acf.hhs.gov/grants/index.html*) on 05/10/2012 and 05/11/2012:

Funding opportunity title	Funding opportunity number (FON)	Access to FOA	Application due date
Basic Center Program	HHS–2012–ACF–ACYF–CY–0303	*http://www.acf.hhs.gov/grants/open/foa/view/HHS–2012–ACF–ACYF–CY–0303.*	07/09/2012
Transitional Living Program and Maternity Group Homes.	HHS–2012–ACF–ACYF–CX–0289	*http://www.acf.hhs.gov/grants/open/foa/view/HHS–2012–ACF–ACYF–CX–0289.*	07/10/2012
Transitional Living Program and Maternity Group Homes.	HHS–2013–ACF–ACYF–CX–0531	*http://www.acf.hhs.gov/grants/open/foa/view/HHS–2013–ACF–ACYF–CX–0531.*	07/10/2012

Additional information and electronic submission of applications are available at: *www.Grants.gov*—FIND and APPLY.

FOR FURTHER INFORMATION CONTACT: Curtis O. Porter, Director, Runaway and Homeless Youth Program, Family and Youth Services Bureau, 1250 Maryland Ave. SW., Suite 800, Washington, DC 20024. Telephone: 202–205–8102; Email: *NCFY@acf.hhs.gov.*

Dated: May 22, 2012.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2012–13498 Filed 6–4–12; 8:45 am]

BILLING CODE 4184–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0197]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Emergency Shortages Data Collection System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 5, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0491. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Emergency Shortages Data Collection System—Section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (OMB Control Number 0910–0491)—Extension

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)), the Commissioner of Food and Drugs is authorized to implement general powers

(including conducting research) to carry out effectively the mission of FDA. Subsequent to the events of September 11, 2001, and as part of broader counterterrorism and emergency preparedness activities, FDA's Center for Devices and Radiological Health (CDRH) began developing operational plans and interventions that would enable CDRH to anticipate and respond to medical device shortages that might arise in the context of Federally declared disasters/emergencies or regulatory actions. In particular, CDRH identified the need to acquire and maintain detailed data on domestic inventory, manufacturing capabilities, distribution plans, and raw material constraints for medical devices that would be in high demand, and/or would be vulnerable to shortages in specific disaster/emergency situations or following specific regulatory actions. Such data could support prospective risk assessment, help inform risk mitigation strategies, and support real-time decision-making by the Department of Health and Human Services during actual emergencies or emergency preparedness exercises.

FDA developed ''The Emergency Medical Device Shortages Program Survey'' in 2002 to support the acquisition of such data from medical device manufacturers. In 2004, CDRH changed the process for the data collection, and the electronic database in which the data were stored was formally renamed the ''Emergency Shortages Data Collection System'' (ESDCS). Recognizing that some of the data collected may be commercially confidential, access to the ESDCS is restricted to members of the CDRH Emergency Shortage Team (EST) and senior management with a need-to-know. At this time, the need-to-know senior management personnel are limited to two senior managers. Further, the data are used by this defined group only for decision-making and planning in the context of a Federally declared disaster/emergency, an official emergency preparedness exercise, or a potential public health risk posed by non-disaster-related device shortage.

The data procurement process consists of an initial scripted telephone call to a regulatory officer at a registered manufacturer of one or more key medical devices tracked in the ESDCS. In this initial call, the EST member describes the intent and goals of the data collection effort and makes the specific data request. After the initial call, one or more additional follow-up calls and/or electronic mail correspondence may be required to verify/validate data sent from the manufacturer, confirm receipt, and/or request additional detail. Although the regulatory officer is the agent who the EST member initially contacts, regulatory officers may designate an alternate representative within their organization to correspond subsequently with the CDRH EST member who is collecting or verifying/validating the data.

Because of the dynamic nature of the medical device industry, particularly with respect to specific product lines, manufacturing capabilities, and raw material/subcomponent sourcing, it is necessary to update the data in the ESDCS at regular intervals. The EST makes such updates on a regular basis, but makes efforts to limit the frequency of outreach to a specific manufacturer to no more than every 4 months.

The ESDCS will only include those medical devices for which there will likely be high demand during a specific emergency/disaster, or for which there are sufficiently small numbers of manufacturers such that disruption of manufacture or loss of one or more of these manufacturers would create a shortage.

In the **Federal Register** of March 8, 2012 (77 FR 14020), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act Section	Number of respondents	Number of responses per response	Total annual responses	Average burden per response (hours)	Total hours
903(d)(2)	125	3	375	0.5	188

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based the burden estimates in table 1 of this document on past experience with direct contact with the medical device manufacturers and anticipated changes in the medical device manufacturing patterns for the specific devices being monitored. FDA estimates that approximately 125 manufacturers would be contacted by telephone and/or electronic mail 3 times per year either to obtain primary data or to verify/validate data. Because the requested data represent data elements that are monitored or tracked by manufacturers as part of routine inventory management activities, it is anticipated that for most manufacturers, the estimated time required of manufacturers to complete the data request will not exceed 30 minutes per request cycle.

Dated: May 30, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–13524 Filed 6–4–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Voluntary Partner Surveys To Implement Executive Order 12862 in the Health Resources and Services Administration (OMB No. 0915–0212)—[Revision]

In response to Executive Order 12862, the Health Resources and Services Administration (HRSA) is proposing to conduct voluntary customer surveys of its partners to assess strengths and

weaknesses in program services and processes. HRSA partners are typically State or local governments, health care facilities, health care consortia, health care providers, and researchers. HRSA is requesting a generic approval from OMB to conduct the partner surveys.

Partner surveys to be conducted by HRSA might include, for example, mail or telephone surveys of grantees to determine satisfaction with grant processes or technical assistance provided by a contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve services and processes. Focus groups may also be used to gain partner input into the design of mail and telephone surveys. Focus groups, in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred data collection methods.

A generic approval will permit HRSA to conduct a limited number of partner surveys without a full-scale OMB review of each survey. If generic approval is granted, information on each individual partner survey will not be published in the **Federal Register**.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
In-Class Evaluations	40,000	1	40,000	.05	2,000
Mail/Telephone Surveys	12,000	1	12,000	.25	3,000
Focus Groups	250	1	250	1.5	375
Total	52,250				5,375

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: May 30, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–13534 Filed 6–4–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Maternal, Infant, and Early Childhood Home Visiting Program FY 2012 Competitive Funding Opportunity Announcement (OMB No. 0915–xxxx)—[New]

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (the Act). Section 2951 of the Act amended Title V of the Social Security Act by adding a new section, 511, which authorized the creation of the Maternal, Infant, and Early Childhood Home Visiting Program (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills docid=f:h3590enr.txt.pdf,* pages 216–225). The Act responds to the diverse needs of children and families in communities at risk and provides an unprecedented opportunity for collaboration and partnership at the federal, state, and community levels to improve health and development outcomes for at-risk children through evidence-based home visiting programs.

Under this program $91 million was made available to eligible States and territories by formula in FY 2010, and in FY 2011, $125 million was made available by formula. Additionally, a competitive funding opportunity announcement (FOA) was issued in June 2011 to allow interested States to apply for one of two possible grant types: Development Grants and Expansion Grants. Development Grants are intended to support States and jurisdictions with modest evidence-based home visiting programs to expand the depth and scope of these efforts. Expansion Grants are intended to recognize States and jurisdictions that have already made significant progress towards a high-quality home visiting program or towards embedding their home visiting program into a comprehensive, high-quality early childhood system. Of State applicants to the competitive grant program, 13 States were awarded Development Grants, and nine States were awarded Expansion Grants. Currently, the 54 States and jurisdictions participating in the formula-funded program have begun implementing their State Home Visiting Plans.

Because the FY 2011 formula grants were for 2 years, no additional FOA will be issued this year for such grants, but the State grantees will be completing non-competing progress reports in order to secure the release of their FY 2012 allocations. The 22 States that received competitive grant funding have also begun to carry out these proposed programs, integrating them with their formula-based programming. These competitive grants are for 2 years (Development Grants) and 4 years (Expansion Grants) respectively, and those grantees will also be completing non-competitive progress reports for FY 2012.

An additional $83.9 million is available in FY 2012 for the 2-year Development and Expansion Grants. Ten Expansion Grants, totaling $71.9 million, have been awarded by rank order from among high-ranking applicants under the FY 2011 announcement. An FY 2012 competitive FOA will announce approximately $12 million for new Development Grants. The intent of these Development Grants, as announced in FY 2011, is to support States and jurisdictions with modest evidence-based home visiting programs to expand the depth and scope of these efforts, with the intent to develop the infrastructure and capacity to sustain

successful home visiting programs. It is anticipated that between four and eight Development Grants will be awarded. The total grant award may range between $1 million to $3 million annually. Applicants may apply for a ceiling amount of up to $3 million per year. The project period is 2 years.

The annual estimate of burden associated with the FY2012 competitive Development Grant Funding Opportunity Announcement is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Introduction	20	1	20	10	200
Needs Assessment	20	1	20	14	280
Methodology	20	1	20	31	620
Work Plan	20	1	20	31	620
Resolution of Challenges	20	1	20	14	280
Evaluation and Technical Support Capacity	20	1	20	48	960
Organizational Information	20	1	20	10	200
Additional Attachments	20	1	20	13	260
Total	160		160	171	3,420

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: May 29, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–13531 Filed 6–4–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Enrollment and Re-Certification of Entities in the 340B Drug Pricing Program (OMB No. 0915–0327)—[Revision]

Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula. Covered entities which choose to participate in the section 340B Drug Pricing Program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

In response to the statutory mandate of section 340B(a)(9) of the PHS Act to notify manufacturers of the identities of covered entities and the mandate of section 340B(a)(5)(A)(ii) to establish a mechanism to ensure against duplicate discounts and the ongoing responsibility to administer the 340B Drug Pricing Program while maintaining efficiency, transparency and integrity, the HRSA Office of Pharmacy Affairs (OPA) developed a process of registration of covered entities to enable it to address those mandates.

Enrollment/Registration

To enroll and certify the eligible federally funded grantees and other safety net health care providers, OPA requires entities to submit administrative information (e.g. shipping and billing arrangements, Medicaid participation, etc.), certifying information and signatures from appropriate grantee level or entity level authorizing officials and State/local government representatives. The purpose of this registration information is to determine eligibility for the 340B Drug Pricing Program. This information is entered into the 340B database by entities and verified by OPA staff according to 340B Drug Pricing Program requirements. Accurate records are critical to implementation of the 340B Drug Pricing Program legislation, especially to prevent diversion and duplicate discounts. To maintain accurate records, OPA also requires that entities recertify eligibility annually and that they notify the program of updates to any administrative information that they submitted when initially enrolling into the program. The burden requirement for these processes is low for recertification and minimal for submitting change requests.

Contract Pharmacy Self-Certification

In order to ensure that drug manufacturers and drug wholesalers recognize contract pharmacy arrangements, covered entities that elect to utilize one or more contract pharmacies are also required to submit general information about the arrangements and certifications that signed agreements are in place with those contract pharmacies.

The estimates of annualized burden are as follows:

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HOSPITAL ENROLLMENT, ADDITIONS & RECERTIFICATIONS					
340B Program Registrations & Certifications for Hospitals	546	1	546	2.00	1092.0
Certifications to Enroll Hospital Outpatient Facilities	606	1	606	0.50	303.0
Hospital Annual Re-Certifications	4842	1	4842	0.50	2421.0
REGISTRATIONS AND RECERTIFICATIONS FOR ENTITIES OTHER THAN HOSPITALS					
340B Registrations for Community Health Centers	253	1	253	1.00	253.0
340B Registrations for Family Planning Programs, STD/TB Clinics and Various Other Eligible Entity Types	353	1	353	1.00	353.0
Community Health Center Annual Re-Certifications	4507	1	4507	0.50	2253.5
Family Planning Annual Re-Certifications	3879	1	3879	0.50	1939.5
STD & TB Annual Re-Certifications	2754	1	2754	0.50	1377.0
Annual Re-Certification for Entities Other Than Hospitals, Community Health Centers, Family Planning, STD or TB Clinics	1174	1	1174	0.50	587.0
OTHER INFORMATION COLLECTIONS					
Submission of Administrative Changes for Any Covered Entity	2500	1	2500	0.50	1250.0
Submission of Administrative Changes for Any Manufacturer	350	1	350	0.50	175.0
CONTRACTED PHARMACY SERVICES REGISTRATION & RECERTIFICATIONS					
Contracted Pharmacy Services Registration	2500	1	2500	1.00	2500.0
TOTAL	24,264		24,264		14,504.0

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: May 29, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–13617 Filed 6–4–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0069]

Assessment Questionnaire—IP Sector Specific Agency Risk Self Assessment Tool (IP–SSARSAT)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day Notice and request for comments; New Information Collection Request, 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Sector Outreach and Programs Division (SOPD), previously named the Sector Specific Agency Executive Management Office, will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). NPPD is soliciting comments concerning new Information Collection Request—Assessment Questionnaire—IP Sector Specific Agency Risk Self Assessment Tool (IP–SSARSAT). DHS previously published this ICR in the **Federal Register** on December 29, 2011, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 5, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, DHS, Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2011–0069 and may be submitted by *one* of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Jay Robinson, DHS/NPPD/IP/SOPD, *jay.robinson@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: To assist SOPD in identifying and assessing the vulnerabilities and risks pertaining to the critical infrastructures, owner-operators and/or security managers often volunteer to conduct an automated self risk assessment. The requested questionnaire information is necessary to facilitate electronic execution of SOPD's risk assessment to focus protection resources and activities on those assets, systems, networks, and functions with the highest risk profiles. Currently, there is no known data collection that includes multiple critical nodes with sector-specific related criteria. When the user logs into the system, the user will be prompted with the assessment questionnaire. Once the user begins the assessment, the only information required to be submitted to (and shared with) DHS before completing the assessment is venue identification information (e.g., contact information, address, latitude/longitude, venue type, or capacity). A user can elect to share the entire completed assessment with DHS. The assessment information is protected as Protected Critical Infrastructure Information. The information from the assessment will be used to assess the risk to the evaluated entity (e.g., calculate a vulnerability score by threat, evaluate protective/mitigation measures relative to vulnerability, calculate a risk score, or report threats presenting highest risks). The information will also be combined with data from other respondents to provide an overall sector perspective (e.g., report additional relevant protective/mitigation measures for consideration).

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Sector Outreach and Programs Division.

Title: Assessment Questionnaire—IP Sector Specific Agency Risk Self Assessment Tool (IP–SSARSAT).

OMB Number: 1670–NEW.

Frequency: On occasion.

Affected Public: Private Sector.

Number of Respondents: 4,000 respondents.

Estimated Time per Respondent: 8 hours.

Total Burden Hours: 32,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $14,440.00.

Dated: May 24, 2012.

Scott Libby,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2012–13597 Filed 6–4–12; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0424]

Great Lakes Pilotage Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applicants.

SUMMARY: The Coast Guard seeks applications for membership on the Great Lakes Pilotage Advisory Committee (GLPAC). The GLPAC provides advice and makes recommendations to the Secretary of Homeland Security and the Coast Guard on matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies.

DATES: Applicants should submit a cover letter and resume in time to reach David Dean, the Alternate Designated Federal Officer (ADFO) on or before July 1, 2012.

ADDRESSES: If you wish to apply for membership, your resume should be submitted by one of the following methods:

- *E-mail: David.J.Dean@uscg.mil.*
- *Fax:* (202) 372–1909 Attn: Mr. David Dean, GLPAC ADFO.
- *Mail:* Mr. David Dean, GLPAC ADFO, Commandant (CG–WWM–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Stop 7580, Washington, DC 20593–7580.

FOR FURTHER INFORMATION CONTACT: Mr. David Dean, GLPAC ADFO, Commandant (CG–WWM–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Stop 7580, Washington, DC 20593–7580; telephone 202–372–1533, fax 202–372–1909, or email at *David.J.Dean@uscg.mil.*

SUPPLEMENTARY INFORMATION: The GLPAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA) 5 U.S.C. (Pub. L. 92–463) and under the authority of 46 U.S.C. 9307, as amended. GLPAC expects to meet twice per year but may also meet at other times at the call of the Secretary. Further information about GLPAC is available by searching on ''Great Lakes Pilotage Advisory Committee'' at *http://www.faca.gov.*

The Committee consists of seven members appointed by and serving at the pleasure of the Secretary of Homeland Security upon recommendation by the Coast Guard Commandant. To be eligible, applicants should have particular expertise, knowledge, and experience regarding the regulations and policies on the pilotage of vessels on the Great Lakes, and at least 5 years of practical experience in maritime operations, except as noted for the Special Government Employee position.

We will consider applicants for two positions that expire or become vacant on September 30, 2012.

- One member representing the interests of vessel operators that contract for Great Lakes pilotage services. This appointment will be as a representative member.
- One member with a background in finance or accounting, who must be recommended to the Secretary by a unanimous vote of the other members of the Committee and may be appointed without regard to the requirement that each member have five years of practical experience in maritime operations. This appointment will be as a Special Government Employee as defined in section 202(a) of Title 18 United States Code. As candidates for appointment as SGEs, applicants are required to complete Confidential Financial Disclosure Reports (OGE Form 450). Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the *Privacy Act* (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*www.oge.gov*), or by contacting the individual listed above. Applications which are not accompanied by a completed OGE Form 450 will not be considered.

Members shall serve terms of office of up to three years and may be reappointed. All members serve at their own expense but may receive reimbursement for travel and per diem from the Federal Government.

Registered lobbyists are not eligible to serve on federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the *Lobbying Disclosure*

Act of 1995 (Pub. L. 110–81, as amended).

The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

To visit our online docket, go to *http://www.regulations.gov* enter the docket number for this notice (USCG–2012–0424) in the Search box, and click ''Go''. Please do not post your resume on this site. During the vetting process, applicants may be asked to provide date of birth and social security number.

Dated: May 23, 2012.

D.A. Goward,

Director Marine Transportation Systems, U.S. Coast Guard.

[FR Doc. 2012–13517 Filed 6–4–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5609–N–06]

Notice of Proposed Information Collection: Comment Request; National Resource Network

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 6, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Brittany Gibbs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–2826 (this is not a toll free number); email address: *SC2Network@hud.gov* for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: National Resource Network.

OMB Control Number, if applicable: None.

Description of the need for the information and proposed use: This is a new data collection for application and reporting information related to the proposed National Resource Network. The U.S. Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55, approved Nov. 18, 2011) funds technical assistance for HUD programs under the Transformation Initiative (TI) account. Through the SC2 National Resource Network, HUD and its partners will offer a central portal to connect America's most economically distressed local communities to national and local experts with wide-ranging experience and skills.

Agency form numbers, if applicable: SF–424, SF–424supp, SF–LLL, SF 269a, HUD–424CB, HUD–424CBW, HUD–2880, HUD–40040, HUD 40044, and a narrative response to application rating factors.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 2,914. The number of respondents is 30, the frequency of response is 2.2, and the burden hour per response is 212.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 29, 2012.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–13593 Filed 6–4–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5604–C–08]

Notice of Proposed Information Collection for Public Comment; Continuum of Care Homeless Assistance Grant Application—Continuum of Care Application

AGENCY: Office of Assistant Secretary for Community Planning and Development.

ACTION: Correction, notice.

SUMMARY: On May 9, 2012, at 77 FR 27243, HUD published a proposed information collection for public comment entitled Continuum of Care of Homeless Assistance Grant Application-Continuum of Care Application. The comment due date should be 60 days after publication in the **Federal Register** instead of 7 day comment due date.

DATES: Comment Due Date: July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1590 (This is not a toll-free number).

Dated: May 29, 2012.

Clifford D. Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2012–13594 Filed 6–4–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Sport Fishing and Boating Partnership Council Charter

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), following

consultation with the General Services Administration, the Secretary of the Interior has renewed the Sport Fishing and Boating Partnership Council (Council) charter for 2 years.

DATES: The charter will be filed with the Senate and House of Representatives and the Library of Congress on June 20, 2012.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, U.S. Fish and Wildlife Service, (703) 358–2336, *doug_hobbs@fws.gov.*

SUPPLEMENTARY INFORMATION: The Council conducts its operations in accordance with the provisions of FACA. It reports to the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service. The Council functions solely as an advisory body. The Council's duties consist of, but are not limited to:

a. Providing advice that will assist the Secretary in compliance with the Fish and Wildlife Act of 1956.

b. Fulfilling responsibilities established by Executive Order 12962:

(1) Monitoring specific Federal activities affecting aquatic systems and the recreational fisheries they support.

(2) Reviewing and evaluating the relation of Federal policies and activities to the status and conditions of recreational fishery resources.

(3) Preparing an annual report of its activities, findings, and recommendations for submission to the National Recreational Fisheries Coordination Council.

c. Recommending policies or programs to increase public awareness and support for the Sport Fish Restoration and Boating Trust Fund.

d. Recommending policies or programs that foster conservation and ethics in recreational fishing and boating.

e. Recommending policies or programs to stimulate angler and boater participation in the conservation and restoration of aquatic resources through outreach and education.

f. Advising about how the Secretary can foster communication and coordination among government, industry, anglers, boaters, and the public.

The Council may consist of no more than 18 members and up to 16 alternates appointed by the Secretary for 2-year terms. The Director of the U.S. Fish and Wildlife Service, and the President of the Association of Fish and Wildlife Agencies (AFWA) are ex officio members. Appointees are selected from among, but not limited to, the following national interest groups:

(a) State fish and wildlife resource management agencies (2 members—one a Director of a coastal State and one a Director of an inland State);

(b) Saltwater and freshwater recreational fishing organizations;

(c) Recreational boating organizations;

(d) Recreational fishing and boating industries;

(e) Recreational fishery resources conservation organizations;

(f) Tribal resource management organizations;

(g) Aquatic resource outreach and education organizations; and

(h) The tourism industry.

Members must be senior-level representatives of recreational fishing, boating, and aquatic resources conservation organizations, and must have the ability to represent their designated constituencies.

The Council functions solely as an advisory body and in compliance with provisions of FACA (5 U.S.C. Appendix 2). This notice is published in accordance with section 9a(2) of FACA. The certification of renewal is published below.

Certification: I hereby certify that the Sport Fishing and Boating Partnership Council is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k), the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and Executive Order 12962 of June 7, 1995–Recreational Fisheries (60 FR 30769, June 7, 1995), as amended by Executive Order 13474 of September 26, 2008 (73 FR 57229, October 1, 2008).

Dated: May 24, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–13571 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for Proposed Strategies for Lake Trout Population Reductions To Benefit Native Fish Species, Flathead Lake, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead Agency, with the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation as a Cooperating Agency, will be gathering information needed for an Environmental Impact Statement (EIS) for proposed fisheries management in Flathead Lake, Montana.

DATES: Written comments on the scope and implementation of this proposal should arrive by July 5, 2012.

ADDRESSES: You may mail, hand carry, or fax written comments to either Tom McDonald, Division Manager, Division of Fish, Wildlife, Recreation, and Conservation, Confederated Salish and Kootenai Tribes, Natural Resources Department, P.O. Box 278, Pablo, Montana, 59855, fax (406) 883–2848; or Rose Leach, NEPA Program Manager, Confederated Salish and Kootenai Tribes, same mailing address as above, fax (406) 676–2605.

FOR FURTHER INFORMATION CONTACT: Tom McDonald, (406) 675–2700, extension 7288; email: *tomm@cskt.org* or Rose Leach, (406) 675–2700, extension 6204; email: *rosel@cskt.org.*

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of BIA approval of a proposal to reduce non-native lake trout abundance in Flathead Lake to benefit native fish populations in Flathead Basin. Direction to manage non-native fish populations to improve conditions for native fish species comes from the Flathead Lake and River Fisheries Co-Management Plan (2000), Bull Trout Restoration Plan (2000), Cutthroat Memorandum of Understanding and Conservation Agreement (2007), and Flathead Subbasin Plan: Part III, Flathead River Subbasin Management Plan (2004).

Stakeholders from the Flathead Basin have been gathered into an interdisciplinary team that includes Confederated Salish and Kootenai Tribes, Montana Department of Fish, Wildlife and Parks, US Fish and Wildlife Service, National Park Service, US Forest Service, US Geological Survey, local fishing guides and anglers, Trout Unlimited, University of Montana, and Montana Department of Natural Resources and Conservation. The team has met since 2010, to draft issues and develop alternatives.

The range of alternatives considered thus far includes (1) no action (maintain the status quo of lake trout harvest from general harvest and fishing contests); (2) reduce lake trout numbers to 25% of 2010 population levels; (3) reduce lake trout numbers to 50% of 2010 population levels; and (4) reduce lake trout numbers to 90% of 2010 population levels.

Proposed alternatives with percent reductions (action alternatives) will use

general harvest, fishing contests, and targeted gill and trap netting to achieve proposed lake trout reduction targets. The proposed action alternatives will be implemented indefinitely into the future, to both achieve and maintain lake trout population reductions and will include implementation and effectiveness monitoring at 5-year intervals, so that harvest strategies can be adapted to future conditions.

Proposed action alternatives will minimize by-catch mortality of non-target fish species, based on decades of work in Flathead Lake and references from other systems.

Suggested annual lake trout harvest levels have been derived from an age-structured stochastic simulation model based on decades of local population data. Annual harvest levels for this proposed project were designed to be implemented indefinitely into the future, to first achieve and then maintain reductions in the overall lake trout population as follows: 113,000 annual lake trout harvest for 25% reduction, 143,000 annual lake trout harvest for 50% reduction, and 188,000 annual lake trout harvest for 90% reduction.

Issues to be covered during the scoping process may include, but not be limited to: Biological resources (lake trout, bull trout, westslope cutthroat trout, lake whitefish, pygmy whitefish, yellow perch, and invertebrates including Mysis shrimp), recreation, fishing, cultural resources, socioeconomic conditions, grizzly bears, aquatic birds, environmental justice and Indian trust resources.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section of this notice, during regular business hours, Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with sections 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of Interior Regulations (43 CFR Part 46), implementing the procedural requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs, by part 209 of the Departmental Manual.

Dated: May 23, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–13557 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14901–A; LLAK965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to Napakiak Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Napakiak Corporation. The lands are in the vicinity of Napakiak, Alaska, and are located in:

Seward Meridian, Alaska

T. 8 N., R. 73 W.,
Secs. 10 and 11.
Containing approximately 80 acres.
T. 5 N., R. 74 W.,
Sec. 28.
Containing 0.52 acres.

Aggregating approximately 80.52 acres.

Notice of the decision will also be published four times in the *Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until July 5, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from the Bureau of Land Management Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM.

The BLM will reply during normal business hours.

Ralph L. Eluska, Sr.,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2012–13582 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK–963000–L1410000- ET0000; AA–80005]

Notice of Application for Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting the Secretary of the Interior to extend the duration of Public Land Order (PLO) No. 7393 for an additional 15-year term. PLO No. 7393 withdrew approximately 600 acres of National Forest System land from location and entry under the United States mining laws, to aid in making high quality rock and gravel from the Spencer Glacier Material Site available to nearby communities for private and public works projects. The withdrawal created by PLO No. 7393 will expire on May 27, 2014, unless it is extended.

This notice also gives an opportunity to comment on the application and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by September 4, 2012.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West Seventh Avenue, No. 13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Mark Fullmer, BLM Alaska State Office, 907–271–5699 or at the address above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The USFS has filed an application requesting that the Secretary of the Interior extend PLO No. 7393 (64 FR 29064 (1999)), which withdrew 600 acres of National Forest System land in the Chugach National Forest from location and entry under the United States mining laws, for an additional 15-year term, subject to valid existing rights. PLO No. 7393 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the USFS Spencer Glacier Material Site in order to make high quality rock and gravel available to nearby communities for private and public works projects.

A complete description, along with all other records pertaining to the extension, can be examined in the BLM Alaska State Office at the address shown above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the Federal interest in the Spencer Glacier Material Site.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period until September 4, 2012, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address indicated above. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Alaska State Director at the address indicated above by September 4, 2012. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 810 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3120).

Authority: 43 CFR 2310.3–1(b).

Mark Fullmer,

Acting Chief, Branch of Lands and Realty.

[FR Doc. 2012–13665 Filed 6–4–12; 8:45 am]

BILLING CODE 1410–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG12–0200]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 26 S., R. 10 W., accepted May 4, 2012.
T. 7 S., R. 3 E., accepted May 4, 2012.
T. 15 S., R. 6 W., accepted May 18, 2012.

Washington

T. 23 N., R. 9 W., accepted May 18, 2012.
T. 23 N., R. 10 W., accepted May 18, 2012.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Timoty J. Moore,

Acting Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2012–13560 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00100 LF1000000.HT0000 LXSS020D0000 4500031290]

Notice of Intent To Prepare Environmental Documents and Proposed Plan Amendments for Off-Highway Vehicle Use Designations in the Kuna and Cascade Land Use Plans, Ada and Payette Counties, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Boise District Office, Four Rivers Field Office, Boise, Idaho, intends to prepare environmental assessments (EA) that will evaluate the effects of amending the 1983 Kuna Management Framework Plan (KMFP) and the 1988 Cascade Resource Management Plan (CRMP) to address off-highway vehicle (OHV) use designations. By this notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the KMFP and CRMP amendments with associated EAs. The dates and locations of any scoping meetings will be announced at least 15 days in advance through local news media, mailings to interested individuals, and on the BLM Idaho Web site *http://www.blm.gov/id.* In order to be included in the analyses, all comments on issues may be submitted in writing until July 5, 2012 or 30 days after the last public meeting, whichever is later.

ADDRESSES: Submit comments on issues and planning criteria related to the KMFP and CRMP amendments and associated EAs by any of the following methods:

- *Email:* *BLM_ID_FRFO_OHV@blm.gov.*
- *Fax:* (208) 384–3326.
- *Mail:* BLM Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, ATTN: Larry Ridenhour.

Documents related to this proposal may be examined at the Boise District Office or online at *http://www.blm.gov/id/st/en/fo/four_rivers.html.* All comments must contain the name and address of the submitter, regardless of delivery method, in order to be considered.

FOR FURTHER INFORMATION CONTACT: Terry Humphrey, Four Rivers Field Manager, 3948 Development Avenue, Boise, Idaho 83705 or phone 208–384–3430. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours (8:00 a.m.–4:30 p.m.). FIRS is available 24 hours a day, 7 days a week, to leave a message or a question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM Four Rivers Field Office, Boise, Idaho, intends to prepare Land Use Plan amendments for the 1983 KMFP and 1988 CRMP and hereby announces the beginning of the scoping process and seeks public input on issues and planning criteria to be addressed in the EAs. The KMFP and CRMP planning areas are located in Ada and Payette counties, Idaho, and encompass approximately 1,416,000 acres of public land. The proposed actions, however, would affect no more than 7,670 acres within these planning areas. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning processes. Preliminary issues for the land use plan amendment areas have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. Known issues include special status species (i.e., slickspot peppergrass, Packard's milkvetch, and southern Idaho ground squirrel), vegetation communities, special area designations, cultural resources, soils, recreational uses, livestock grazing, and unauthorized OHV trespass. Preliminary planning criteria include:

1. Compliance with FLPMA, NEPA, and all other applicable laws, regulations, and policies; and
2. Program-specific guidance for decisions at the land use planning level in accordance with policies in the BLM Land Use Planning Handbook, H–1601–1 and Manual Section 1626, Travel and Transportation Management.

Public participation and collaboration will be an integral part of the planning process. The BLM will strive to make decisions in the plan amendments that are compatible with existing plans and policies of affected local, State, and Federal agencies and affected Native American tribes, as long as the decisions are also consistent with the purposes, policies, and programs of Federal law and regulations applicable to public lands. The planning process will provide for ongoing consultation with Native American tribes and strategies for protecting recognized traditional uses (e.g. gathering of traditionally used plant materials) and impacts on Indian trust assets. The plan amendments will incorporate, where appropriate, management decisions brought forward from existing planning documents. The BLM will work collaboratively with cooperating agencies and all other interested groups, agencies and individuals. Geographic Information System (GIS) and metadata information will meet Federal Geographic Data Committee standards, as required by Executive Order 12906. All other applicable BLM data standards will also be followed. The BLM will use an interdisciplinary approach to develop the analyses in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: rangeland management, outdoor recreation, botany, archaeology, wildlife and fisheries, lands and realty, soils, sociology, and economics.

The Big Willow Route Designation and the Blacks Creek Reservoir Area Designation will be considered in separate EAs, each of which could result in plan amendments. The 1988 CRMP addresses public land resources and resource use on 487,000 acres in southwestern Idaho, including the Big Willow area. The CRMP provides for OHV uses on public land by designating use levels (i.e., open; limited to designated or existing roads and trails; closed) in the planning area. The CRMP also provides for the protection of candidate and sensitive plants by excluding surface and subsurface rights-of-way in areas known to contain them.

The KMFP addresses public land resources and resource use on 929,000 acres in southwestern Idaho, including the Black Creek Reservoir area. The KMFP, like the CRMP, designates OHV use levels on public land. More information is provided below for each of the proposed actions and how they might affect current plan guidance.

A. The Big Willow Route Designation would affect public lands 14 miles northwest of Emmett, Idaho, in Payette County. The CRMP limits motorized travel in the area to designated or existing roads and trails. The OHV designations would be amended as a result of a route designation decision. Additionally, future travel management development, such as parking areas, trailheads, and trail construction corridors on public land, may also be considered in order to facilitate travel through public land and provide trail-based recreational opportunities. The BLM needs to be responsive to current and future demands for recreational opportunities for access to support livestock operations, utilities, and private in-holdings. These needs would be compatible with management actions that maintain and enhance habitat for Packard's milkvetch, a candidate species under the Endangered Species Act. The public lands affected by the Big Willow Route Designation are located in:

Boise Meridian, Payette County, Idaho

T. 8 N., R. 2 W.,

Secs. 5 to 7, inclusive.
T. 9 N., R. 2 W.,
Sec. 19, and secs. 27 to 34, inclusive.
T. 8 N., R. 3 W.,
Secs. 1 to 4 inclusive, secs. 8 to 10, inclusive, and sec. 12.
T. 9 N., R. 3 W.,
Secs. 25, 26, 34 and 35.

The areas described contain approximately 7,415 acres.

B. The Blacks Creek Reservoir Area Designation would affect public land 11 miles southeast of Boise, Idaho, in Ada County. The KMFP designates the area as open to OHV use. The OHV designation would be amended as a result of a route designation decision. Additionally, visitor use development, such as parking areas, trailheads, and future trail construction corridors on public land, may also be considered in order to facilitate non-motorized recreational uses and administrative access.

The public lands affected by the Blacks Creek Reservoir Area Designation are located in:

Boise Meridian, Ada County, Idaho

T. 1 N., R. 3 E.,
Portion of secs. 5 and 6 lying north of East Kuna-Mora Road.
T. 2 N., R. 3 E.,
Sec. 31.

The areas described contain approximately 255 acres.

The public is encouraged to help identify any management questions and concerns that should be addressed in the plan amendments. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. Federal, State, and local agencies, along with other stakeholders who may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting or using one of the methods listed in the **ADDRESSES** section above. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The minutes and list of attendees for any scoping meeting(s) will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views s/he expressed. The BLM will evaluate identified issues to be addressed in the plan amendments, and will place them into one of three categories:

1. Issues to be resolved in the plan amendments;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of the plan amendments.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Terry A. Humphrey,
Four Rivers Field Manager.

[FR Doc. 2012–13581 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY921000, L14300000.ET0000; WYW 167436]

Public Land Order No. 7790; Withdrawal of Public Lands for the Parting of the Ways National Historic Site; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 40 acres of public land from settlement, sale, location, and entry under the general land laws, including the United States mining laws, for a period of 20 years to protect The Parting of the Ways National Historic Site. The land has been and will remain open to mineral leasing.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Diane Schurman, Realty Specialist, Bureau of Land Management (BLM), Wyoming State Office, 5353 N. Yellowstone Road, Cheyenne, Wyoming 82009, 307–775–6189 or via email at *dschurma@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours per day, 7 days per week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM manages the land to protect the nationally significant historic site. The historic site has pristine integrity, both in terms of physical trail remains and environmental setting, and is listed on the National Register of Historic Places. The Parting of the Ways National Historic Site is an historic fork in the Emigrant Trail (Oregon Trail, Mormon-Pioneer Trail, California Trail, and the Pony Express Trail) where emigrants had to decide whether to stay on the main route and head southwest towards Fort Bridger or veer right and cross some 50 waterless miles, known as the Sublette Cutoff.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described public land is hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect The Parting of the Ways National Historic Site:

Sixth Principal Meridian

T. 26 N., R. 104 W.,
Sec. 4, E½SE¼NW¼ and W½SW¼NE¼.

The area described contains 40 acres in Sweetwater County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Authority: 43 CFR 2310.3–3.

Dated: May 22, 2012.

Rhea S. Suh,
Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2012–13601 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000.L14300000.ET0000; WYW 28908]

Public Land Order No. 7791; Extension of Public Land Order No. 6928; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This Order extends the withdrawal created by Public Land Order No. 6928 for an additional 20-year period. This extension is necessary to continue the protection of the significant capital investments and improvements made by the U.S. Forest Service associated with the Crandall Creek Administrative Site.

DATE: *Effective Date:* May 29, 2012.

FOR FURTHER INFORMATION CONTACT: Daniel R. Aklufi, U.S. Forest Service, Region 2, Supervisors Office, 808 Meadow Lane Avenue, Cody, Wyoming 82414, 307–578–5151, or email *daklufi@fs.fed.us,* or Diane Schurman, Bureau Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, 307–775–6189, or email *dschurma@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which this withdrawal was made requires this extension in order to continue to protect U.S. Forest Service significant capital improvements associated with the Crandall Creek Administrative Site. The withdrawal extended by this Order will expire on May 28, 2032, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary of the Interior determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6928 (57 FR 22659, (1992)), which withdrew 30 acres of National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the U.S. Forest Service's capital investments at the Crandall Creek Administrative Site, is hereby extended for an additional 20-year period until May 28, 2032.

Authority: 43 CFR 2310.3–3(b)(1).

Dated: May 24, 2012.

Anne J. Castle,

Assistant Secretary—Water and Science.

[FR Doc. 2012–13605 Filed 6–4–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L1430000–FQ0000–HAG12–0150; WAOR–22073 and 22465]

Public Land Order No. 7789; Partial Withdrawal Revocation and Transfer of Administrative Jurisdiction for Fort Vancouver National Historic Site, WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a withdrawal created by a Secretarial Order, General Orders, and an Executive Order insofar as they affect approximately 33.75 acres of public land reserved for military purposes on behalf of the United States Department of the Army for the East and South Vancouver Barracks in Washington. The land is no longer needed for the purpose for which it was withdrawn. This order also transfers administrative jurisdiction of the land to the National Park Service to be managed as part of the Vancouver National Historical Site.

DATES: *Effective Date:* May 22, 2012.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, Bureau of Land Management, Oregon State Office, 333 SW. 1st Avenue, Portland, Oregon 97204; 503–808–6155. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7-days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The United States Department of the Army has determined that 33.75 acres of public land is excess to its needs and has requested a partial revocation of the withdrawal. Pursuant to Public Law 87–78, (75 Stat. 196 (1961)), as amended, the land is found suitable for transfer to the National Park Service to be administered as part of the Fort Vancouver National Historical Site.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and Public Law 87–78 (75 Stat. 196 (1961)), it is ordered as follows:

1. The Secretarial Order dated January 29, 1848, as modified by an Executive Order dated January 15, 1878, and General Order No. 6 dated February 4, 1878, which withdrew public land and reserved it on behalf of the U.S. Military, presently managed by the Army Corps of Engineers, is hereby revoked only insofar as it affects the following described land:

Willamette Meridian

T. 2 N., R. 1 E.,

Parcels 5, 6, 7, and 9, and any Federal interest in McLaughlin Boulevard (now Fort Vancouver Way), easterly of a line from Cor. 1 to Cor. 2, Public Roads Administration (Federal Highway Administration) site and westerly of Parcel 5, as shown on the official survey accepted on December 5, 2011.

The area described contains approximately 33.75 acres, more or less, in Clark County.

2. Pursuant to Public Law 87–78 (75 Stat. 196 (1961)), administrative jurisdiction of the land described in Paragraph 1 is hereby transferred to the National Park Service to be administered as part of the Fort Vancouver National Historic Site.

Dated: May 22, 2012.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2012–13600 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES003420.L14300000.EU0000; MNES–056512]

Notice of Realty Action: Modified Competitive Sale of Public Lands in Becker County, MN

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Northeastern States

Field Office, proposes to offer for sale two parcels of public land totaling 1 acre in Becker County, Minnesota. The sale will be subject to the Federal Land Policy and Management Act of 1976 (FLPMA), and BLM land sale regulations. The BLM proposes to conduct the sale using sealed bid modified competitive procedures pursuant to BLM regulations.

DATES: The BLM must receive written comments regarding the proposed sale at the address listed below on or before July 20, 2012. The BLM will accept sealed bids for the offered lands from qualified bidders no later than 3 p.m. local time on August 6, 2012. Sealed bids will be opened the following day, which will be the date of the sale.

ADDRESSES: Written comments concerning the proposed sale should be addressed to the Field Manager, BLM, Northeastern States Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202–4617. Sealed bids must also be submitted to this address.

FOR FURTHER INFORMATION CONTACT: Carol Grundman, Realty Specialist, 414–297–4447; at the address listed above; or via email at *cgrundma@blm.gov.* More detailed information regarding the sale can be found at the BLM Eastern States Web site at: *http://www.blm.gov/es/st/en.html.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following two parcels of public land have been examined and found suitable for modified competitive sale to adjacent landowners in accordance with Sections 203 the FLPMA, as amended (43 U.S.C. 1713), and implementing regulations at 43 CFR 2711.3–2, at no less than the appraised fair market value of the land:

Fifth Principal Meridian

Parcel No. 1

T. 139 N., R. 41 W.,
Sec. 18, lot 1.

The area described contains 0.50 acres in Becker County, and is proposed for sale to the adjacent landowners, Richard D. Davis and Curtis Ullrich.

Parcel No. 2

T. 139 N., R. 41 W.,
Sec. 18, lot 2.

The area described contains 0.50 acres in Becker County, and is proposed for sale to the adjacent landowners, Bruce and Joan Wilken and Jeffrey and Linda Schlauderaff.

The Federal land is not needed for any Federal purpose and the disposal is in the public interest and in conformance with the BLM Minnesota Management Framework Plan dated September 9, 1982, and the BLM Minnesota Management Framework Plan Evaluation dated September 4, 2004. The purpose of the sale is to dispose of lands which are difficult and uneconomic to manage as part of the public lands because of their isolated location and lack of legal access. The BLM is proposing a modified competitive sale to allow adjacent landowners who control access to the public land an equal opportunity to bid on the property.

Bidding under modified competitive sale procedures is open only to identified adjacent landowners who must submit sealed bids to the BLM, Northeastern States Field Office (See **ADDRESSES** above), no later than 3 p.m. local time on August 6, 2012. If the adjacent landowners fail to exercise the preference consideration offered by the modified competitive sale and no successful bids are received, then the parcels will remain available for sale on a continuing basis in accordance with competitive sale procedures found at 43 CFR 2711.3–1 without further legal notice. Bids submitted to the BLM under competitive sale procedures will be opened on a monthly basis on the first Friday of each month at 10 a.m. local time, at the BLM, Northeastern States Field Office, until a successful bid is received or the sale is cancelled.

Sealed bid envelopes must be clearly marked on the front lower left-hand corner with ''SEALED BID BLM LAND SALE, MNES–056512''. The bid envelope must contain a signed statement showing the total amount of the bid and the name, mailing address, and phone number of the entity making the bid. Bids must be equal to or greater than the federally appraised fair market value of the land. The appraised fair market values will be made available 30 days prior to the sealed bid closing date at the BLM, Northeastern States Field Office, and on the Web site (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections above). Each sealed bid must be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management for an amount not less than 20 percent of the total amount of the bid. Personal checks will not be accepted.

Sealed bids will be opened to determine the high bid at 10 a.m. local time the day after the bids are due, at the BLM, Northeastern States Field Office (See **ADDRESSES** above). The highest qualifying bid will be declared the high bid for the parcel and the high bidder will receive written notice. Bidders submitting matching high bid amounts for a parcel will be provided an opportunity to submit a supplemental sealed bid. Bid deposits submitted by unsuccessful bidders will be returned by U.S. mail.

The successful bidder will be allowed 180 days from the date of sale to submit the remainder of the full bid price in the form of a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management. Personal checks will not be accepted. Failure to submit the remainder of the full bid price prior to but not including the 180th day following the day of the sale, will result in the forfeiture of the bid deposit to the BLM, and the parcel will be offered to the second highest qualifying bidder at their original bid.

Federal law requires that bidders must be: (1) United States citizens 18 years of age or older, (2) A corporation subject to the laws of any State or of the United States, (3) An entity legally capable of acquiring and owning real property, or interests therein, under the laws of the State of Minnesota, or (4) A State, State instrumentality, or political subdivision authorized to hold real property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of a patent.

Publication of this Notice in the **Federal Register** segregates the subject lands from all forms of appropriation under the public land laws, except sale under the provisions of the FLPMA. The segregation will terminate upon issuance of a patent, upon publication in the **Federal Register** of a termination of the segregation, or on June 5, 2014, unless extended by the BLM State Director, Eastern States, in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Any conveyance document issued would contain the following terms, conditions, and reservations:

1. The conveyance will be subject to all valid existing rights of record;

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe shall be reserved to the United States.

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use,

occupancy, or operations on the patented land; and

4. Additional terms and conditions that the authorized officer deems appropriate to ensure proper land use and protection of the public interest.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition or potential uses of the lands proposed for sale, and conveyance will not be on a contingency basis. To the extent required by law, the parcels are subject to the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(h)) (CERCLA), as amended. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that may affect the subject land or its future uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer. Detailed information concerning the proposed land sale, including the appraisals, planning and environmental documents, and mineral reports, are available for review at the BLM Northeastern States Field Office at the address listed above.

Public Comments: Interested parties and the general public may submit written comments concerning the parcels being considered for sale, including notification of any encumbrances or other claims relating to the identified lands, to the Field Manager, BLM, Northeastern States Field Office, at the above address on or before July 20, 2012. Comments transmitted via email or facsimile will not be considered. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by an individual in their capacity as an official or representative of a business or organization. Comments will be available for public review at the BLM, Northeastern States Field Office, during regular business hours, except holidays.

Any adverse comments will be reviewed by the BLM State Director, Eastern States, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Randall C. Anderson,

Acting Field Manager.

[FR Doc. 2012–13578 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC02000 L57000000.BX0000 241A; 12–08807; MO# 4500032927; TAS: 14X5017]

Temporary Closures of Public Land in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.,* and pursuant to 43 CFR 8364.1, certain public land near Stead, Nevada, will be temporarily closed to all public use to provide for public safety during the 2012 Reno Air Racing Association Pylon Racing Seminar and the Reno National Championship Air Races.

DATES: Temporary closure periods are June 13 through June 16, 2012, and September 12 through September 16, 2012.

FOR FURTHER INFORMATION CONTACT: Alan Bittner, (775) 885–6000, email: *abittner@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This closure applies to all public use, including pedestrian use and vehicles. The public lands affected by this closure are described as follows:

Mount Diablo Meridian

T. 21 N., R. 19 E.,
Sec. 8, E½E½, NW¼;NE¼;
Sec. 16, SW¼SW¼NE¼, NW¼, W½SE¼.

The area described contains 450 acres, more or less, in Washoe County, Nevada.

The closure notice and map of the closure area will be posted at the BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, Nevada and on the BLM Web site: *http://www.blm.gov/nv/st/en/fo/carsoncity_field.html*. Roads leading into the public lands under the closure will be posted to notify the public of the closure. Under the authority of Section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.9–7 and 43 CFR 8364.1, the Bureau of Land Management will enforce the following rules in the area described above: All public use, whether motorized, on foot, or otherwise, is prohibited.

Exceptions: Closure restrictions do not apply to event officials, medical and rescue personnel, law enforcement, and agency personnel monitoring the events.

Penalties: Any person who fails to comply with the closure orders is subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisonment for not more than 12 months under 43 CFR 8360.0–7. Violations may also be subject to the provisions of Title 18, U.S.C. sections 3571 and 3581.

Authority: 43 CFR 8360.0–7 and 8364.1.

Alan Bittner,

Acting Manager, Sierra Front Field Office.

[FR Doc. 2012–13543 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–0411–10063; 2310–0085–422]

Saline Valley Warm Springs Management Plan/Environmental Impact Statement, Death Valley National Park, Inyo County, CA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for the Saline Valley Warm Springs Management Plan, Death Valley National Park.

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is initiating the conservation planning and environmental impact analysis process for the Saline Valley Warm Springs Management Plan for Death Valley

National Park. This effort will result in a plan that provides a sound basis for guiding management actions within the Saline Valley Warms Springs area of Death Valley National Park, based upon evaluation of a range of reasonable alternatives regarding recreational use and tribal interests. The plan would fulfill this need and complete the park's broad-level management objectives for this area, as called for in the 2001 General Management Plan (GMP).

DATES: All comments must be postmarked or transmitted not later than August 6, 2012.

SUPPLEMENTARY INFORMATION: As part of the EIS process, the NPS will evaluate different approaches for managing the Saline Valley Warm Springs area to determine the potential impacts on visitor access, asset management, water resources, biological and cultural resources, human health and safety, aesthetics, visitor experience, wilderness character, and other stewardship considerations. Alternatives to be considered include no-action and reasonable action alternatives, such as establishing designated camping areas, limiting further development of the springs, restoration or partial restoration of the springs, and either closure or authorization of the nearby airstrip.

Saline Valley is a large desert valley located in the northwest portion of Death Valley National Park. Despite the variety of resources within this remote area, many people associate Saline Valley only with Warm Springs. Since the 1940s, impromptu developments were incrementally added to the area, particularly at Lower Warm Spring. Over the years, the soaking pools became ''clothing optional'' sites. Warm Springs and the rest of Saline Valley were transferred to Death Valley National Park from the Bureau of Land Management with the passage of the California Desert Protection Act in 1994. Under NPS management, efforts have been made to enforce measures to reduce impacts on certain resources, manage or remove non-native species, and discontinue use of unimproved airstrips.

In the late 1990s, preliminary scoping meetings for the draft GMP attempted to establish a vision for more direct management and oversight of the Saline Valley Warm Springs area. This became controversial because many visitors wanted a less regulatory approach for accommodating bathers and campers at Warm Springs. However, the Warm Springs possess religious, historical, and spiritual significance for the Timbisha Shoshone Tribe. In addition, the Timbisha Shoshone Homeland Act of 2000 mandates that the park and the tribe ensure that certain park resources and values are protected by partnerships between the NPS and the Tribe. As a consequence of conflicting perceptions and values, park staff decided to remove site-specific details from the GMP and instead develop a separate plan specifically focused on the Saline Valley Warm Springs area in order to adequately address the Timbisha's concerns.

For this EIS the Warm Springs area of Saline Valley is defined as an approximately 100 acre tract of non-wilderness surrounded by backcountry and designated Wilderness. The park is currently preparing a separate Backcountry and Wilderness Stewardship Plan (Wilderness Plan) and Environmental Assessment that will provide a framework for managing lands and resources surrounding Warm Springs. The Saline Valley Warm Springs Management Plan will be prepared separately in order to concentrate on the issues specific to the Warm Springs, but in coordination with the Wilderness Plan so as not to conflict with the values and desired conditions set forth in that plan.

Scoping Process: This notice formally initiates the public scoping comment phase necessary for informing preparation of the Environmental Impact Statement (EIS). Early public comment will be elicited regarding issues and concerns, the nature and extent of potential environmental impacts (and as appropriate, mitigation measures), and alternatives that should be addressed in preparing the Draft EIS. The NPS welcomes information and suggestions from the public regarding resource protection, visitor use, and land management. A scoping brochure has been prepared that details the issues identified to date; copies of the brochure as well as current information about the EIS effort may be obtained from Mike Cipra at Death Valley National Park, P.O. Box 579, Death Valley, CA 92328 (760) 786–3227.

During the scoping phase any person desiring to comment on any issues associated with the plan, or wishing to provide relevant environmental information, may use any one of several methods. If you wish to comment electronically, you may submit your comments via email to *DEVA_Planning@nps.gov* or online via the NPS Planning, Environment and Public Comment (PEPC) Web site by visiting *http://parkplanning.nps.gov/SalineValleyWarmSprings*. If it is more convenient, or if you lack access to a computer, you can hand-deliver or mail your written comments to: Superintendent, Death Valley National Park, Attn: Saline Valley Warm Springs Management Plan, Death Valley National Park, P.O. Box 579, Death Valley, California 92328.

At this time, it is expected that several public meetings will be held in towns near the park during the week of June 10–16, 2012: Bishop, Ridgecrest, and Victorville, California. Confirmed details regarding these meetings will be posted on the project Web site (noted above) and will be announced in the local press; details may also be obtained by contacting the park directly. These meetings will provide current information, and provide an opportunity to ask questions, comment on issues, and suggest potential alternatives to be addressed in developing the Draft EIS; written comments will also be accepted. The project Web site will provide the most up-to-date information regarding the project, including project description, EIS process updates, meeting notices, reports and documents, and useful links associated with the project.

Comments will not be accepted by fax or in any other way than those specified above. Comments in any format (hard copy or electronic) submitted by an individual or organization on behalf of another individual or organization will not be accepted.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Decision Process: Following the scoping phase and consideration of public concerns and comments from agencies, a Draft EIS will be prepared and released for public review. Availability will be announced through the publication of a Notice of Availability in the **Federal Register**, as well as through local and regional news media, direct mailing to the project mailing list, and via the Project Web site. Following due consideration of all agency and public comments on the Draft EIS, a Final EIS will be prepared and its availability for public review will be similarly announced. Not sooner than 30 days after release of the Final EIS, a Record of Decision will be prepared. As a delegated EIS, the official responsible for final approval of the Saline Valley Warm Springs

Management Plan is the Regional Director, Pacific West Region. Subsequently the official responsible for implementation of the approved plan would be the Superintendent, Death Valley National Park.

Dated: March 22, 2012.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2012–13612 Filed 6–4–12; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–0411–10066; 9530–0905–454]

Prairie Stewardship Plan/ Environmental Impact Statement, San Juan Island National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for Prairie Stewardship Plan, San Juan Island National Historical Park, Washington.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) is initiating the preparation of an Environmental Impact Statement (EIS) for a Prairie Stewardship Plan, as called for in the 2008 General Management Plan. The Prairie Stewardship Plan (plan) will establish management goals for perpetuating this sensitive ecosystem, while also providing for the use and enjoyment of the park by current and future generations. The purpose of the scoping process is to elicit public comments regarding the full spectrum of public issues and concerns, suitable stewardship actions, and nature and extent of potential environmental consequences and appropriate mitigation strategies which should be addressed in the EIS process.

SUPPLEMENTARY INFORMATION: A range of alternatives for stewardship of prairie areas in San Juan Island National Historical Park (Park) will be developed through this conservation planning and environmental impact analysis process, which will include at least no-action and preferred alternatives. Topics which the EIS/plan is expected to address include: (1) Designing a flexible, adaptable, diverse, and sustainable plan that reflects shared objectives responsive to community concerns and NPS mandates; (2) determining the best means to perpetuate native and native endemic species by considering a full range of potential management actions to improve prairie stewardship; (3) determining the best means to manage nonnative invasive plant and animal species; (4) identifying management actions for specific areas within the national historical park; (5) incorporating monitoring and evaluation tools to measure success; and (6) allowing for adaptive management based on the results of restoration actions. The EIS will evaluate and compare the potential environmental consequences of all the alternatives, and appropriate mitigation strategies will be included. The ''environmentally preferred'' alternative will also be identified.

In July, 2010 the NPS released an Environmental Assessment for the proposed plan. Issues and concerns emerged in regards to appropriateness of proposed stewardship actions, and conflicts between desired visitor experience and protection of cultural and natural resource protection could not be resolved. As a result, it was determined that an EIS would be prepared. Subsequently the Park has conducted two workshops to improve community relationships, including an Adaptive Management Workshop in July, 2011 and a Prairie Stewardship Educational Symposium in September, 2011. These workshops brought together interested community members, NPS staff, and scientists to identify issues and concerns, discuss common ground, and begin collection of relevant environmental information to facilitate planning for preparation of the plan/EIS.

All interested persons, organizations, and agencies are encouraged to submit comments and suggestions on issues and concerns that should be addressed in preparing the plan/EIS, and the range of appropriate alternatives that should be examined. All prior comments and information received in regards to the 2010 Environmental Assessment will be carried forward and fully considered in developing the Draft EIS.

DATES: The NPS is beginning public scoping via a letter to state and federal agencies, American Indian tribes, local and regional governments, organizations and businesses, researchers and institutions, and interested members of the public. Written comments concerning the scope of the plan/EIS and submittal of relevant environmental information must be postmarked or transmitted not later than September 4, 2012. Public meetings will be scheduled during the scoping period. Dates, times, and locations of the meetings will be announced on the park Web page and via local and regional newspapers.

FOR FURTHER INFORMATION CONTACT: Jerald Weaver, Chief of Resource Management, San Juan Island National Historical Park (contact via telephone (360) 378–2240 x2224 or Email: *jerald_weaver@nps.gov*). General information about San Juan Island National Historical Park is available at *http://www.nps.gov/sajh.*

ADDRESSES: Interested individuals, organizations, and other entities wishing to provide input to this phase of developing the plan/EIS should mail written comments to Superintendent, San Juan Island National Historical Park, P.O. Box 429, Friday Harbor, Washington, 98250. Comments may also be hand-delivered to the Superintendent's Office in Friday Harbor. Telephone: (360) 378–2240.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

As a delegated EIS, the official responsible for approving the Prairie Stewardship Plan/EIS is Christine Lehnertz, Regional Director, Pacific West Region, National Park Service. Subsequently the official responsible for implementation of the approved plan would be the Superintendent, San Juan Island National Historical Park.

Dated: March 1, 2012.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2012–13607 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–MS–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–LACL–0312–9853; 9921–9855–409]

Notice To Terminate the Wilderness Study and Environmental Impact Statement on a Lake Clark National Park and Preserve General Management Plan Amendment

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) is terminating the wilderness study and environmental impact

statement on a general management plan amendment for Lake Clark National Park and Preserve. The NPS published a Notice of Intent to prepare an Environmental Impact Statement on a General Management Plan Amendment/Wilderness Study Environmental Impact Statement (EIS) for Lake Clark National Park and Preserve in the **Federal Register** (76 FR 31359) on May 31, 2011. The NPS released a scoping newsletter in June 2011 and the public comment period ended September 1, 2011. Public comments focused on issues related to opportunities for visitor use, recreation and access. Pursuing a wilderness study in this plan did not emerge as an important issue, and the NPS has decided this plan should focus on providing for visitor use while protecting park resources and values. Therefore, the NPS is deferring the wilderness study and requisite environmental impact statement. The plan will be evaluated in an environmental assessment because the management alternatives are not expected to result in significant impacts to the human environment.

FOR FURTHER INFORMATION CONTACT: Joel Hard, Superintendent, Lake Clark National Park and Preserve, 240 West 5th Avenue, Suite 236, Anchorage, AK 99501. Telephone: (907) 644–3626.

Sue E. Masica,

Regional Director, Alaska.

[FR Doc. 2012–13604 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–GY–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Contra Costa Water District.
- City of Santa Barbara.
- Tulare Irrigation District.
- Pacheco Irrigation District.
- City of Tracy.
- Citrus Heights.
- Water District.

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation developed and published the Criteria for Evaluating Water Management Plans (Criteria). For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have each developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the Plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination of Plan adequacy is invited at this time.

DATES: All public comments must be received by July 5, 2012.

ADDRESSES: Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California, 95825, or email at *lsharp@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Sharp at the email address above or 916–978–5232 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (i.e., draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall ''develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria must be developed ''with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare a Plan that contains the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation evaluates Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific Regional Office, 2800 Cottage Way, MP–410, Sacramento, California, 95825. Our practice is to make comments, including names and home addresses of respondents, available for public review. If you wish to review a copy of these Plans, please contact Ms. Sharp.

Public Disclosure

Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 30, 2012.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2012–13574 Filed 6–4–12; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–819]

Certain Semiconductor Chips With DRAM Circuitry, and Modules and Products Containing Same Determination Not To Review an Initial Determination To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) to amend the complaint and notice of investigation to add allegations of infringement of claims 5, 17, 18, 21, and 29 of U.S. Patent No. 7,495,453 against respondents Nanya Technology Corporation of TaoYuan, Taiwan and Nanya Technology Corporation, U.S.A. of Santa Clara, California.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or 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 instituted this investigation on December 21, 2011, based on a complaint filed by Elpida Memory, Inc. of Tokyo, Japan and Elpida Memory (USA) Inc. of Sunnyvale, California (collectively, ''Elpida''). 76 FR 79215 (Dec. 21, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by reason of infringement of various claims of seven United States patents. The Commission issued a notice of investigation naming Nanya Technology Corporation of TaoYuan, Taiwan and Nanya Technology Corporation, U.S.A. of Santa Clara, California (collectively, ''Nanya'') as respondents.

On February 13, 2012, Elpida filed a motion to amend the complaint and notice of investigation to assert five additional claims from one of the seven patents originally asserted against Nanya. The claims in question are claims 5, 17, 18, 21, and 29 of U.S. Patent No. 7,495,453. On February 22, 2012, Nanya opposed the motion to amend.

On May 10, 2012, the ALJ issued the subject ID (Order No. 7) granting the motion to amend the complaint and notice of investigation. No petitions for review of the ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h)(3) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)(3)).

By order of the Commission.

Issued: May 31, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–13542 Filed 6–4–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Council members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year.

The terms of five members of the Council expire this year. The groups or fields they represent are as follows: (1) Employee organizations; (2) employers; (3) investment counseling; (4) actuarial counseling; and (5) the general public. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse Council.

Accordingly, notice is hereby given that any person or organization desiring to nominate one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph may submit nominations to Larry Good, Council Executive Secretary, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Suite N–5623, Washington, DC 20210, or to *good.larry@dol.gov*. Nominations (including supporting nominations) must be received on or before August 3, 2012. Please allow three weeks for regular mail delivery to the Department of Labor. Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination or, in the case of a nomination by an organization, by an authorized representative of the organization.

Nominations should:

- State the person's qualifications to serve on the Council.
- State that the candidate will accept appointment to the Council if offered.
- Include the position for which the nominee is nominated.
- Include the nominee's full name, work affiliation, mailing address, phone number, and email address.
- Include the nominator's full name, mailing address, phone number, and email address.
- Include the nominator's signature, whether sent by email or otherwise.

In selecting Council members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

Nominees will be contacted to provide information on their political affiliation and their status as registered lobbyists. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Council. Historically, this has meant a commitment of 15–20 days per year.

Signed at Washington, DC this 30th day of May, 2012.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2012–13486 Filed 6–4–12; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

AMENDED NOTICE: Change to the Scheduled Time for Commencement of the Meeting of the *Finance Committee* of the Legal Services Corporation Board of Directors.

DATE AND TIME: On May 31, 2012, the Legal Services Corporation (''LSC'') issued a public announcement (to be published in the **Federal Register** on June 4, 2012) that the Finance

Committee of its Board of Directors will meet on June 11, 2012, starting at 1:00 p.m., Eastern Daylight Time (''EDT''). This announcement amends the notice issued on May 31st but only as to the time when the meeting will commence. The meeting will commence at 12 noon, EDT, instead of the earlier announced time of 1 p.m., EDT, and will continue until conclusion of the Committee's agenda. The rest of the notice remains unchanged.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold. From time to time, the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately ''MUTE'' your telephone.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of minutes of the Committee's meeting of April 15, 2012
3. Public Comment regarding LSC's fiscal year 2014 budget request
   - Presentation by a representative of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
   - Presentation by a representative of National Legal Aid & Defender Association (NLADA)
   - Other interested parties
4. Consider and act on other business
5. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 1, 2012.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2012–13737 Filed 6–1–12; 4:15 pm]

BILLING CODE 7050–01–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 collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 5, 2012 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 collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on March 19, 2012 (77 FR 16076). No comments were received. NARA has submitted the described information collection 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 collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Accounting System and Financial Capability Questionnaire.

OMB number: 3095–00XX.

Agency form numbers: NA Form 17003.

Type of review: Regular.

Affected public: Not-for-profit institutions and State, Local, or Tribal Government.

Estimated number of respondents: 100.

Estimated time per response: 4 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 400.

Abstract: Pursuant to the Title 2, Section 215 of the Code of Federal Regulations, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (formerly Office of Management and Budget (OMB) Circular A–110) and Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, grant recipients are required to maintain adequate accounting controls and systems in managing and administering Federal funds. Some of the recipients of grants from the National Historical Publications and Records Commission (NHPRC) have proven to have limited experience with managing Federal funds. This questionnaire is designed to identify those potential recipients and provide appropriate training or additional safeguards for Federal funds. Additionally, the questionnaire serves as a pre-audit function in identifying

potential deficiencies and minimizing the risk of fraud, waste, abuse, or mismanagement, which we use in lieu of a more costly and time consuming formal pre-award audit.

Dated: May 24, 2012.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2012–13624 Filed 6–4–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CAPITAL PLANNING COMMISSION

Public Comment and Public Meeting on Draft Revisions to the Federal Environment Element of the Comprehensive Plan for the National Capital: Federal Elements

AGENCY: National Capital Planning Commission.

ACTION: Notice of public comment period and public meeting.

SUMMARY: The National Capital Planning Commission (NCPC), the Planning Commission for the Federal Government within the National Capital Region, intends to release for public comment draft revisions to the Federal Environment Element of the Comprehensive Plan for the National Capital: Federal Elements. The Comprehensive Plan for the National Capital: Federal Elements addresses matters relating to Federal Properties and Federal Interests in the National Capital Region, and provides a decision-making framework for actions the NCPC takes on specific plans and proposals submitted by Federal government agencies for the NCPC review required by law. The Federal Environment Element articulates policies that guide federal actions on mitigating environmental impacts and providing better stewardship of environmental resources. All interested parties are invited to submit written comment. The draft revised Federal Environment Element will be available online at *http://www.ncpc.gov/compplan* no later than June 11, 2012. Printed copies are available upon request from the contact person noted below.

DATES AND TIME: The public comment period begins on Monday, June 11, 2012 and closes on Friday, August 10, 2012. A public meeting to discuss the draft revisions to the Federal Environment Element will be held on Wednesday, June 27, 2012 from 6:30 p.m. to 8:30 p.m.

ADDRESSES: Mail written comments or hand deliver comments on the draft revisions to Comprehensive Plan Public Comment, National Capital Planning Commission, 401 9th Street NW., Suite 500, Washington, DC 20004. The public meeting will be held at 401 9th Street NW., North Lobby, Suite 500, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: David Zaidain at (202) 482–7230 or *david.zaidain@ncpc.gov.* Please confirm meeting attendance with Mr. Zaidain or as noted below.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing Addresses

You may submit comments electronically at the public comment portal at *http://www.ncpc.gov/compplan.* Confirm meeting attendance at *http://www.ncpc.gov.rsvp.*

Speaker Sign-Up and Speaker Time Limits

Individuals should register to speak on the sign-up sheet available at the meeting. Speakers are asked to limit their remarks to five minutes.

Authority: (40 U.S.C. 8721(e)(2)).

Dated: May 30, 2012.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2012–13564 Filed 6–4–12; 8:45 am]

BILLING CODE 7520–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0125]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing and petition for leave to intervene, order.

DATES: Comments must be filed by July 5, 2012. A request for a hearing or leave to intervene must be filed by August 6, 2012. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4, who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by June 15, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0125. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0125. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0125 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0125.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0125 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would

constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: February 28, 2012. Publicly available versions of the amendment request and its attachment are available in ADAMS under Accession Nos. ML12061A288 and ML12061A289.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the Palisades Nuclear Plant Technical Specifications (TS) to support the replacement of the Region I spent fuel pool (SFP) storage racks with new neutron absorber Metamic-equipped racks. Degradation of the present neutron absorber, Carborundum®, has resulted in reduced SFP storage capacity. The replacement of the SFP storage racks will allow recovery of the currently unusable storage locations in the SFP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability of any accident previously evaluated is not significantly increased by the proposed changes to the Region I spent fuel pool (SFP) storage racks. The probabilities of an accidental fuel assembly drop or misloading is primarily influenced by the methods used to lift and move these loads. The method of handling fuel is not changed since the same equipment and procedures will be used. Work in the SFP area will be controlled and performed in accordance with written procedures. Any movement of fuel assemblies required to be performed to support the modification will be performed in the same manner as during normal operations. Replacing the Region I SFP storage racks does not have a significant impact on the frequency of occurrence for any accident previously evaluated. Additionally, the probabilities of a seismic event, boron dilution, or loss of SFP cooling flow are not influenced by the proposed changes. Therefore, the proposed change will not involve a significant increase in the probability of occurrence of any event previously analyzed.

TS 3.7.15, *SFP Boron Concentration*, requires a minimum boron concentration of 1720 ppm, which bounds the analysis for the proposed amendment. Soluble boron is maintained in the SFP water as required by the TS and controlled by procedures. The criticality safety analyses for Region I and for Region II of the SFP credit the same soluble boron concentration of 850 ppm to maintain a Keff ≤ 0.95 under normal conditions and 1350 ppm to maintain a Keff ≤ 0.95 under accident scenarios as does the analysis for the proposed change for Region I. In crediting soluble boron, in Region 1, the SFP criticality analysis would have no effect on normal pool operation and maintenance. Thus, there is no change to the probability or the consequences of the boron dilution event in the SFP.

The consequences of the dropped spent fuel assembly in the SFP have been re-evaluated for the proposed change by analyzing a potential impact on the replacement racks. The results show that the postulated accident of a fuel assembly striking the top of the replacement racks would not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin (i.e., neutron multiplication factor (Keff) less than or equal to 0.95) will be maintained. The structural damage to the fuel building, pool liner, and fuel assembly resulting from a dropped fuel assembly striking the pool floor or another assembly located in the racks is primarily dependent on the mass of the falling object and drop height. Since these two parameters are not changed by the proposed modification, the postulated structural damage to these items remains unchanged. The radiological dose at the exclusion area boundary has been evaluated and found to remain well below levels established by regulatory guidance.

The consequences of a loss of SFP cooling were evaluated and found to not involve a significant increase as a result of the proposed changes. The concern with this accident is a reduction of SFP water inventory from bulk pool boiling resulting in uncovering fuel assemblies. This situation could lead to fuel failure and subsequent significant increase in offsite dose. Loss of SFP cooling is mitigated by ensuring that a sufficient time lapse exists between the loss of forced cooling and the uncovering of fuel. This period of time is compared against a reasonable period to re-establish cooling or supply an alternative water source. Evaluation of this accident includes determination of the time to boil. This time period is much less than the onset of any significant increase in offsite dose, since once boiling begins it would have to continue unchecked until the pool water surface was lowered to the point of exposing active fuel. The time to boil represents the onset of loss of pool water inventory and is used as a gauge for establishing the comparison of consequences before and after a rack replacement project. The heatup rate in the SFP is a nearly linear function of the fuel decay heat load. The thermal-hydraulic analysis determined that the minimum time to boil is at least 1.8 hours subsequent to complete loss of forced cooling. In the unlikely event that all pool cooling is lost, sufficient time will still be available subsequent to the proposed changes for the operators to provide alternate means of cooling before the water shielding above the top of the racks falls below an acceptable level.

The consequences of a design basis seismic event are not increased. The consequences of this event are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The replacement racks have been analyzed and were found to be safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed neutron absorber configurations subsequent to a seismic event. The replacement racks do not impact the pool walls. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The fuel building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator and coolant.

The consequence of a fuel misloading accident has been analyzed for the worst possible storage configuration subsequent to the proposed modification and it has been shown that the consequences remain acceptable with respect to the same criteria used previously.

In summary, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The existing TS allow storage of fuel assemblies with a maximum planar average U–235 enrichment of 4.54 weight percent. The proposed change, for the replacement Region I fuel storage racks, would increase the maximum planar average U–235 enrichment to 4.95 weight percent. Fuel would be allowed in all the storage cell locations in the Metamic™ equipped Region I storage racks. Therefore, the possibility of misplacing a fuel assembly in the replacement fuel storage racks, with greater enrichment than allowed in certain storage locations in Region I, for the Carborundum equipped fuel storage racks would be eliminated, for the replacement Metamic™ equipped fuel storage racks. Changing the enrichment and allowing fuel storage in all the storage locations in the Metamic™ equipped Region I storage racks does not create a new or different kind of accident from any previously evaluated.

No new or different activities are introduced in the replacement of the fuel storage racks other than the physical removal of the existing racks and the installation of

the new Metamic ™ equipped fuel storage racks. An accident of a rack dropping onto stored spent fuel or the pool floor liner is not a postulated event due to the defense-in-depth approach to be taken. A rack lifting rig will be introduced to remove the existing Region I racks and to install the replacement racks. The temporary lift items are designed to meet the requirements of NUREG–0612, *Control of Heavy Loads,* and ANSI N14.6, *Radioactive Materials—Special Lifting Devices for Shipping Containers Weighing 10,000 Pounds (4500 kg) or More.* The lift rig and rack would be lifted using the fuel building crane main hook. This crane and main hook satisfy the single failure proof criteria of NUREG–0554, *Single Failure Proof Cranes for Nuclear Power Plants.* A rack drop event is a ''heavy load drop'' over the SFP. A lifted rack will not be allowed to travel over any stored fuel assemblies, thus a rack drop onto fuel is precluded. A rack drop to the pool liner is not a postulated event. All movements of heavy loads over the pool will comply with the applicable administrative controls and guidelines. Therefore, the activities for removal and installation of the fuel storage racks will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The changes would not affect the SFP cooling system or the SFP makeup systems. The proposed change does not affect any of the important parameters required to ensure safe fuel storage.

In summary, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The function of the SFP is to store the fuel assemblies in a subcritical and cool-able configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The replacement Region I fuel storage rack design must meet all applicable requirements for safe storage and be functionally compatible with the SFP.

Detailed analysis has shown, with a 95 percent probability at a 95 percent confidence level, that the Keff of the Region I fuel storage racks in the SFP, including uncertainties, is less than 1.0 with unborated water and is less than or equal to 0.95 with 850 ppm of soluble boron in the SFP. In addition, the effects of abnormal and accident conditions have been evaluated to demonstrate that under credible conditions the Keff will not exceed 0.95 with 1350 ppm soluble boron credited. The current TS requirement for minimum SFP boron concentration is 1720 ppm, which provides assurance that the SFP would remain subcritical under normal, abnormal, or accident conditions. The margin of safety for subcriticality is maintained by having Keff equal to or less than 0.95 under all normal storage, fuel handling, and accident conditions, including uncertainties.

The current analysis basis for the Region I and Region II fuel storage racks is a maximum Keff of less than 1.0 when flooded with unborated water, and less than or equal to 0.95 when flooded with water having a boron concentration of 850 ppm. In addition, the Keff in accident or abnormal operating conditions is less than 0.95 with 1350 ppm of soluble boron. These values are not affected by the proposed change. Therefore, the margin of safety is not reduced.

The mechanical, material, and structural designs of the replacement racks have been reviewed in accordance with the applicable NRC guidance. The rack materials used are compatible with the spent fuel assemblies and the SFP environment. The design of the replacement racks preserves the margin of safety during abnormal loads such as a dropped fuel assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a cool-able and subcritical configuration.

The thermal-hydraulic and cooling evaluation of the pool demonstrated that the pool can be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The pool temperature will not exceed 150°F during the worst single failure of a cooling pump. The maximum local water and fuel cladding temperatures in the hot channel will remain below the boiling point. The fuel will not undergo any significant heat up after an accidental drop of a fuel assembly on top of the rack blocking the flow path. A loss of cooling to the pool will allow sufficient time (nearly 2 hours) for the operators to intervene and line up alternate cooling paths and the means of inventory make-up before boiling begins. The thermal limits specified for the evaluations performed to support the proposed change are the same as those that were used in the previous evaluations.

Therefore, the proposed change for the replacement of the Region I SFP storage racks does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Acting Branch Chief: Istvan Frankl.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: November 3, 2011. A publicly available version is available in ADAMS under Accession No. ML113081441.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would modify the Technical Specifications to include the use of neutron absorbing spent fuel pool rack inserts for the purpose of criticality control in the spent fuel pools.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Technical Specification (TS) 4.3.1 to permit installation of NETCO–SNAP–IN® rack inserts in spent fuel storage rack cells. The change is necessary to ensure that, with continued Boraflex degradation over time, the effective neutron multiplication factor, K_{eff}, is less than or equal to 0.95, if the spent fuel pool is fully flooded with unborated water as required by 10 CFR 50.68. Because the proposed change pertains only to the spent fuel pool, only those accidents that are related to movement and storage of fuel assemblies in the spent fuel pool could potentially be affected by the proposed change.

The installation of NETCO–SNAP–IN® rack inserts does not result in a significant increase in the probability of an accident previously analyzed because there are no changes in the manner in which spent fuel is handled, moved, or stored in the rack cells. The probability that a fuel assembly would be dropped is unchanged by the installation of the NETCO–SNAP–IN® rack inserts. These events involve failures of administrative controls, human performance, and equipment failures that are unaffected by the presence or absence of Boraflex and the rack inserts.

The installation of NETCO–SNAP–IN® rack inserts does not result in a significant increase in the consequences of an accident previously analyzed because there is no change to the fuel assemblies that provide the source term used in calculating the radiological consequences of a fuel handling accident. In addition, consistent with the current design, only one fuel assembly will be moved at a time. Thus, the consequences of dropping a fuel assembly onto any other fuel assembly or other structure remain bounded by the previously analyzed fuel handling accident. The proposed change does not affect the effectiveness of the other engineered design features to limit the offsite dose consequences of the limiting fuel handling accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Onsite storage of spent fuel assemblies in the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3 spent fuel pools is a normal activity for which PBAPS has been designed and licensed. As part of assuring that this normal activity can be performed without endangering public health and safety, the ability to safely accommodate different possible accidents in the spent fuel pool, such as dropping a fuel assembly or misloading a fuel assembly, have been analyzed. The proposed spent fuel storage configuration does not change the methods of fuel movement or spent fuel storage. The proposed change allows for continued use of spent fuel pool storage rack cells with degraded Boraflex within those spent fuel pool storage rack cells.

The rack inserts are passive devices. These devices, when inside a spent fuel storage rack cell, perform the same function as the previously licensed Boraflex neutron absorber panels in that cell. These devices do not add any limiting structural loads or affect the removal of decay heat from the assemblies. No change in total heat load in the spent fuel pool is being made. The devices will maintain their design function over the life of the spent fuel pool. The existing fuel handling accident, which assumes the drop of a fuel assembly, bounds the drop of a rack insert and/or rack insert installation tool. This proposed change does not create the possibility of misloading an assembly into a spent fuel storage rack cell.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

PBAPS TS 4.3.1.1 requires the spent fuel storage racks to maintain the effective neutron multiplication factor, K_{eff}, less than or equal to 0.95 when fully flooded with unborated water, which includes an allowance for uncertainties. Therefore, for criticality, the required safety margin is 5% including a conservative margin to account for engineering and manufacturing uncertainties.

The proposed change provides a method to ensure that K_{eff} continues to be less than or equal to 0.95, thus preserving the required safety margin of 5%. The criticality analyses demonstrate that the required margin to criticality of 5%, including a conservative margin to account for engineering and manufacturing uncertainties, is maintained assuming an infinite array of fuel with all fuel at the peak reactivity. In addition, the radiological consequences of a dropped fuel assembly are unchanged because the event involving a dropped fuel assembly onto a spent fuel storage rack cell containing a fuel assembly with a rack insert is bounded by the radiological consequences of a dropped fuel assembly without a rack insert. The proposed change also maintains the capacity of the Unit 2 and Unit 3 spent fuel pools to be no more than 3,819 fuel assemblies each.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. J. Bradley Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Meena K. Khanna.

NextEra Energy Seabrook, LLC Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: April 10, 2012. A publically available version is available in ADAMS under Accession No. ML12121A527.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed changes would revise the Seabrook Station Technical Specifications (TSs). The proposed change would revise TS 6.7.6.k, Steam Generator (SG) Program, to exclude a portion of the tubes below the top of the SG tube sheet from periodic tube inspections and plugging. The proposed change also establishes permanent reporting requirements in TS 6.8.1.7, Steam Generator Tube Inspection Report, that were previously implemented on a temporary basis.

Basis for proposed no significant hazards consideration (NSHC) determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below with NRC edits in brackets:

1. *The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.*

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator (SG) inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the SG tube inspection and repair criteria are the steam generator tube rupture (SGTR) event, the steam line break (SLB), and the feed line break (FLB) postulated accidents.

Addressing the SGTR event, the required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side, and tubesheet rotation. The structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes,'' and Technical Specification (TS) 6.7.6.k, are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the SG tubes consistent with the performance criteria of TS 6.7.6.k. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary-to-secondary leakage flow during the event as primary-to-secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed change does not result in a significant increase in the consequences of a SGTR.

The consequences of a SLB or FLB are also not significantly affected by the proposed changes. The leakage analysis shows that the primary-to-secondary leakage during a SLB/FLB event would be less than or equal to that assumed in the Updated Safety Analysis Report.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (i.e., a SLB/FLB) is limited by flow restrictions. These restrictions result from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications.

The leakage factor of 2.49 for Seabrook Station, for a postulated SLB/FLB, has been calculated as shown in References 8, 9 and 10. For the Condition Monitoring assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.49 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the Operational Assessment, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.49 and compared to the observed operational leakage.

The probability of a SLB/FLB is unaffected by the potential failure of a SG tube as the failure of the tube is not an initiator for a SLB/FLB event. SLB/FLB leakage is limited by flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during all postulated accident conditions that model primary-to-secondary leakage (including locked rotor and control rod ejection) has been shown to remain within the accident analysis assumptions for all axial and or circumferentially orientated cracks occurring 15.21 inches below the top of the tubesheet. The assumed accident induced leak rate for Seabrook is 500 gallons per day (gpd) during a postulated steam line break in the faulted loop. Using the limiting leak rate factor of 2.49, this corresponds to an acceptable level of operational leakage of 200 gpd. Therefore, the TS leak rate limit of 150 gpd provides significant added margin against the 500 gpd accident analysis leak rate assumption.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Response: No.

The proposed change that alters the SG inspection and reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. *The proposed changes do not involve a significant reduction in the margin of safety.*

Response: No.

The proposed change that alters the SG inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute 97–06, Rev. 3 ''Steam Generator Program Guidelines,'' and NRC Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' are used as the bases in the development of the limited hot leg tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse WCAP–17071–P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage as described in WCAP–17071–P provides significant margin between the accident-induced leakage assumption and the technical specification leakage limit during normal operating conditions when the proposed limited tubesheet inspection depth criteria is implemented.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Meena Khanna.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of amendment request: October 26, 2011. A publicly available version is available in ADAMS under Accession No. ML113070457.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the facility operating licenses to allow the permanent replacement of the current Diablo Canyon Power Plant, Units 1 and 2 (DCPP) Eagle 21 digital process protection system (PPS) with a new digital PPS that is based on the Invensys Operations Management Tricon Programmable Logic Controller (PLC), Version 10, and the CS Innovations, LLC (CSI, a Westinghouse Electric Company), Advanced Logic System (ALS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or Consequences of an accident previously evaluated?

Response: No.

The proposed change would allow Pacific Gas and Electric Company to permanently replace the Diablo Canyon Power Plant Eagle 21 digital process protection system with a new digital process protection system that is based on the Invensys Operations Management Tricon Programmable Logic Controller, Version 10, and the CS Innovations Advanced Logic System. The process protection system replacement is designed to applicable codes and standards for safety-grade protection systems for nuclear power plants and incorporates additional redundancy and diversity features and therefore, does not result in an increase in the probability of inadvertent actuation or probability of failure to initiate a protective function. The process protection system replacement does not introduce any new credible failure mechanisms or malfunctions that cause an accident. The process protection system replacement design will continue to perform the reactor trip system and engineered safety features actuation system functions assumed in the Final Safety Analysis Report within the response time assumed in the Final Safety Analysis Report Chapter 6 and 15 accident analyses.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change is to permanently replace the current Diablo Canyon Power Plant Eagle 21 digital process protection system with a new digital process protection system. The process protection system performs the process protection functions for the reactor protection system that monitors selected plant parameters and initiates protective action as required. Accidents that may occur due to inadvertent actuation of the process protection system, such as an inadvertent safety injection actuation, are considered in the Final Safety Analysis Report accident analyses.

The protection system is designed with redundancy such that a single failure to generate an initiation signal in the process protection system will not cause failure to trip the reactor nor failure to actuate the engineered safeguard features when required. Neither will such a single failure cause spurious or inadvertent reactor trips or engineered safeguard features actuations because coincidence of two or more initiation signals is required for the solid state protection system to generate a trip or actuation command. If an inadvertent actuation occurs for any reason, existing control room alarms and indications will notify the operator to take corrective action.

The process protection system replacement design includes enhanced diversity features compared to the current process protection system to provide additional assurance that the protection system actions credited with

automatic operation in the Final Safety Analysis Report accident analyses will be performed automatically when required should a common cause failure occur concurrently with a design basis event.

The process protection system replacement does not result in any new credible failure mechanisms or malfunctions. The current Eagle 21 process protection system utilizes digital technology and therefore the use of digital technology in the process protection system replacement does not introduce a new type of failure mechanism. Although extremely unlikely, the current Eagle 21 process protection system is susceptible to a credible common-cause software failure that could adversely affect automatic performance of the protection function. The process protection system replacement contains new, additional diversity features that prevent a common-cause software failure from completely disabling the process protection system.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The reactor protection system is fundamental to plant safety and performs reactor trip system and engineered safety features actuation system functions to limit the consequences of Condition II (faults of moderate frequency), Condition III (infrequent faults), and Condition IV (limiting faults) events. This is accomplished by sensing selected plant parameters and determining whether predetermined instrument settings are being exceeded. If predetermined instrument settings are exceeded, the reactor protection system sends actuation signals to trip the reactor and actuate those components that mitigate the severity of the accident.

The process protection system replacement design will continue to perform the reactor trip system and engineered safety features actuation functions assumed in the Final Safety Analysis Report within the response time assumed Final Safety Analysis Report Chapter 6 and 15 accident analyses. The use of the process protection system replacement does not result in a design basis or safety limit being exceeded or changed. The change to the process protection system has no impact on the reactor fuel, reactor vessel, or containment fission product barriers. The reliability and availability of the reactor protection system is improved with the process protection system replacement, and the reactor protection system will continue to effectively perform its function of sensing plant parameters to initiate protective actions to limit or mitigate events.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, 77 Beale Street, Room 2496, Mail Code B30A, San Francisco, CA 94105.

NRC Branch Chief: Michael T. Markley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

NextEra Energy Seabrook, LLC Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmail center@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 29th day of May, 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2012–13426 Filed 6–4–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0129; Docket No. 50–423]

Notice of Withdrawal of Application for Amendment to Facility Operating License; Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit 3

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has granted the request of Dominion Nuclear Connecticut, Inc. (DNC or the licensee) to withdraw its July 5, 2011, application for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Power Station, Unit 3 (MPS3), located in town of Waterford, Connecticut.

The proposed amendment would relocate certain Technical Specification (TS) surveillance frequencies to a licensee-controlled program by adopting Technical Specification Task Force (TSTF)–425, Revision 3, ''Relocate Surveillance Frequencies of Licensee Control—Risk-Informed Technical Specification Task Force Initiative 5b.'' The proposed change would also add a new program, the Surveillance Frequency Control Program, to the TSs, in accordance with TSTF–425. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 15, 2011 (76 FR 70771). However, by letter dated May 8, 2012, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 5, 2011, as supplemented by letter dated September 12, 2011, and the licensee's letter dated May 8, 2012, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of May 2012.

For the Nuclear Regulatory Commission.

James Kim,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–13623 Filed 6–4–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission; [NRC–2012–0002].

DATES: Weeks of June 4, 11, 18, 25, July 2, 9, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of June 4, 2012

Thursday, June 7, 2012

9:25 a.m. Affirmation Session (Public Meeting) (Tentative)

a. *Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative* (Combined License Application for North Anna Unit 3); Dominion's Petition for Review of LBP–11–22) (Tentative)

b. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), Docket No. 50–293–LR (Tentative)

c. Final Rule: 10 CFR 73.37, ''Physical Protection of Irradiated Fuel in Transit'' (RIN 3150–AI64) (Tentative)

d. *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Referred Ruling in LBP–11–32 (Nov. 18, 2011); San Luis Obispo Mothers for Peace's Petition for Partial Interlocutory Review of LBP–11–32 (Dec. 5, 2011) (Tentative)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Tanny Santos, 301–415–7270)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of June 11, 2012—Tentative

Friday, June 15, 2012

9:30 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) on Grid Reliability (Public Meeting) To be held at FERC Headquarters, 888 First Street NE., Washington, DC. (Contact: Jim Andersen, 301–415–3565)

This meeting will be webcast live at the Web address—*www.ferc.gov*.

Week of June 18, 2012—Tentative

There are no meetings scheduled for the week of June 18, 2012.

Week of June 25, 2012—Tentative

There are no meetings scheduled for the week of June 25, 2012.

Week of July 2, 2012—Tentative

There are no meetings scheduled for the week of July 2, 2012.

Week of July 9, 2012—Tentative

Tuesday, July 10, 2012

9:30 a.m. Strategic Programmatic Overview of the Operating Reactors Business Line (Public Meeting) (Contact: Trent Wertz, 301–415–1568)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: May 31, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–13680 Filed 6–1–12; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0126]

Regulatory Guide 8.33, Quality Management Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory Guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is withdrawing Regulatory Guide (RG) 8.33, ''Quality Management Program.'' This guide provided guidance to ensure that the objectives of the former NRC ''Quality Management Program'' regulations were met. In this connection, the guide suggested policies and procedures to be used in complying with other specific NRC regulations. However, the requirement to establish a Quality Management Program was deleted from the regulations as part of an overall revision in 2002 of the ''Medical Use of Byproduct Material'' regulations. Therefore, the guidance provided in RG 8.33 is no longer accurate or current and is being withdrawn through this notice.

ADDRESSES: Please refer to Docket ID NRC–2012–0126 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0126. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mohammad Saba, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7558 or email to *Mohammad.Saba@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is withdrawing Regulatory Guide 8.33, ''Quality Management Program,'' published on November 4, 1991 (56 FR 56425). The guide provided guidance for licensees and applicants for developing policies and procedures for a quality management program acceptable to the NRC staff for complying with former Title 10 of the *Code of Federal Regulations* (10 CFR) Part 35, ''Medical Use of Byproduct Material,'' 10 CFR 35.32, ''Quality Management Program.'' However, the requirement that licensees must establish and maintain a Quality Management Program was deleted from the regulations on April 24, 2002 (see 67 FR 20370). Therefore, the guidance provided in RG 8.33 is neither necessary nor current. NUREG–1556, Volume 9, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Medical Use Licenses,'' has since been published to provide guidance on topics related to the current regulations in 10 CFR Part 35. The guidance in NUREG–1556, Volume 9, will be revised in conjunction with the promulgation of a rule revising 10 CFR Part 35 that is currently being developed.

II. Further Information

The withdrawal of Regulatory Guide 8.33 does not alter any prior or existing licensing commitments or conditions based on their use. The guidance provided in these regulatory guides is neither necessary nor current. Regulatory guides may be withdrawn when their guidance is superseded by congressional action or no longer provides useful information.

Dated at Rockville, Maryland, this 24th day of May 2012.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–13620 Filed 6–4–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0115]

Regulatory Guide 8.24, Revision 2, Health Physics Surveys During Enriched Uranium-235 Processing and Fuel Fabrication

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

ADDRESSES: Please refer to Docket ID NRC–2010–0115 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0115. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

FOR FURTHER INFORMATION CONTACT: Gregory Chapman, Uranium Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3106 or email to: *Gregory.Chapman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Revision 2 of Regulatory Guide 8.24, ''Health Physics Surveys During Enriched Uranium-235 Processing and Fuel Fabrication'' was issued with a temporary identification as Draft Regulatory Guide, DG–8040 on March 22, 2010 (75 FR 13599). This guide specifies the types and frequencies of surveys that are acceptable to the NRC's staff for the protection of workers in plants licensed by the NRC to process enriched uranium and fabricate uranium fuel.

Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1501(a), requires each licensee to make or cause to be made such surveys that may be necessary for compliance with the regulations in 10 CFR part 20, ''Standards for Protection Against Radiation.'' Section 20.1003, the definitions section of 10 CFR part 20, defines the term ''survey'' as ''an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.''

This guide does not relate to the processing of uranium-233, nor does it deal specifically with the following aspects of an acceptable occupational health physics program that are closely related to surveys: (1) The number and qualification of the health physics staff, (2) instrumentation, including types, numbers of instruments, limitations of use, accuracy, and calibration, (3) personnel dosimetry, and (4) bioassays.

II. Further Information

On March 22, 2010, DG–8040 was published with a request for public comments (75 FR 13599). The public comment period closed on May 3, 2010. Electronic copies of Regulatory Guide 8.24, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/* and through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML110400305. The regulatory analysis may be found in ADAMS under Accession No. ML110400310. Staff's responses to public comments on DG–8040 are available under ML110400315.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by email to *pdr@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 25th day of May 2012.

Edward O'Donnell,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–13622 Filed 6–4–12; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Expediting Transition of Government Performed and Sponsored Aeronautics Research and Development

AGENCY: National Science and Technology Council, Office of Science and Technology Policy.

ACTION: Notice of request for public comment.

SUMMARY: The National Science and Technology Council seeks public comment on potential means to expedite the transition of government performed or sponsored research and development (R&D) to the private sector for use in developing new civil and military applications that foster economic growth, the creation of high-quality jobs, and national security. In addition, as a means to improve future national aeronautics R&D plans and progress assessments, the Council seeks public comment on the utility of certain national aeronautics R&D planning documents for providing transparency of goals, priorities, and outcomes, with an emphasis on understanding their utility in aiding investment strategies of non-Federal stakeholders.

DATES: Comments will be received through July 16, 2012, 11:59 p.m. EST.

ADDRESSES: Concise comments are requested and may be submitted by any of the following methods:

- *Email: aero@ostp.gov.* Include ''AERONAUTICS COMMENTS'' in the subject line of the message.
- *Mail:* Office of Science and Technology Policy, National Science and Technology Council, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW., Washington, DC 20504. Attention: ''AERONAUTICS COMMENTS.''

All submissions must be in English and must include your name and return or email address, if applicable. At the discretion of the ASTS, responders may be contacted to seek further clarification or additional information; if you do not wish to be contacted please so indicate in your response. Submitted comments may be subject to public release under applicable law. Submitters are advised to not submit any personally identifiable information (such as social security numbers), or classified or copyrighted material. Any proprietary or business confidential information that is submitted in response to this notice should be clearly labeled at the top of each page.

FOR FURTHER INFORMATION CONTACT: Dr. Michael C. Romanowski, 202–456–4444. Questions about the content of this notice should be sent to *aero@ostp.gov.* Include ''AERONAUTICS COMMENTS'' in the subject line of the message. Questions may also be sent by mail (please allow additional time for processing) to: Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW., Washington, DC 20504. Attention: ''AERONAUTICS COMMENTS.'' Further information or updates related to this notice may be posted at *http://www.aeronautics.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

The National Science and Technology Council (NSTC), through the Aeronautics Science and Technology Subcommittee (ASTS) of the Committee on Technology (CoT), seeks public comment on ways to maximize the benefits of Federal aeronautics research and development (R&D) investments.

Background

ASTS seeks to identify innovative means whereby Federal agencies conducting or sponsoring aeronautics R&D can accelerate the transition of advancements to the non-Federal community, thereby further increasing the effectiveness of the national aeronautics enterprise and supporting the creation of high-wage, high-skill jobs within the aerospace sector. ASTS has

particular interest in proposals that are actionable within existing legislative authorities, and that would have measurable anticipated payoffs. As rapid progress is desired, it would be helpful if responders identify near-term opportunities as well as improvements with medium-to-long-term payoffs. Responders are encouraged to rank their relative priorities if submitting multiple suggestions.

In December 2006, the National Aeronautics Research and Development Policy was published (see *http://www.aeronautics.nasa.gov/releases/national_aeronautics_rd_policy_dec_2006.pdf*), marking the first time that a national policy for government performed or sponsored aeronautics R&D was approved by the President. Since then, the first cycle of plans and progress assessments in response to the Policy were completed. The Federal Government published its initial National Plan for Aeronautics Research and Development and Related Infrastructure in 2007, with follow-on updates published in 2010 and 2011. In 2008, an initial assessment of progress against the 2007 plan was also published. Likewise, in December 2011, an assessment against the 2010 aeronautics research and development plan was published. With the completion of the 2011 Progress Assessment of the 2010 National Aeronautics Research and Development Plan, ASTS has completed a five-year national aeronautics R&D planning and assessment cycle. ASTS seeks public comment on the contents and utility of these plans and assessment documents as a means to improve the effectiveness of the federal aeronautics enterprise.

We encourage responders to be specific and to identify innovative approaches, broader use of current best practices, and past practices no longer employed that might be re-implemented. No prioritization is implied by the order in which questions are asked. Please consider the following documents, as appropriate, when responding to the questions:

- National Plan for Aeronautics Research & Development and Related Infrastructure (2007) (*http://www.whitehouse.gov/files/documents/ostp/default-file/Final%20National%20Aero%20RD%20Plan%20HIGH%20RES.pdf*)
- Technical Appendix to the National Plan for Aeronautics Research and Development and Related Infrastructure (2008) (*http://www.whitehouse.gov/files/documents/ostp/default-file/technical_appendix_high.pdf*)
- 2010 National Aeronautics Research and Development Plan (*http://www.whitehouse.gov/sites/default/files/microsites/ostp/aero-rdplan-2010.pdf*)
- 2011 Progress Assessment of the 2010 National Aeronautics Research and Development Plan (*http://www.whitehouse.gov/sites/default/files/microsites/ostp/NARDP_2011_Progress_Assessment_final.pdf*)

Questions on Technology Transfer and National Aeronautics R&D

Responders are encouraged to respond to any or all of the following questions, and to provide proposed metrics to index improvements where appropriate.

1. Through what mechanisms are you, or your organization, able to obtain visibility into the progress of aeronautics R&D activities conducted or sponsored by the Federal Government? In what ways could your visibility be improved?

2. Through what mechanisms, and to what extent, are you, or your organization, able to access the products of federally sponsored or conducted aeronautics R&D activities? In what ways could access be improved?

3. Since 2007, have you, or your organization, been able to transition any of the products from the specific Federal R&D activities that were performed under the National Aeronautics Research & Development Plans into the products or services developed by your organization? Please discuss, and provide examples of specific mechanisms that facilitated technology transfer or that impeded the process.

4. What other ideas or thoughts do you have for maximizing the benefits of Federal aeronautics R&D, or for increasing the effectiveness of technology transfer from Federally conducted or sponsored R&D to the private sector? Do you have recommendations for success criteria or metrics associated with these areas?

5. Through what mechanisms, and to what extent, are you, or your organization, able to provide input into overall priorities and goals for Federal aeronautics R&D, or into the specific department and agency R&D plans or programs? How could this be improved?

6. What do you perceive to be the impact of the National Aeronautics R&D Policy and its associated plans on the U.S. aeronautics enterprise?

7. To what extent have the national aeronautics plans and assessments helped you, or your organization, understand the overall goals and status of Federal aeronautics R&D?

8. To what extent have the national aeronautics plans and assessments helped you, or your organization, guide your internal R&D strategies, planning or execution?

9. What recommendations would you provide to make future national aeronautics plans and assessments more useful to you or your organization?

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2012–13586 Filed 6–4–12; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold a public meeting on Friday, June 8, 2012, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 9:00 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks. The meeting will be Webcast on the Commission's Web site at www.sec.gov.

On May 22, 2012, the Commission issued notice of the Committee meeting (Release No. 33–9325), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes discussions of provisions of the Jumpstart Our Business Startups Act and other matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: June 1, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–13700 Filed 6–1–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67068; File No. SR–NASDAQ–2012–064]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Date for Its Excess Order Fee

May 29, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change to delay the implementation date for its Excess Order Fee. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ recently submitted a proposed rule change to introduce an Excess Order Fee,[3] aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In order to provide market participants with additional time to enhance their efficiency so as to avoid the fee, NASDAQ is delaying the implementation date of the fee until July 2, 2012.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, NASDAQ believes that delaying the implementation date of the Excess Order Fee will provide market participants with additional time to enhance the efficiency of their systems, and that implementation of the fee on July 2, 2012 will benefit investors and the public interest by encouraging more efficient order entry practices by all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, NASDAQ believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, NASDAQ believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.[6] NASDAQ further believes that the proposed delay of one month in the implementation of the fee will not have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–064. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66951 (May 9, 2012), 77 FR 28647 (May 15, 2012) (SR–NASDAQ–2012–055).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(a)(i) [sic].

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissionsshould refer to File Number SR–NASDAQ–2012–064, and should be submitted on or before June 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13483 Filed 6–4–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67074; File No. SR–BX–2012–037]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Waiver of Fees for BX Options Participants

May 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to waive certain application, membership and data fees for BX members seeking to participate solely in the new BX Options Market.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=BXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to waive the following BX fees to promote participation in the new BX Options Market: (1) Membership Fee; (2) Trading Rights Fee; (3) Application Fee; (4) testing fee; and (5) Annual Administrative Fee.

The Exchange recently filed for approval to operate a new options market.[3] The new market, called NASDAQ OMX BX Options, or BX Options, will be all-electronic with no physical trading floor. BX proposed to adopt a series of rules based on the existing rules of NOM.[4]

Persons desiring to join the new BX Options Market need to apply to become members of BX pursuant to BX Rules. BX Members are subject to various charges for membership, services and equipment as noted in the 7000 Rules. The Exchange desires to waive certain of those fees to attract market participants to the new BX Options Market. BX seeks to implement the fee waivers immediately so that Applicants seeking to participate in the new BX Options market may begin submitting applications to the Exchange prior to the market's commencement of operations.

Currently, BX members are assessed a $3,000 Membership Fee[5] per year and a $500 per month trading rights fee.[6] The Exchange also assesses an Application Fee of $2,000.[7] Among other fees, the Exchange also currently assesses subscribers to the Exchange a fee for conducting tests of their Exchange access protocols connection or market data feeds through the Exchange's Testing Facility a fee of $300 per port, per month.[8] The Exchange assesses an Annual Administrative Fee to market data distributors that receive any proprietary Exchange data feed product. The amount of this fee is the higher of the delayed distributor fee of $500 or the real-time distributor fee of $1,000 (which may include the delayed fee). This fee is assessed annually.

The Exchange proposes to waive the Membership Fee, Trading Rights Fee, Application Fee, and Annual Administrative Fee for Applicants desiring to apply to become BX Options Market Participants, who will not transact business on the BX Equities Market.[9] The proposed fee waivers for the Membership Fee, Trading Rights Fee and Annual Administrative Fee would apply also to an existing BX member if that member applies to transact business on the BX Options Market only and will no longer be conducting an equities business on BX. In this example, the Application Fee would not be waived because it was already assessed at the time the member became a BX member.

[3] *See* SR–BX–2012–30.

[4] *See* SR–BX–2012–30. BX will operate an electronic trading system developed to trade options that will provide for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders.

[5] The Membership Fee is imposed on all persons that are Exchange members as of a date determined by the Exchange in December of each year. This fee is not refundable in the event that a person ceases to be an Exchange member following the date on which the fee is assessed. *See* Rule 7001. This Membership Fee is collected by the Financial Industry Regulatory Authority (FINRA) on behalf of the Exchange and would be refunded by the Exchange annually, if the fee is assessed to a BX Options Participant who qualified for the waiver.

[6] The Trading Rights Fee is assessed on all persons that are Exchange members as of a date determined by the Exchange in each month. This fee is not refundable in the event that a person ceases to be an Exchange member following the date on which the fee is assessed. *See* Rule 7001.

[7] The Application Fee for membership in the Exchange is non-refundable.

[8] These fees do not apply to testing occasioned by new or enhanced services or software, modifications to services or software initiated by the Exchange in response to a contingency or testing by a new subscriber under certain circumstances. *See* Rule 7030.

[9] New BX Options Market members would be assigned an account by the Membership Department.

The waiver would also apply to a BX member who determines at a later date to transact business on the BX Options Market only; the Application Fee would not be waived in this case because it was already paid at the time the member became a BX member. The aforementioned waivers would not apply to Applicants seeking approval to participate solely in the BX Equities Market, or to an applicant seeking to participate in both the BX Equities and the BX Options Markets. In the event that an Applicant applies to be a BX Options Participant and obtains the waiver but later determines to commence an equities business, the BX Options Participant would be assessed the Membership Fee, Trading Rights Fee; testing fees; and Annual Administrative Fee going forward.[10]

The Exchange also proposes to waive BX Options testing fees as such fees are described in Rule 7030(d). The Exchange also proposes to make minor technical amendments to Rule 7001 to remove outdated text that dates back to the commencement of the BX Equities Market.

2. Statutory Basis

The Exchange believes that its proposal to amend its fees is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange makes all services and products subject to its fees available on a non-discriminatory basis to similarly situated recipients. The proposed waivers of the Membership Fee, Trading Rights Fee, Application Fee, testing fee and Annual Administrative Fee are reasonable because the Exchange is seeking to attract market participants to the new BX Options Market.

The Exchange believes that the proposed waivers of the Membership Fee, Trading Rights Fee, Application Fee and Annual Administrative Fee are equitable and not unfairly discriminatory because the waivers will uniformly apply to BX Options Participants that transact business solely on the BX Options Market. The testing fee will also be uniformly waived for all testing related to the BX Options market.

The proposed technical amendments are reasonable, equitable and not unfairly discriminatory because the amendments remove outdated text.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;)* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–037 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.)* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–037 and should be submitted on or before June 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13511 Filed 6–4–12; 8:45 am]

BILLING CODE 8011–01–P

[10] These members would not be assessed an Application Fee, which was previously waived at the time they became Exchange members.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67075; File No. SR–NYSE Arca–2012–28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Shares of the JPM XF Physical Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

May 30, 2012.

On April 2, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of JPM

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

XF Physical Copper Trust pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on April 20, 2012.[3] The Commission received one comment letter regarding the proposal.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is June 4, 2012. The Commission is extending the 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on this proposed rule change. In particular, extension of time will ensure the Commission has sufficient time to consider the Exchange's proposal in light of, among other things, the Letter. The extension of time also will allow the Commission sufficient time to consider any responses to the Letter.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates July 19, 2012, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, this proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13512 Filed 6–4–12; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772 (''Notice'').

[4] *See* letter from Vandenberg & Feliu, LLP, received May 9, 2012 (''Letter''). The Letter is available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml.*

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67078; File No. SR–CBOE–2012–051]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to FLEX Options

May 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2012, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to provide for additional time to implement new system enhancements for trading Flexible Exchange Options (''FLEX Options'')[5] that were the subject of another rule change filing that was recently approved. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 7, 2012, the Exchange received approval of a rule change filing, SR–CBOE–2011–122, which amended certain rules pertaining to the electronic trading of FLEX Options on the Exchange's FLEX Hybrid Trading System platform (the ''FLEX System'' or ''System'').[6] In that filing, the Exchange indicated that it is in the process of enhancing the FLEX System in order to further integrate it with the Exchange's existing technology platform utilized for Non-FLEX trading. In conjunction with the enhancement, the filing made some modifications to the existing electronic trading processes utilized on the FLEX System platform. The filing made other amendments to eliminate certain European-Capped style settlement and currency provisions with the FLEX rules that pertain to both electronic and open outcry trading. The filing also indicated that the Exchange planned to announce to its Trading Permit Holders (''TPHs'') via Regulatory Circular an implementation schedule for transitioning from the existing technology platform to the new technology platform once the rollout schedule is finalized. The filing indicated that the Exchange intended to begin implementation by no later than March 30, 2012, with the specific implementation schedule to be announced via Regulatory Circular, as stated above. The Exchange intended to transition a few classes at a time and anticipated full implementation within approximately one to three weeks of the initial transition. Finally, in the event

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b 4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform (which is limited to open outcry trading only) are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (which combines both open outcry and electronic trading) are contained in Chapter XXIVB. The Exchange notes that, currently, all FLEX Options are traded on the FLEX Hybrid Trading System platform.

[6] Securities Exchange Act No. 66348 (February 7, 2012), 77 FR 8304 (February 14, 2012) (SR–CBOE–2011–122 Approval Order).

that implementation did not begin by March 30, 2012, the Exchange represented that it would file a proposed rule change to establish the revised time period.

The Exchange thereafter submitted another rule change filing, SR–CBOE–2012–033, which provided in relevant part for additional time to implement the new system enhancements for trading FLEX Options.[7] In particular, rather than March 30, 2012, that rule change filing revised the implementation schedule such that the Exchange would begin implementation by no later than April 30, 2012, with the specific implementation schedule to be announced via Regulatory Circular. The Exchange still intended to transition a few classes at a time and anticipated full implementation within approximately one to three weeks of the initial transition.

The purpose of this instant rule change filing is to again provide for additional time to implement the new system enhancements for trading FLEX Options. While the Exchange did begin the initial rollout of the enhancements on April 24, 2012, the Exchange will not have the full implementation completed within the approximated three week transaction period. However, the Exchange believes that full implementation will be completed within the next several weeks. Therefore, the Exchange is submitting this rule change filing to advise that it anticipates the rollout of the new system enhancements will be fully implemented by June 29, 2012. Consistent with the prior rule change filings, the Exchange will announce the specific implementation schedule via Regulatory Circular and, in the event the implementation is not completed by June 29, 2012, the Exchange represents that it will file another proposed rule change to establish the revised time period.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that the use of FLEX Options provides CBOE TPHs and investors with additional tools to trade customized options in an exchange environment[10] and greater opportunities to manage risk. The Exchange believes that the enhancements to the FLEX System adopted under rule change filing SR–CBOE–2011–122 should serve to further those objectives and encourage use of FLEX Options by enhancing and simplifying the existing processes and integrating the FLEX System with the Exchange's existing technology platform for Non-FLEX trading, which should make the FLEX System more efficient and effective and easier for users to understand. The Exchange believes that the provision for additional time to rollout the system enhancements will allow the Exchange to implement the enhancements in a fair and orderly manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b-4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow CBOE to revise its implementation schedule for the new system enhancements. The new schedule will provide adequate time for a fair and orderly implementation of the enhancements. Therefore, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[7] Securities Exchange Act Release No. 66769 (April 6, 2012), 77 FR 22012 (April 12, 2012) (SR–CBOE–2012–033 Notice of Filing and Immediate Effectiveness). Besides extending the implementation schedule, the rule change filing also contained certain amendments to the rules for trading FLEX Options.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] FLEX Options provide TPHs and investors with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. The Exchange believes that making these changes will make the FLEX Hybrid Trading System an even more attractive alternative when market participants consider whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–051 and should be submitted on or before June 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13532 Filed 6–4–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67076; File No. SR–NASDAQ–2012–062]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Its Corporate Governance Rules

May 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2012, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the exception that allows a non-independent director to serve on a listed company's audit committee, compensation committee or nominations committee under exceptional and limited circumstances. The text of the proposed rule change is available on Nasdaq's Web site at *http://www.nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room. Nasdaq will implement the proposed rule change upon approval.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's rules generally require that a listed company's audit, compensation and nominations committees consist of ''independent directors,'' as defined in Listing Rule 5605(a)(2).[3] Under this definition, a company's board must determine affirmatively that a director does not have any relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In addition, there are certain categories of directors who cannot be considered independent, such as a director who is currently, or was during the prior three years, employed by the company, or a director who is a family member[4] of an individual who is, or at any time during the past three years was, employed as an executive officer[5] by the company.[6] A director is not barred from being independent if he or she has a family member employed by the company, provided that the family member is not an executive officer of the company.

Nasdaq's rules also include an exception (the ''Exception'') to permit a listed company, under exceptional and limited circumstances and with proper disclosure, to allow one non-independent director to serve on the audit, compensation or nominations committee for up to two years.[7] The Exception, which is used infrequently by Nasdaq-listed companies,[8] was first adopted for audit committees in December 1999,[9] when the audit committee requirements were significantly enhanced following the release of the report of the Blue Ribbon

[3] *See* Nasdaq Listing Rules 5605(c)(2), 5605(d)(2)(B) and 5605(e)(1)(B).

[4] ''Family Member'' is defined as ''a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.'' Nasdaq Listing Rule 5605(a)(2).

[5] ''Executive Officer'' is defined as an officer ''covered in Rule 16a–1(f) under the [Exchange] Act.'' Nasdaq Listing Rule 5605(a)(1).

[6] *See* Nasdaq Listing Rules 5605(a)(2)(A) and 5605(a)(2)(C).

[7] *See* Nasdaq Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

[8] On December 31, 2011, nine companies were using the Exception: Six companies for the audit committee only, two companies for the nominations committee only and one company for both the nominations and compensation committees. In the two-year period from January 1, 2010 to December 31, 2011, 37 companies used the Exception for one or more of their committees.

[9] *See* Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999).

Committee on Improving the Effectiveness of Corporate Audit Committees (the ''Blue Ribbon Report'').[10] When Nasdaq implemented rules regarding independent director oversight of executive officer compensation and director nominations in 2003, these new rules included the Exception for compensation and nominations committees.[11]

The Blue Ribbon Report identified examples of relationships that may interfere with an audit committee member's exercise of independence but also specifically recommended adopting an exception for a director ''who has one or more of these relationships'' if the company's board of directors, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its stockholders and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.[12] The Exception allows a listed company greater flexibility as to board and committee membership and composition. This is particularly important for a smaller company that may have relationships with large investors that may require such flexibility.[13]

Currently, a listed company cannot utilize the Exception for a director who has a family member who is an employee of the listed company, even if that family member is not an executive officer of the company, if the director is not independent for an unrelated reason. However, that same family relationship would not otherwise preclude the director from being considered independent.[14] To provide an example, consider a director who, until one year ago, was employed by a listed company and who has a son who is a non-executive employee of the listed company. That director cannot be considered independent until three years after the end of her employment.[15] However, it is solely the prior employment relationship that precludes her from being considered independent; the son's employment does not preclude her from being considered independent and the company's board can determine that she is independent three years after the end of her employment even if her son is still a non-executive employee of the company at that time. Nonetheless, if the listed company sought to appoint this same director to one of its committees pursuant to the Exception prior to the expiration of the three-year lookback period, it would be unable to do so solely because of the son's employment.

Nasdaq believes this distinction in its rules is incongruous. If employment of a director's family member, other than as an executive officer, does not disqualify a director from being considered independent, Nasdaq sees no policy basis for precluding a listed company from relying on the Exception for that same director where the company's board has determined that the director's membership on the relevant committee is required by the best interests of the company and its stockholders. Accordingly, Nasdaq proposes to amend Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3) to allow a director who is a family member of a non-executive employee of a listed company to serve on the listed company's audit committee, compensation committee or nominations committee under exceptional and limited circumstances. This proposed change is consistent with the recommendation contained in the Blue Ribbon Report, which, as described above, would allow any non-independent director to serve under exceptional and limited circumstances with a proper board finding and disclosure.

Under both the current and proposed versions of the Exception, a listed company's board of directors must make an affirmative determination that the non-independent director's membership on a committee is required by the best interests of the company and its stockholders. In making this determination, Nasdaq expects that a board of directors would consider any family relationship between the non-independent director and a non-executive employee of the company. However, Nasdaq does not believe that the mere existence of this family relationship alone should create an outright prohibition on the use of the Exception.

Under both the current and proposed versions of the Exception, a listed company could not rely on the Exception for a director who has a family member who is an executive officer of the listed company. In addition, under both the current and proposed versions of the Exception for audit committees, a listed company could not rely on the Exception for a director who does not meet the criteria set forth in Section 10A(m)(3) of the Exchange Act and the rules thereunder to allow the director to serve on the audit committee.[16]

Finally, under both the current and proposed versions of the Exception, a listed company, other than a foreign private issuer, that relies on the Exception for an audit committee member must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S–K.[17] A foreign private issuer that relies on the Exception for an audit committee member must disclose in its next annual report (e.g., Form 20–F or 40–F) the nature of the relationship that makes the committee member not independent and the reasons for the board's determination to rely on the Exception.[18] A listed company that relies on the Exception for a compensation or nominations committee member must disclose either on or through the company's Web site or in the proxy statement for the next annual meeting (or, if the company does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship that makes the committee member not independent and the reasons for the determination to rely on the Exception.[19] A listed company that relies on the Exception for a compensation or nominations committee member also must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S–K regarding its reliance on the Exception.[20]

The proposed rule change also would substitute ''Executive Officer,'' which is a defined term, for ''officer,'' which is now used in the Exception but is not defined. Nasdaq always has interpreted these terms in the same way.

[10] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 1999).

[11] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003).

[12] *See* the Blue Ribbon Report at 24.

[13] *Id.* at 23. The Blue Ribbon Report proposed to exempt smaller companies (i.e., those with a market capitalization below $200 million) from the proposed audit committee requirements. *Id.* at 12 and 23. Thus, while the Blue Ribbon Committee's recommendation to adopt the Exception was not primarily targeted towards smaller companies, and the Blue Ribbon Committee recognized the utility of the Exception for companies of all sizes, the Exception is more important today for smaller companies given that they are now subject to all the same board composition requirements as larger companies.

[14] *See* Nasdaq Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

[15] *See* Nasdaq Listing Rule 5605(a)(2)(A), which provides that a director who is, or at any time during the past three years was, employed by a listed company may not be considered independent.

[16] *See* 15 U.S.C. 78j–1(m)(3) and 17 CFR 240.10A–3(b)(1).

[17] *See* Nasdaq Listing Rule 5605(c)(2)(B).

[18] *Id.*

[19] *See* Nasdaq Listing Rules 5605(d)(3) and 5605(e)(3).

[20] *Id.*

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[21] in general, and with Section 6(b)(5) of the Act,[22] in particular. Section 6(b)(5) requires, among other things, that a national securities exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change would modify Nasdaq's rules to allow a listed company to utilize the Exception for a very narrow category of additional directors: Those who have a family member who is a non-executive employee of the listed company. Nasdaq believes that the proposed change will reduce confusion about the application of the Exception, given that the same family relationship does not otherwise preclude the director from being considered independent, and will thereby promote just and equitable principles of trade and remove an impediment to the mechanism of a free and open market. The proposed rule change is designed to protect investors and the public interest because a company's board will continue to be required to conclude that the use of the Exception is in the best interests of the company and its stockholders and the use of the Exception will continue to be required to be disclosed as set forth in Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at Nasdaq's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–062 and should be submitted on or before June 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13513 Filed 6–4–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5) and (8).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13078 and #13079]

Massachusetts Disaster #MA–00048

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 05/29/2012.

Incident: Lake Williams Condominium Complex Fire.

Incident Period: 04/23/2012.

Effective Date: 05/29/2012.

Physical Loan Application Deadline Date: 07/30/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 03/01/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Middlesex.

Contiguous Counties:

Massachusetts: Essex, Norfolk, Suffolk, Worcester.

New Hampshire: Hillsborough.

The Interest Rates are:

	Percent
For Physical Damage:	

	Percent
Homeowners With Credit Available Elsewhere	3.875
Homeowners Without Credit Available Elsewhere	1.938
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 130785 and for economic injury is 130790.

The States which received an EIDL Declaration # are Massachusetts; New Hampshire.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 29, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–13494 Filed 6–4–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0149]

National Registry of Certified Medical Examiners Testing Providers Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation (DOT).

ACTION: Notice of Public Meeting.

SUMMARY: The National Registry of Certified Medical Examiners (National Registry) Testing Providers Public Meeting will take place on Monday, June 11, 2012, from 1:00–4:00 p.m. (EDT), at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. The purpose of the meeting is to help testing providers understand the regulation and their role so they can make an informed decision about their participation.

DATES: The National Registry Testing Providers meeting will be held from 1:00–4:00 p.m. (EDT) on June 11, 2012. The preliminary agenda for this meeting is located in the **SUPPLEMENTARY INFORMATION** section of this notice for specific information.

ADDRESSES: The meeting will take place at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. A conference phone number will be provided for those that are unable to physically attend but would still like to participate. *Once you have notified FMCSA that you plan to participate, the Agency will provide the room number, conference phone number, and access code.*

TO PARTICIPATE OR FOR FURTHER INFORMATION CONTACT: Ms. Robin Hamilton, Program Analyst, Medical Programs Division, FMCSA, 202–366–4001, *robin.hamilton@dot.gov*.

SERVICES FOR INDIVIDUALS WITH DISABILITIES: Should you need sign language interpretation or other assistance to participate, please contact Ms. Hamilton by Wednesday, June 6, 2012, to allow us to arrange for such services. There is no guarantee that services requested on short notice can be provided.

SUPPLEMENTARY INFORMATION:

I. Preliminary Agenda

1:00–1:15 p.m. Introductions
1:15–2:15 p.m. Overview of the National Registry of Certified Medical Examiners and the role of the test delivery organizations
2:15–2:45 p.m. Security requirements and privacy protections
2:45–3:15 p.m. Data transfer requirements
3:15–4:00 p.m. Questions

II. Background

FMCSA published The National Registry of Certified Medical Examiners (National Registry) in the **Federal Register** on April 20, 2012. This rule requires all healthcare practitioners who conduct medical examinations for interstate commercial motor vehicle drivers to undergo training, pass a certification exam, and be listed on the National Registry on the Agency's Web site. The rule becomes effective on May 21, 2012. At that time, testing providers may apply on-line through the National Registry System to be a test delivery organization for the certification exam.

Test delivery organizations play a key role in the rule's implementation. In writing this rule, the Agency decided to use the public/private partnership model. The Agency develops and provides the test to test delivery organizations who then deliver the test, charge whatever fee they determine reasonable, and transmit test results to the Agency. The Agency does not pay the test delivery organization. However, to participate, test delivery organizations must apply and be approved before the Agency will provide access to the system and give the test delivery organization the test forms.

III. Meeting Participation

Attendance is open to all interested parties.

Issued on: May 30, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–13535 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2012–0044]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 22 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective June 5, 2012. The exemptions expire on June 5, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m.

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

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

Background

On April 6, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 22 individuals and requested comments from the public (77 FR 20876). The public comment period closed on May 7, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 22 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 22 applicants have had ITDM over a range of 1 to 41 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 6, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts, Adele M. Aasen (ND), David P. Altomer (NY), Steven W. Beaty (SD), David B. Brown (MI), Erik F. Brown, (CA), Michael R. Conley (WI), Emil H. Ellis, Jr. (WA), Cecil E. Glenn (CA), Evan P. Hansen, (WI), Todd A. Heitschmidt (WA), John M. Kennedy (NC), Jeremy A. Ludolph, (KS), Bradley A. Marlow (WA), Gerlad N. Martinson (ND), Karl L. Price (MS), Earl C. Saxton (MO), Alan J. Schipkowski (IL), William H. Stone, Sr. (FL), Glenn D. Taylor (NY), Richard E. Thomas (OH), Thomas R. Toews (OR) and James E. Waller, III. (GA) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 29, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–13536 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0027]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 2, 2012, the Heber Valley Railroad (HVRR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR. FRA assigned the petition Docket Number FRA–2012–0027.

Specifically, HVRR seeks a waiver of compliance for 15 freight cars, from 49 CFR 215.303, which requires stenciling on restricted freight cars; and 49 CFR part 224, Reflectorization of Rail Freight Rolling Stock. HVRR also requested a Special Approval to continue in service of the same cars in accordance with 49 CFR Section 215.203(c). The ages of these cars are more than 50 years from their original construction dates, and therefore, are restricted per 49 CFR Section 215.203(a); unless HVRR receives a Special Approval from FRA.

HVRR stated that it is a nonprofit independent agency of the State of Utah doing business as the Heber Valley Railroad. This railroad was a former Denver and Rio Grande Western branch line. The trains operate on 16 miles of Class I and Class II track between Heber City and Vivian Park, UT, at no more than 25 mph. This line is a noninsular tourist railroad that is not connected to the general system. HVRR exercises complete control of the operation and maintenance of the freight cars, which are the subject of this waiver petition.

HVRR attached to the petition letter an Exhibit A, which lists the subject cars' types, reporting marks, construction, designs, type components, and other items causing the restriction of some of the cars.

HVRR stated that the main reason for the maintenance and operation of these historic cars is their status and attraction as operating historic artifacts. There would be few other uses worth the expense and effort that HVRR has put into the maintenance and upkeep of these cars. Each car is lettered and painted according to its appearance on its road of origin approximately 60 years ago, or in a scheme representing one of the railroads that would have originally purchased that type of car. HVRR further stated that stenciling the cars and adding reflectorization in order to meet the requirements of 49 CFR Section 215.303 and Part 224 would violate the historic impression that the car is maintained to preserve.

The HVRR petition letter also mentioned that these freight cars have been inspected by HVRR shop personnel and have been deemed safe for service. These restricted cars are limited in their service by speed, lading, and territory. HVRR's track is not connected to the general system. The subject cars will be operated at speeds not exceeding 25 mph, with light tonnage loading, if any. These cars will never be subject to regular railroad interchange operations.

HVRR believes that the restricted cars will always be operated in a context that ensures that each car and its sensibilities are readily accessible and known both to HVRR, as operator; and to FRA, as enforcer of 49 CFR part 215. In making this request, HVRR understands that a permanent roster of restricted cars shall be maintained for the benefit of the railroad and FRA at all times.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 20, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 30, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–13501 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[DOT Docket No. NHTSA–2012–0012]

Proposed Collection of Information; Alcohol Impaired Driving Countermeasures

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), on February 9, 2012 the agency published a 60 day notice in the **Federal Register** soliciting public comment on the proposed information collection abstracted below. In further compliance with the PRA, the agency now publishes this second notice announcing the submission of its proposed collection to the Office of Management and Budget (OMB) for review and notifying the public about how to submit comments in the proposed collection to OMB during the 30-day comment period. The **Federal Register** Notice with a 60-day comment period was published on February 9, 2012 Vol. 77, No. 27, Page 6856.

DATES: Comments must be submitted on or before July 5, 2012.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be

submitted to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Jackie Schraf at the National Highway Traffic Safety Administration, Office of Regional Operations and Program Delivery (NTI–200), 1200 New Jersey Avenue SE., W46–496, Washington, DC 20590. MS. Schraf's telephone number is (202) 366–3990. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day public comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 23 CFR, Part 1313, Alcohol Impaired Driving Countermeasures—Section 410.

OMB Number: 2127–0501.

Type of Request: Extension of currently approved collection of information.

Affected Public: The 50 States, the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

Abstract: An impaired driving incentive grant is available to States that have an alcohol fatality rate of 0.5 or less per 100 million vehicle miles traveled as determined by using the most recent Fatality Analysis Reporting System (FARS) data or that are one of the ten States that have the highest alcohol related fatality rates as determined by using the most recent FARS data. States designated as a high fatality rate State must submit a grant expenditures plan for conducting a high visibility impaired driving law enforcement program and a report on the previous years activities. States may also qualify through meeting specified program criteria. To demonstrate compliance using program criteria a State must submit an application that shows how they met three of eight criteria in FY2006, four of eight criteria in FY2007 and five of eight criteria in FY2008, FY2009, and beyond.

Estimated Annual Burden: 1261 hours annually.

Estimated Number of respondents: 49.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; and ways to enhance quality and clarity of information.

Mary D. Gunnels,

Associate Administrator, Regional Operations and Program Delivery.

[FR Doc. 2012–13553 Filed 6–4–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35594]

Eric Temple—Control Exemption—Portland Vancouver Junction Railroad, LLC

AGENCY: Surface Transportation Board.

ACTION: Correction to Notice of Exemption.

On February 6, 2012, Eric Temple (applicant), a noncarrier individual, filed with the Surface Transportation Board a verified notice of exemption to acquire direct control of Portland Vancouver Junction Railroad, LLC (PVJR), a wholly owned subsidiary of Columbia Basin Railroad Company, Inc. (CBRW), upon his acquiring 100% of the membership interest in PVJR. On February 22, 2012, notice of the exemption was served and published in the **Federal Register** (77 FR 10,618). The exemption became effective on March 7, 2012.

On April 24, 2012, applicant filed a letter with the Board advising that the notice incorrectly states that CBRW, which is an entity controlled by applicant and Nicholas B. Temple, leases and operates its rail lines. This notice corrects that statement. According to applicant, CBRW owns and operates approximately 74 miles of rail line, and has trackage rights over approximately 13 miles of rail line.[1] All other information in the notice is correct.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: May 25, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–13538 Filed 6–4–12; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Columbia Basin R.R—Acquis. and Operation Exemption—BNSF Ry. & BNSF Acquis.,* FD 35066 (STB served Nov. 16, 2007).

FEDERAL REGISTER

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Part II

Department of Agriculture

Office of Procurement and Property Management

7 CFR Part 3201

Designation of Product Categories for Federal Procurement; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599–AA15

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add 12 sections that will designate the following product categories within which biobased products would be afforded Federal procurement preference: Agricultural spray adjuvants; animal cleaning products; deodorants; dethatcher products; fuel conditioners; leather, vinyl, and rubber care products; lotions and moisturizers; shaving products; specialty precision cleaners and solvents; sun care products; wastewater systems coatings; and water clarifying agents. USDA is also proposing minimum biobased contents for each of these product categories.

DATES: USDA will accept public comments on this proposed rule until August 6, 2012.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0599–AA15. Also, please identify submittals as pertaining to the ''Proposed Designation of Product Categories.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: biopreferred@usda.gov.* Include RIN number 0599–AA15 and ''Proposed Designation of Product Categories'' on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased products preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Today's Proposed Rule
IV. Designation of Product Categories, Minimum Biobased Contents, and Time Frame
A. Background
B. Product Categories Proposed for Designation
C. Minimum Biobased Contents
D. Compliance Date for Procurement Preference and Incorporation Into Specifications
V. Where can agencies get more information on these USDA-designated product categories?
VI. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Regulatory Flexibility Act (RFA)
C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13132: Federalism
F. Unfunded Mandates Reform Act of 1995
G. Executive Order 12372: Intergovernmental Review of Federal Programs
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Paperwork Reduction Act
J. E-Government Act

I. Authority

The designation of these product categories is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

Section 9002 provides for the preferred procurement of biobased products by Federal procuring agencies and is referred to hereafter in this **Federal Register** notice as the ''Federal preferred procurement program.'' The definition of ''procuring agency'' in section 9002 includes both Federal agencies and ''a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract.'' Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002.

The term ''product category'' is used in the designation process to mean a generic grouping of specific products that perform a similar function, such as the various brands of shaving products or deodorants. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within these designated product categories where the purchase price of the procurement product exceeds $10,000 or where the quantity of such products or the functionally equivalent products purchased over the preceding fiscal year equaled $10,000 or more. Procuring agencies must procure biobased products within each product category unless they determine that products within a product category are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in 7 CFR Part 3201—''Guidelines for Designating Biobased Products for Federal Procurement'' (Guidelines), biobased products that are merely incidental to Federal funding are excluded from the Federal preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. In implementing the Federal preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the product categories proposed for designation in this proposed rule. Rather, the effect of the designation of the product categories is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated product categories that meet

the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002(a)(3)(B) requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such products and to recommend, where appropriate, the minimum level of biobased content to be contained in the procured products.

Subcategorization. Most of the product categories USDA is considering for designation for Federal preferred procurement cover a wide range of products. For some product categories, there are subgroups of products that meet different requirements, uses and/or different performance specifications. For example, within the product category ''hand cleaners and sanitizers,'' products that are used in medical offices may be required to meet performance specifications for sanitizing, while other products that are intended for general purpose hand washing may not need to meet these specifications. Where such subgroups exist, USDA intends to create subcategories. Thus, for example, for the product category ''hand cleaners and sanitizers,'' USDA determined in an earlier rulemaking that it was reasonable to create a ''hand cleaner'' subcategory and a ''hand sanitizer'' subcategory. Sanitizing specifications are applicable to the latter subcategory, but not the former. In sum, USDA looks at the products within each product category to evaluate whether there are groups of products within the category that have different characteristics or that meet different performance specifications and, where USDA finds these types of differences, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

For some product categories, however, USDA may not have sufficient information at the time of proposal to create subcategories. For example, USDA may know that there are different performance specifications that leather, vinyl, and rubber care products are required to meet, but it may have information on only one type of leather, vinyl, and rubber care product. In such instances, USDA may either designate the product category without creating subcategories (i.e., defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the product category until additional information is obtained. Once USDA has received sufficient additional information to justify the designation of a subcategory, the subcategory will be designated through the proposed and final rulemaking process.

USDA is not proposing to subcategorize any of the product categories being proposed for designation in today's action. However, public comments and additional data are being requested for several of the product categories and subcategories may be created in a future rulemaking.

Minimum Biobased Contents. The minimum biobased contents being proposed with today's rule are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples. USDA has, however, begun to receive biobased content data associated with manufacturer's applications for certification to use the USDA Certified Biobased Product label. As discussed later in this preamble, these test results will also be considered when proposing the minimum biobased content levels for designated product categories.

In addition to considering the biobased content test data for each product category, USDA also considers other factors including product performance information. USDA evaluates this information to determine whether some products that may have a lower biobased content also have unique performance or applicability attributes that would justify setting the minimum biobased content at a level that would include these products. For example, a lubricant product that has a lower biobased content than others within a product category but is formulated to perform over a wider temperature range than the other products may be more desirable to Federal agencies. Thus, it would be beneficial to set the minimum biobased content for the product category at a level that would include the product with superior performance features.

USDA also considers the overall range of the tested biobased contents within a product category, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, the biobased contents of 13 tested products within a product category being proposed for designation today range from 12 to 100 percent, as follows: 12, 15, 53, 64, 74, 74, 86, 87, 87, 88, 90, 93, and 100. Because this is a very wide range, and because there is a significant gap in the data between the 12 percent biobased product and the 53 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this product category. USDA found that the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 12 percent biobased content product. Thus, USDA is proposing to set the minimum biobased content for this product category based on the product with a tested biobased content of 53 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each product category. For most designated product categories, USDA has biobased content test data on more than one product within the category. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated product category. As USDA obtains additional data on the biobased contents for products within these designated product categories or their subcategories, USDA will evaluate whether the minimum biobased content for a designated product category or subcategory will be revised.

USDA anticipates that the minimum biobased content of a product category that is based on a single product is more likely to change as additional products within that category are identified and tested. In today's proposed rule, none of the proposed minimum biobased contents is based on a single tested product.

Where USDA receives additional biobased content test data for products within these proposed product categories during the public comment period, USDA will take that information into consideration when establishing the minimum biobased content when the product categories are designated in the final rulemaking.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. Some of the products that are within biobased product categories designated for Federal preferred procurement under this program may also be within categories the Environmental Protection Agency (EPA) has designated under the

EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered materials. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies also may review available information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the ASTM Standard D7075, ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products,'' or the Building for Environmental and Economic Sustainability (BEES) analysis for evaluating and reporting on environmental performance of biobased products). Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products. Detailed information on ASTM Standard D7075, and other ASTM standards, can be found on ASTM's Web site at *http://www.astm.org.* Information on the BEES analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html.*

Section 6002 of RCRA requires a procuring agency procuring a product designated by EPA generally to procure such a product composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such a product based on a determination that it fails to meet the reasonable performance standards or specifications of the procuring agency. A product with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the product with recovered materials content would jeopardize the intended end use of the product.

Where a biobased product is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because ''lubricating oils containing re-refined oil'' has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil.'' If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to reasonable price, availability, and performance considerations.

USDA does not believe that any of the product categories being proposed for Federal preferred procurement in today's rulemaking overlap with an EPA-designated recovered content product. However, interested readers may obtain more information on EPA's CPG products by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: the BioPreferred Program, the EPA's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Procuring agencies should note that not all biobased products are ''environmentally preferable.'' For example, unless cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. Household cleaning products that are formulated to be disinfectants are required, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to be registered with EPA and must meet specific labeling requirements warning of the potential risks associated with misuse of such products. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that the products have been reformulated in accordance with recommendations from the EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

In contrast, some biobased products may be more environmentally preferable than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's DfE program. To fully compare products, one must look at the ''cradle-to-grave'' impacts of the manufacture, use, and disposal of products. Biobased products that will be available for Federal preferred procurement under this program have been assessed as to their ''cradle-to-grave'' impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new, fossil carbon into the atmosphere. Fossil carbon is derived from non-renewable sources (typically fossil fuels such as coal and oil), whereas renewable biomass carbon is derived from renewable sources (biomass). Qualifying biobased products offer the user the opportunity to manage the carbon cycle and reduce the introduction of new fossil carbon into the atmosphere.

Manufacturers of qualifying biobased products designated under the Federal preferred procurement program will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results of the ASTM D7075, or the comparable BEES analysis, which examines 12 different environmental parameters, including human health. Therefore, USDA encourages Federal procurement agencies to consider that USDA has already examined all available information on the environmental and human health effects of biopreferred products when making their purchasing decisions.

Other Federal Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by

Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and NISH offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*www.abilityone.gov*) indicated that five of the product categories being proposed today (deodorants; leather, vinyl, and rubber care products; lotions and moisturizers; specialty precision cleaners and solvents; and sun care products) are available through the AbilityOne Program. While there is no specific product within these product categories identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other product categories being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the Federal preferred procurement program.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the Federal preferred procurement program during the development of the rulemaking packages for the designation of product categories. USDA consults with stakeholders to gather information used in determining the order of product category designation and in identifying: Manufacturers producing and marketing products that fall within a product category proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within product categories. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing. Based on these results, USDA will then propose new product categories for designation for Federal preferred procurement.

USDA has developed a preliminary list of product categories for future designation and has posted this preliminary list on the BioPreferred Web site. While this list presents an initial prioritization of product categories for designation, USDA cannot identify with certainty which product categories will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those product categories that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, product categories with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list. USDA intends to update the list of product categories for future designation on the Biopreferred Web site every six months, or more often if significant changes are made to the list.

III. Summary of Today's Proposed Rule

USDA is proposing to designate the following product categories for Federal preferred procurement: Agricultural spray adjuvants; animal cleaning products; deodorants; dethatcher products; fuel conditioners; leather, vinyl, and rubber care products; lotions and moisturizers; shaving products; specialty precision cleaners and solvents; sun care products; wastewater systems coatings; and water clarifying agents. USDA is also proposing a minimum biobased content for each of these product categories. Lastly, USDA is proposing a date by which Federal agencies must incorporate these designated product categories into their procurement specifications (see Section IV.D).

In today's proposed rule, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life-cycle costs for each of the designated product categories. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these product categories is not presented in this notice. Further, USDA has reached an understanding with manufacturers not to publish their names in conjunction with specific product data published in the **Federal Register** when designating product categories. This understanding was reached to encourage manufacturers to submit products for testing to support the designation of a product category. Once a product category has been designated, USDA will encourage the manufacturers of products within the product category to voluntarily make their names and other contact information available for the BioPreferred Web site.

Warranties. Some of the product categories being proposed for designation today may affect original equipment manufacturers' (OEMs) warranties for equipment in which the product categories are used. For example, the manufacturer of a piece of equipment that requires lubrication typically includes a list of recommended lubricants in the owner/operators manual that accompanies the equipment when purchased. If the purchaser of the equipment uses a lubricant (including a biobased lubricant) that is not among the lubricants recommended by the equipment manufacturer, the manufacturer may cite that as a reason not to honor the warranty on the equipment. At this time, USDA does not have information available as to the extent that OEMs have included, or will include, biobased products among their recommended lubricants (or other similar operating components). This does not necessarily mean that use of biobased products will void warranties, only that USDA does not currently have such information. USDA is requesting comments and information on this topic, but cannot be held responsible if damage were to occur. USDA encourages manufacturers of biobased products to test their products against all relevant standards, including those that affect warranties, and to work with OEMs to ensure that biobased products are accepted and recommended for use. Whenever manufacturers of biobased products find that existing performance standards for warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. In addition to outreach to biobased product manufacturers and Federal Agencies, USDA will, as time and resources allow, work with OEMs on addressing any effect the use of biobased products may have on their warranties. If, in spite of these efforts, there is insufficient information regarding the use of a biobased product and its effect on warranties, the procurement agent would not be required to buy such a product. As information is available on warranties,

USDA will make such information available on the BioPreferred Web site.

Additional Information. USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Web site before a procuring agency asks for it, in order to make the Federal preferred procurement program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through email and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these product categories through the following Web site: *http://www.biopreferred.gov.*

Comments. USDA invites comment on the proposed designation of these product categories, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these product categories. In addition, USDA invites comments and information in the following areas:

1. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed product categories. If you know of other such standards or relevant measures of performance for any of the proposed product categories, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

2. Many biobased products within the product categories being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the BioPreferred Web site. This information will then be available to Federal procuring agencies and will assist them in making informed sustainable procurement decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

3. Several product categories (e.g., agricultural spray adjuvants, animal cleaning products, deodorants, leather, vinyl, and rubber care products, sun care products, and wastewater systems coatings) have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing a minimum biobased content for most of these product categories that would allow many of the tested products to be eligible for Federal preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these product categories and whether there are potential subcategories within the product categories that should be considered.

4. As discussed above, the effect that the use of biobased products may have on original equipment manufacturers' warranties is uncertain. USDA requests comments and supporting information on any aspect of this issue.

5. Today's proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased Federal preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. Because USDA has been unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule, USDA requests comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

All comments should be submitted as directed in the **ADDRESSES** section above.

To assist you in developing your comments, the background information used in proposing these product categories for designation has been posted on the BioPreferred Web site. The background information can be located by clicking on the ''Federal Procurement Preference'' link on the right side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*) and then on the ''Rules and Regulations'' link. At the next screen, click on the Supporting Documentation link under Round 9 Designation under the Proposed Regulations section.

IV. Designation of Product Categories, Minimum Biobased Contents, and Time Frame

A. Background

In order to designate product categories for Federal preferred procurement, section 9002 requires USDA to consider: (1) The availability of biobased products within the product categories and (2) the economic and technological feasibility of using those products, including the life-cycle costs of the products.

In considering a product's availability, USDA uses several sources of information. USDA performs Internet searches, contacts trade associations (such as the Bio organization) and commodity groups, searches the Thomas Register (a database, used as a resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts manufacturers and vendors to identify those manufacturers and vendors with biobased products within product categories being considered for designation. USDA uses the results of these same searches to determine if a product category is generally available.

In considering a product category's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of a product and its life-cycle cost and performance characteristics. This information is obtained from the sources used to assess a product's availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information on the availability, relative prices, and performance of their products as well as by evidence of a product being purchased by a procuring agency or other entity, where available. In sum, USDA considers a product category economically and technologically feasible for purposes of designation if products within that product category are being offered and used in the marketplace.

In considering the life-cycle costs of product categories proposed for designation, USDA has obtained the necessary input information (on a voluntary basis) from manufacturers of biobased products and has used the BEES analytical tool to analyze individual products within each

proposed product category. The BEES analytical tool measures the environmental performance and the economic performance of a product. The environmental performance scores, impact values, and economic performance results for products within the Round 9 designated product categories analyzed using the BEES analytical tool can be found on the BioPreferred Web site (*http://www.biopreferred.gov*) under the Supporting Documentation link mentioned above.

In addition to the BEES analytical tool, manufacturers wishing to make similar life-cycle information available may choose to use the ASTM Standard D7075 analysis. The ASTM Standard D7075 product analysis includes information on environmental performance, human health impacts, and economic performance. USDA is working with manufacturers and vendors to make this information available on the BioPreferred Web site in order to make the Federal preferred procurement program more efficient.

As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make this information, including manufacturer contact information, available on the BioPreferred Web site in order to then make it available to procurement officials. Additional information on specific products within the product categories proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided a link on the BioPreferred Web site to a document that offers useful information to manufacturers and vendors who wish to position their businesses as BioPreferred vendors to the Federal Government. This document can be accessed by clicking on the ''Sell Biobased Products'' tab on the right side of the home page of the BioPreferred Web site, then on the ''Resources for Business'' tab under ''Related Topics'' on the right side of the next page, and then on the document titled ''Selling Biobased Products to the Federal Government'' in the middle of the page.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering information on industry standard test methods and performance standards that manufacturers are using to evaluate the functional performance of their products. (Test methods are procedures used to provide information on a certain attribute of a product. For example, a test method might determine how many bacteria are killed. Performance standards identify the level at which a product must perform in order for it to be ''acceptable'' to the entity that set the performance standard. For example, a performance standard might require that a certain percentage (e.g., 95 percent) of the bacteria must be killed through the use of the product.) The primary sources of information on these test methods and performance standards are manufacturers of biobased products within these product categories. Additional test methods and performance standards are also identified during meetings of the Interagency council and during the review process for each proposed rule. We have listed, under the detailed discussion of each product category proposed for designation (presented in Section IV.B), the functional performance test methods, performance standards, product certifications, and other measures of performance associated with the functional aspects of products identified during the development of this **Federal Register** notice for these product categories.

While this process identifies many of the relevant test methods and standards, USDA recognizes that those identified herein do not represent all of the methods and standards that may be applicable for a product category or for any individual product within the category. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the BioPreferred Web site.

In gathering information relevant to the analyses discussed above for this proposed rule, USDA has made extensive efforts to contact and request information and product samples within the product categories proposed for designation. For product information, USDA has attempted to contact representatives of the manufacturers of biobased products identified by the Federal preferred procurement program. For product samples on which to conduct biobased content tests and BEES analysis, USDA has attempted to obtain samples and BEES input information for at least five different suppliers of products within each product category in today's proposed rule. However, because the submission of information and samples is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who volunteered to invest the resources required to gather and submit the information and samples. The data presented are all the data that were submitted in response to USDA requests for information from manufacturers of the products within the product categories proposed for designation. While USDA would prefer to have complete data on the full range of products within each product category, the data that were submitted support designation of the product categories in today's proposed rule.

To propose a product category for designation, USDA must have sufficient information on a sufficient number of products within the category to be able to assess its availability and its economic and technological feasibility, including its life-cycle costs. For some product categories, there may be numerous products available. For others, there may be very few products currently available. Given the infancy of the market for some product categories, it is expected that categories with only a single product will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate a product category or subcategory for Federal preferred procurement even when there is only a single product with a single supplier, though this will generally occur once other products with high biobased content and two or more producers are first designated. However, USDA has also determined that in such situations it is appropriate to defer the effective Federal preferred procurement date until such time that more than one supplier is identified in order to provide choice to procuring agencies. Similarly, the documented availability, benefits, and life-cycle costs of even a very small percentage of all products that may exist within a product category are also considered sufficient to support designation.

B. Product Categories Proposed for Designation

USDA uses a model (as summarized below) to identify and prioritize product categories for designation. Through this model, USDA has identified over 100 product categories for potential designation under the Federal preferred procurement program. A list of these product categories and information on the model can be accessed on the BioPreferred Web site at *http://www.biopreferred.gov.*

In general, product categories are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and manufacturers. These evaluations begin by looking at the cost, performance, and availability of products within each product category. USDA then considers the following points:

- Are there manufacturers interested in providing the necessary test information on products within a particular product category?
- Are there a number of manufacturers producing biobased products in this product category?
- Are there products available in this product category?
- What level of difficulty is expected when designating this product category?
- Is there Federal demand for the product?
- Are Federal procurement personnel looking for biobased products?
- Will a product category create a high demand for biobased feed stock?
- Does manufacturing of products within this product category increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of product categories for designation. USDA then gathers information on products within the highest priority product categories and, as sufficient information becomes available for a group of product categories, a new rulemaking package is developed to designate the product categories within that group. USDA points out that the list of product categories may change, with some being added or dropped, and that the order in which they are proposed for designation is likely to change because the information necessary to designate a product category may take more time to obtain than one lower on the list.

In today's proposed rule, USDA is proposing to designate the following product categories for the Federal preferred procurement program: Agricultural spray adjuvants; animal cleaning products; deodorants; dethatcher products; fuel conditioners; leather, vinyl, and rubber care products; lotions and moisturizers; shaving products; specialty precision cleaners and solvents; sun care products; wastewater systems coatings; and water clarifying agents. USDA has determined that each of these product categories meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, USDA has sufficient information on these product categories to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life-cycle costs.

Exemptions. Products exempt from the biobased procurement preference are military equipment, defined as any product or system designed or procured for combat or combat-related missions, and spacecraft systems and launch support equipment. However, agencies may purchase biobased products wherever performance, availability and reasonable price indicates that such purchases are justified.

Although each product category in today's proposed rule would be exempt from the procurement preference requirement when used in spacecraft systems or launch support application or in military equipment used in combat and combat-related applications, this exemption does not extend to contractors performing work other than direct maintenance and support of the spacecraft or launch support equipment or combat or combat-related missions. For example, if a contractor is applying a dethatcher product to the lawn around an office building on a military base, the dethatcher the contractor purchases and uses on the lawn should be a qualifying biobased dethatcher. The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space or launch applications. After reviewing the regulatory requirement and the relevant contract, where contractors have any questions on the exemption, they should contact the cognizant contracting officer.

USDA points out that it is not the intent of these exemptions to imply that biobased products are inferior to non-biobased products. If manufacturers of biobased products can meet the concerns of these two agencies, USDA is willing to reconsider such exemptions on an case-by-case basis. Any changes to the current exemptions would be announced in a proposed rule amendment with an opportunity for public comment.

Each of the proposed designated product categories are discussed in the following sections.

1. Agricultural Spray Adjuvants (Minimum Biobased Content 50 Percent) [1]

Agricultural spray adjuvants are products mixed in the spray tank with the herbicide, pesticide, or fertilizer formulas that will improve the efficiency and the effectiveness of the chemicals including sticking agents, wetting agents, etc.

USDA identified 30 manufacturers and suppliers of 62 agricultural spray adjuvants. These 30 manufacturers and suppliers do not necessarily include all manufacturers of agricultural spray adjuvants, merely those identified during USDA information gathering activities. Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified three test methods (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the three test methods identified by the manufacturers are:

Test Methods

- 29 CFR 1910.1200; Occupational Safety Health Standards Section 1200—Hazard Communication
- VOCs; California Air Resources Board Method 310
- ASTM D790; Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials

USDA contacted procurement officials with various policy-making and procuring agencies in an effort to gather information on the purchases of agricultural spray adjuvants, as well as information on products within the other 11 product categories proposed for designation today. These agencies included GSA, several offices within the DLA, OFEE, USDA Departmental Administration, the National Park Service, EPA, a Department of Energy laboratory, and OMB. Communications

[1] Additional information on the determination of minimum biobased contents is presented in Section IV.C of this preamble.

with these Federal officials led to the conclusion that obtaining current usage statistics and specific potential markets within the Federal government for biobased products within the 12 proposed designated product categories is not possible at this time.

Most of the contacted officials reported that procurement data are appropriately reported in higher level groupings of Federal Supply Codes [2] for materials and supplies, which is higher level coding than the proposed designated product categories. Using terms that best match the product categories in today's proposed rule, USDA queried the GSA database for Federal purchases of products within today's proposed product categories. The results indicate purchases of products within product categories in today's proposed rule. The results of this inquiry can be found in the background information for Round 9, which is posted on the BioPreferred Web site. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally leads to less accurate data on purchases of specific products.

USDA also investigated the Web site *FEDBIZOPPS.gov*, a site which lists Federal contract purchase opportunities and awards greater than $25,000. The information provided on this Web site, however, is for broad categories of services and products rather than the specific types of products that are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of agricultural spray adjuvants purchased by procuring agencies. However, Federal agencies routinely perform, or contract for, agricultural, lawn, and landscaping services involving the use of such products. Thus, they have a need for agricultural spray adjuvants and for services that use these products. Designation of agricultural spray adjuvants will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 21 agricultural spray adjuvants. Analyses of the environmental and human health benefits and the life-cycle costs of agricultural spray adjuvants were performed for one of the products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

2. Animal Cleaning Products (Minimum Biobased Content 57 Percent)

Animal cleaning products are products designed to clean, condition, or remove substances from animal hair or other parts of an animal.

USDA identified 85 manufacturers and suppliers of 329 animal cleaning products. The 85 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased animal cleaning products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified one test method (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the one test method identified by the manufacturers is:

Test Method

- 29 CFR 1910.1200; EPA FIFRA 25b Minimum Risk Pesticide Exempt

USDA attempted to gather data on the potential market for animal cleaning products within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, the types of cleaning activities that use these products. Thus, they have a need for animal cleaning products and for services that require the use of animal cleaning products. Designation of animal cleaning products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 15 animal cleaning products. Analyses of the environmental and human health benefits and the life-cycle costs of animal cleaning products were performed for one product using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

3. Deodorants (Minimum Biobased Content 73 Percent)

Deodorants are products for inhibiting or masking perspiration and other body odors and that are often combined with an antiperspirant.

USDA identified 37 manufacturers and suppliers of 82 different deodorants. These 37 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased deodorants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for deodorants within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, several Federal agencies operate housing and medical care facilities where deodorants are used or sold. In addition, Federal agencies may contract for services involving the use of such products. Thus, they have a need for deodorants and for services that require the use of deodorants. Designation of deodorants will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 10 deodorant products. Analyses of the environmental and human health benefits and the life-cycle costs of deodorants were performed for one of the products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

[2] The Federal Supply Code (FSC) is a four-digit code used by government buying offices to classify and identify, in broad terms, the products and supplies that the government buys and uses. The FSC is the first four digits in the much more detailed 13-digit National Stock Number (NSN) that is assigned to all government purchases for purposes of identification and inventory control.

4. Dethatchers (Minimum Biobased Content 87 Percent)

Dethatchers are products used to remove non-decomposed plant material accumulated in grassy areas.

USDA identified 13 manufacturers and suppliers of 14 dethatchers. These 13 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased dethatchers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for dethatchers within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, many Federal agencies routinely maintain, or procure contract services to maintain, office and residential facility landscapes where dethatchers are used. Thus, they have a need for these products. Designation of dethatchers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on six dethatchers. Analyses of the environmental and human health benefits and the life-cycle costs of dethatchers were performed for three of the products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

5. Fuel Conditioners (Minimum Biobased Content 64 Percent)

Fuel conditioners are products formulated to improve the performance and efficiency of engines by providing benefits such as removing accumulated deposits, increasing lubricity, removing moisture, increasing the cetane number, and/or preventing microbial growths within the fuel system.

USDA identified 13 manufacturers and suppliers of 25 fuel conditioner products. These 13 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased fuel conditioner products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified six test methods (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the six test methods identified by the manufacturers are:

Test Methods

- Environmental Protection Agency 40 CFR 79.23 Fuel Additive
- ASTM International D1094 Standard Test Method for Water Reaction of Aviation Fuels
- ASTM International D2274 Standard Test Method for Oxidation Stability of Distillate Fuel Oil (Accelerated Method)
- ASTM International D6078 Standard Test Method for Evaluating Lubricity of Diesel Fuels by the Scuffing Load Ball-on-Cylinder Lubricity Evaluator (SLBOCLE)
- ASTM International D665 Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water
- Cummins Engine Company L10 Injector Depositing Test Detergency. A standard used to indicate of the ability of a product to provide injector cleanliness and can be used to discriminate fuel/fuel additive quality

USDA attempted to gather data on the potential market for fuel conditioner products within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, many Federal agencies routinely operate, or procure contract services to operate, motor vehicles and other equipment where fuel conditioners are used. Thus, they have a need for these products. Designation of fuel conditioner products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 23 fuel conditioner products. Analyses of the environmental and human health benefits and the life-cycle costs of fuel conditioner products were performed for three of the products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

6. Leather, Vinyl, and Rubber Care Products (Minimum Biobased Content 55 Percent)

Leather, vinyl, and rubber care products are products that help clean, nourish, protect, and restore leather, vinyl, and rubber surfaces including cleaners, conditioners, protectants, polishes, waxes, etc.

USDA identified 36 manufacturers and suppliers of 79 leather, vinyl, and rubber care products. These 36 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of leather, vinyl, and rubber care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the two test methods identified by manufacturers are:

Test Methods

- ASTM D4488; Standard Guide for Testing Cleaning Performance of Products Intended for Use on Resilient Flooring and Washable Walls
- GS–37; Green Seal Environmental Standard for General-Purpose, Bathroom, Glass, and Carpet Cleaners Used for Industrial and Institutional Purposes

USDA attempted to gather data on the potential market for leather, vinyl, and rubber care products within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, many Federal agencies routinely procure leather, vinyl, and rubber care products, or contract with services that procure these products.

Thus, they have a need for leather, vinyl, and rubber care products and for services that require the use of leather, vinyl, and rubber care products. Designation of leather, vinyl, and rubber care products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on seven leather, vinyl, and rubber care products. Analyses of the environmental and human health benefits and the life-cycle costs of biobased leather, vinyl, and rubber care products were performed for two products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

7. Lotions and Moisturizers (Minimum Biobased Content 59 Percent)

Lotions and moisturizers are creams and oils used to soften and treat damaged skin.

USDA identified 230 manufacturers and suppliers of 888 lotions and moisturizers. These 230 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of lotions and moisturizers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the two test methods identified by manufacturers are:

Test Methods

- ASTM International E1207 Standard Practice for The Sensory Evaluation of Auxiliary Deodorancy
- ASTM International E1909 Standard Guide for Time-Intensity Evaluation of Sensory Attributes

USDA attempted to gather data on the potential market for lotions and moisturizers within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, Federal agencies procure lotions and moisturizers for use in medical care or similar types of facilities, or they procure the services that use these products. Thus, they have a need for lotions and moisturizers and for services that require the use of lotions and moisturizers. Designation of lotions and moisturizers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 133 lotions and moisturizers. Analyses of the environmental and human health benefits and the life-cycle costs of biobased lotions and moisturizers were performed for one product using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

8. Shaving Products (Minimum Biobased Content 92 Percent)

Shaving products are products designed for every step of the shaving process, including shaving creams, gels, soaps, lotions, and aftershave balms.

USDA identified 71 manufacturers of 640 biobased shaving products. The 71 manufacturers do not necessarily include all manufacturers of biobased shaving products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for shaving products within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, Federal medical care facilities use, and procure services that use, shaving products. Thus, they have a need for shaving products and for services that require the use of shaving products. Designation of shaving products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 10 shaving products. Analyses of the environmental and human health benefits and the life-cycle costs of biobased shaving products were performed for one product using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

9. Specialty Precision Cleaners and Solvents (Minimum Biobased Content 56 Percent)

Specialty precision cleaners and solvents are cleaners and solvents used in specialty applications. These materials may be used in either neat solution, diluted with water, or in hand wiping applications.

USDA identified 22 manufacturers and suppliers of 30 specialty precision cleaners and solvents. These 22 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of specialty precision cleaners and solvents, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the two test methods identified by manufacturers are:

Test Methods

- ASTM F1110 Standard Test Method for Sandwich Corrosion Test
- ASTM F519 Standard Test Method for Mechanical Hydrogen Embrittlement Evaluation of Plating Processes and Service Environments

USDA attempted to gather data on the potential market for specialty precision cleaners and solvents within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, many Federal agencies purchase and maintain equipment that requires specialty precision cleaners and solvents, or contract with services that procure these products. Thus, they have a need for specialty precision cleaners and solvents and for services

that require the use of specialty precision cleaners and solvents. Designation of specialty precision cleaners and solvents will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 11 specialty precision cleaners and solvents. Analyses of the environmental and human health benefits and the life-cycle costs of biobased specialty precision cleaners and solvents were performed for one product using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

10. Sun Care Products (Minimum Biobased Content 53 Percent)

Sun care products are topical products, including sunscreens, sun blocks, and suntan lotions that absorb or reflect the sun's ultraviolet radiation to protect the skin.

USDA identified 47 manufacturers and suppliers of 206 different biobased sun care products. These 47 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased sun care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified one test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the one test method identified by manufacturers is:

Test Methods

- 21 CFR part 352 21 CFR part 352 Sun Protection Factor Monogram

USDA attempted to gather data on the potential market for sun care products within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, some Federal agencies provide medical or other personnel care activities that require the use of sun care products. In addition, Federal agencies may procure medical care and other similar services that require the use of sun care products. Thus, they have a need for sun care products and for services that require the use of such products. Designation of sun care products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 13 sun care products. Analyses of the environmental and human health benefits and the life-cycle costs of biobased sun care products were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

11. Wastewater Systems Coatings (Minimum Biobased Content 47 Percent)

Wastewater systems coatings are coatings that protect wastewater containment tanks, liners, roofing, flooring, joint caulking, manholes and related structures from corrosion. Protective coatings may cover the entire system or be used to fill cracks in systems.

USDA identified four manufacturers and suppliers of six wastewater systems coatings. These four manufacturers and suppliers do not necessarily include all manufacturers and suppliers of wastewater systems coatings, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified seven test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the seven test methods identified by manufacturers are:

Test Methods

- ASTM D2240; Standard Test Method for Rubber Property—Durometer Hardness
- ASTM D412; Standard Test Methods for Vulcanized Rubber and Thermoplastic Elastomers-Tension
- ASTM D624; Standard Test Method for Tear Strength of Conventional Vulcanized Rubber and Thermoplastic Elastomers
- ASTM D4060; Standard Test Method for Abrasion Resistance of Organic Coatings by the Taber Abraser
- ASTM D638; Standard Test Method for Tensile Properties of Plastics
- ASTM D792; Standard Test Methods for Density and Specific Gravity (Relative Density) of Plastics by Displacement
- ASTM E96; Standard Test Methods for Water Vapor Transmission of Materials

USDA attempted to gather data on the potential market for wastewater systems coatings within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, many Federal agencies are responsible for maintaining wastewater systems and routinely procure wastewater systems coatings, or contract with services that procure these products. Thus, they have a need for wastewater systems coatings and for services that require the use of wastewater systems coatings. Designation of wastewater systems coatings will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on three wastewater systems coatings. Analyses of the environmental and human health benefits and the life-cycle costs of biobased wastewater systems coatings were performed for one product using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

12. Water Clarifying Agents (Minimum Biobased Content 92 Percent)

Water clarifying agents are products designed to clarify and improve the quality of water by reducing contaminants such as excess nitrites, nitrates, phosphates, ammonia, and built-up sludge from decaying waste and other organic matter. These products are typically used in lakes, coves, decorative ponds, and aquaculture operations.

USDA identified 18 manufacturers and suppliers of 39 water clarifying agents. The 18 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased water clarifying agents, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified three test

methods (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the three test methods identified by the manufacturers are:

Test Methods

- ATCC Biosafety Level 1; Minimal potential for causing diseases in humans, plants, animals and aquatic life
- NSF Cat. 61; Pretreatment of Potable Water Sources
- EPA/600/4–90/027; Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms

USDA attempted to gather data on the potential market for water clarifying agents within the Federal government as discussed in the section on agricultural spray adjuvants. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, maintenance, reclamation, or research activities on bodies of water where these products are used. Thus, they have a need for water clarifying agents and for services that require the use of water clarifying agents. Designation of water clarifying agents will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 11 water clarifying agents. Analyses of the environmental and human health benefits and the life-cycle costs of water clarifying agents were performed for one product using the BEES analytical tool. The results of those analyses are presented in the background information for Round 9, which is posted on the BioPreferred Web site.

C. Minimum Biobased Contents

USDA has determined that setting a minimum biobased content for designated product categories is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimis biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the Federal preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for a product category at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002.

As discussed in Section IV.A of this preamble, USDA relied primarily on manufacturers' voluntary submission of information and product samples to support the proposed designation of these product categories. However, in selecting the proposed minimum biobased content for each product category, USDA also considered the biobased content of several products for which manufacturers have requested certification to use the USDA Certified Biobased Product label. USDA considered these data points to be valid and useful in setting the proposed minimum biobased content because the labeling program specifies that the reported biobased content must be determined by a third-party testing entity that is ISO 9001 conformant. Thus, the biobased content data presented in the following paragraphs includes test results from the labeling portion of the BioPreferred program as well as the test results from all of the product samples that were submitted for analysis under the Federal biobased products preferred procurement program.

As a result of public comments received on the first designated product categories rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for a product category at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level three (3) percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA encourages procuring agencies to seek products with the highest biobased content that is practicable in all of the proposed designated product categories. To assist the procuring agencies in determining which products have the highest biobased content, USDA will update the information in the biobased products catalog to include the biobased content of each product. Those products within each product category that have the highest biobased content will be listed first and others will be listed in descending order. USDA is specifically requesting comments on the proposed minimum biobased contents and also requests additional data that can be used to re-evaluate the appropriateness of the proposed minimum biobased contents. As the market for biobased products develops and USDA obtains additional biobased content data, it will re-evaluate the established minimum biobased contents of designated product categories and consider raising them whenever justified.

The following paragraphs summarize the information that USDA used to propose minimum biobased contents within each proposed designated product category.

1. Agricultural Spray Adjuvants

Thirteen of the 62 biobased agricultural spray adjuvants have been tested for biobased content using ASTM D6866.[3] The biobased contents of these 13 biobased agricultural spray adjuvants range from 12 to 100 percent, as follows: 12, 15, 53, 64, 74, 74, 86, 87, 87, 88, 90, 93, and 100. Because there is a significant break between the values for the products with the 15 percent and the 53 percent biobased contents, USDA considered the need to subcategorize this product category. However, USDA found that there was not sufficient information on the performance or applicability of the products with the lowest biobased contents to justify creating a subcategory based on those two products. Because the biobased contents of the remaining 11 products are spread over the range of 53 to 100 without any significant gaps or breaks in the data, USDA is proposing to set the minimum biobased content for agricultural spray adjuvants at 50 percent, based on the product with a tested biobased content of 53 percent.

USDA requests additional information on potential subcategories within this product category. USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing subcategories based on

[3] ASTM D6866, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis,'' is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

formulation, performance, or applicability.

2. Animal Cleaning Products

Seven of the 329 biobased animal cleaning products identified have been tested for biobased content using ASTM D6866. The biobased contents of these 7 biobased animal cleaning products range from 60 percent to 97 percent, as follows: 60, 63, 69, 74, 74, 77, and 97 percent. Because there is a significant break between the values for the two products with the highest biobased contents, USDA considered the need to subcategorize this product category. However, USDA found that there was not sufficient information on the performance or applicability of the product with the highest biobased content to justify creating a subcategory based on that single product. Because the biobased contents of the remaining 5 products are within a narrow range, USDA is proposing to set the minimum biobased content for animal cleaning products at 57 percent, based on the product with a tested biobased content of 60 percent.

3. Deodorants

Seven of the 82 identified biobased deodorants identified have been tested for biobased content using ASTM D6866. The biobased contents of these 7 biobased deodorant products range from 25 percent to 100 percent, as follows: 25, 25, 30, 76, 98, 99, and 100 percent. There are two significant breaks in the range of data, one between the 30 and 76 percent biobased products and another between the 76 and 98 percent biobased products. USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these product to justify subcategorization. However, USDA did not find sufficient information to justify subcategories within the product category. USDA also did not find any features of the three lowest biobased content products that would justify setting the minimum biobased content at a level that would include these products. The 4 remaining products all have biobased contents above 75 percent. Therefore, USDA is proposing to set the minimum biobased content for this product category at 73 percent, based on the product with the tested biobased content of 76 percent, the lowest of the 4 remaining products within the product category.

USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

4. Dethatchers

Six of the 14 biobased dethatchers identified have been tested for biobased content using ASTM D6866. The biobased contents of these 6 biobased dethatchers range from 6 percent to 100 percent, as follows: 6, 10, 35, 90, 98, and 100 percent. There are two significant breaks in the range of data, one between the 10 and 35 percent biobased products and another between the 35 and 90 percent biobased products. USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these products to justify subcategorization. However, USDA did not find sufficient information to justify subcategories within the product category. USDA also did not find any features of the three lowest biobased content products that would justify setting the minimum biobased content at a level that would include these products. Therefore, USDA is proposing to set the minimum biobased content for this product category at 87 percent, based on the product with the lowest biobased content of the 3 remaining products within the product category.

USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

5. Fuel Conditioners

Eight of the 25 biobased fuel conditioners identified have been tested for biobased content using ASTM D6866. The biobased contents of these 8 biobased fuel conditioners range from 28 percent to 96 percent, as follows: 28, 38, 49, 67, 75, 77, 89, and 96 percent.

There is a significant break in the data between the 49 percent biobased product and the 67 percent biobased product. USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these two product groups to justify subcategorization. However, USDA did not find sufficient information to justify subcategories within the product category. USDA also did not find any features of the 28, 38, or 49 percent biobased content products that would justify setting the minimum biobased content at a level that would include these products. Therefore, USDA is proposing to set the minimum biobased content for this product category at 64 percent, based on the product with the lowest biobased content of those products in the group of products with the higher tested biobased content.

USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

6. Leather, Vinyl, and Rubber Care Products

Six of the 79 biobased leather, vinyl, and rubber care products identified have been tested for biobased content using ASTM D6866. The biobased contents of these 6 biobased leather, vinyl, and rubber care products range from 8 percent to 88 percent, as follows: 8, 28, 58, 62, 70, and 88 percent. There are two significant breaks in the range of data, one between the 8 and 28 percent biobased products and another between the 28 and 58 percent biobased products. USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these products to justify subcategorization. However, USDA did not find sufficient information to justify subcategories within the product category. USDA also did not find any features of the two lowest biobased content products that would justify setting the minimum biobased content at a level that would include these products. The remaining 4 products have biobased contents ranging from 58 to 88 percent, and there are no significant breaks in the range of data nor are there obvious performance or applicability claims that distinguish one product from the others. Therefore, USDA is proposing to set the minimum biobased content for this product category at 55 percent, based on the product with the lowest biobased content of the 4 remaining products within the product category.

USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

7. Lotions and Moisturizers

Twenty-seven of the 888 biobased lotions and moisturizers identified have been tested for biobased content using ASTM D6866. The biobased contents of these 27 biobased lotions and moisturizers range from 37 to 100 percent, as follows: 37, 47, 62, 66, 66,

72, 73, 80, 84, 85, 87, 88, 89, 89, 90, 91, 94, 94, 94, 95, 95, 95, 95, 97, 99, 100, and 100 percent. There is a significant break in the data between the 47 percent biobased product and the 62 percent biobased product. USDA could find no distinguishing features claimed for the products with 37 and 47 percent biobased contents that would lead to setting the minimum biobased content at such a low level. The biobased contents of the remaining 25 products are reasonably evenly distributed between 62 and 100 percent. USDA did not find any performance claims or other features that would justify creating subcategories for this product category. Because there are no obvious breaks in the data for the 25 products with biobased contents above 62 percent, USDA is proposing to set the minimum biobased content for this product category at 59 percent based on the product with a tested biobased content of 62 percent.

8. Shaving Products

Five of the 640 biobased shaving products identified have been tested for biobased content using ASTM D6866. The biobased contents of these 5 biobased shaving products range from 40 to 100 percent, as follows: 40, 95, 99, 99, and 100 percent. USDA found no performance or applicability claims to justify setting the minimum biobased content for this product category based on the 40 percent product. Because of the narrow range and the very high tested biobased content of the four remaining products, USDA is proposing to set the minimum biobased content for shaving products at 92 percent, based on the product with a tested biobased content of 95 percent.

9. Specialty Precision Cleaners and Solvents

Nine of the 30 biobased specialty precision cleaners and solvents identified have been tested for biobased content using ASTM D6866. The biobased contents of these 9 biobased specialty precision cleaners and solvents range from 59 percent to 100 percent, as follows: 59, 61, 69, 74, 76, 80, 82, 96, and 100 percent. USDA reviewed the product information available for this product category and found that the performance of the product with a tested biobased content of 59 percent has been demonstrated using numerous aircraft industry standards. Because the manufacturers of the other products tested do not make such performance claims for their products, USDA is proposing to set the minimum biobased content for this product category at 56 percent. USDA will continue to gather performance information for products within this product category and, if sufficient information is obtained, will consider raising the minimum biobased content for the final rule.

10. Sun Care Products

Eighteen of the 206 biobased sun care products identified have been tested for biobased content using ASTM D6866. The biobased contents of these 18 biobased sun care products range from 56 to 99 percent, as follows: 56, 62, 63, 70, 71, 81, 82, 97, 99, 99, 99, 99, 99, 99, 100, 100, 100, and 100 percent. The only significant break in the range of data is between the 82 and 97 percent products. Because 7 of the 18 data points are well below the 97 to 100 percent level of the 11 products above the break, USDA is not proposing to set the minimum biobased content based on these products. Because the biobased contents of the remaining 7 products are within a fairly narrow range, USDA is proposing to set the minimum biobased content for sun care products at 53 percent, based on the product with a tested biobased content of 56 percent.

11. Wastewater Systems Coatings

Five of the six biobased wastewater systems coatings identified have been tested for biobased content using ASTM D6866. The biobased contents of these 5 biobased wastewater systems coatings are 34, 50, 62, 62, and 64 percent. Because of the significant gap between the 34 percent biobased product and the 50 percent product, USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between the products to justify subcategorization. However, USDA did not find sufficient information to justify subcategories within the product category. USDA also did not find any features of the 34 percent biobased content product that would justify setting the minimum biobased content at a level that would include this product. Therefore, USDA is proposing to set the minimum biobased content for this product category at 47 percent, based on the product with the 50 percent biobased content.

USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

12. Water Clarifying Agents

Ten of the 39 biobased water clarifying agents identified have been tested for biobased content using ASTM D6866. The biobased contents of these 10 biobased water clarifying agents range from 95 percent to 100 percent, as follows: 95, 98, 98, 98, 98, 99, 99, 100, 100, and 100 percent. Because the biobased contents of these 10 products are all very high and they are within a narrow range, USDA is proposing to set the minimum biobased content for water clarifying agents at 92 percent, based on the product with a tested biobased content of 95 percent.

D. Compliance Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, as proposed, procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated product category would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect because it recognizes that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Both section 9002(a)(3) and 7 CFR 3201(c) explicitly acknowledge the need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing products within the designated product categories. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

By the time these product categories are promulgated for designation, Federal agencies will have had a minimum of 18 months (from the date of this **Federal Register** notice), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated product categories take effect one year after promulgation of the final rule. The one-year period provides these agencies

with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement actions involving any of the designated product categories.

V. Where can agencies get more information on these USDA-designated product categories?

Information used to develop this proposed rule can be found in the background information for Round 9, which is posted on the BioPreferred Web site located at: *http://www.biopreferred.gov.* At the BioPreferred Web site, click on the ''Federal Procurement Preference'' link on the right side of the page and then on the ''Rules and Regulations'' link. At the next screen, click on the Supporting Documentation link under Round 9 Designation Product Categories under the Proposed Regulations section.

Further, once the product category designations in today's proposal become final, manufacturers and vendors voluntarily may make available information on specific products, including product and contact information, for posting by the Agency on the BioPreferred Web site. USDA has begun performing periodic audits of the information displayed on the BioPreferred Web site and, where questions arise, is contacting the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the BioPreferred Web site, agencies will also be able to obtain the voluntarily-posted information on each product concerning: Relative price; life-cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information from the BEES analysis or the alternative analysis embedded in the ASTM Standard D7075, ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products.''

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

Today's proposed rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today's proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 12 designated product categories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing products within designated product categories if price is ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. Consideration was also given to the fact that agencies may choose not to procure products within designated product categories due to unreasonable price.

1. Summary of Impacts

Today's proposed rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased Federal preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Proposed Rule

The designation of these product categories provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Proposed Rule

Like the benefits, the costs of today's proposed rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance,

availability and price reasonableness of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its proposed designation of these product categories to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of product categories for Federal preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the product categories designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The Federal preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following NAICS codes: 325320 (pesticide and other agricultural chemicals manufacturing), 325411 (medicinal and botanical manufacturing), 325412 (pharmaceutical preparation manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), and 325620 (toilet preparation manufacturing). USDA obtained information on these six NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 3,756 companies within these 6 NAICS categories and that these companies own a total of about 4,374 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 4,374 individual establishments, about 4,258 (97.3 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 92 and that the pharmaceutical preparation manufacturing segment (with an average of about 250) is the only segment reporting an average of more than 100 employees per company. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being designated, but believes that the impact will not be significant. Most of the product categories being proposed for designation in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the product categories being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector.

Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's proposed rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this proposed rule is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated product category. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXXII as follows:

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Add §§ 3201.88 through 3201.99 to subpart B to read as follows:

Sec.
3201.88 Agricultural spray adjuvants.
3201.89 Animal cleaning products.
3201.90 Deodorants.
3201.91 Dethatcher products.
3201.92 Fuel conditioners.
3201.93 Leather, vinyl, and rubber care products.
3201.94 Lotions and moisturizers.
3201.95 Shaving products.
3201.96 Specialty precision cleaners and solvents.
3201.97 Sun care products.
3201.98 Wastewater systems coatings.
3201.99 Water clarifying agents.

§ 3201.88 Agricultural spray adjuvants.

(a) *Definition.* Products mixed in the spray tank with the herbicide, pesticide, or fertilizer formulas that will improve the efficiency and the effectiveness of the chemicals, including sticking agents, wetting agents, etc.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 50 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased agricultural spray adjuvants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased agricultural spray adjuvants.

§ 3201.89 Animal cleaning products.

(a) *Definition.* Products designed to clean, condition, or remove substances from animal hair or other parts of an animal.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 57 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal cleaning products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased animal cleaning products.

§ 3201.90 Deodorants.

(a) *Definition.* Products that are designed for inhibiting or masking perspiration and other body odors and that are often combined with an antiperspirant.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 73 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased deodorants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased deodorants.

§ 3201.91 Dethatchers.

(a) *Definition.* Products used to remove non-decomposed plant material accumulated in grassy areas.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dethatchers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased dethatchers.

§ 3201.92 Fuel conditioners.

(a) *Definition.* Products formulated to improve the performance and efficiency

of engines by providing benefits such as removing accumulated deposits, increasing lubricity, removing moisture, increasing the cetane number, and/or preventing microbial growths within the fuel system.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 64 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fuel conditioners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased fuel conditioners.

§ 3201.93 Leather, vinyl, and rubber care products.

(a) *Definition.* Products that help clean, nourish, protect, and restore leather, vinyl, and rubber surfaces, including cleaners, conditioners, protectants, polishes, waxes, etc.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 55 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased leather, vinyl, and rubber care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased leather, vinyl, and rubber care products.

§ 3201.94 Lotions and moisturizers.

(a) *Definition.* Creams and oils used to soften and treat damaged skin.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 59 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased lotions and moisturizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased lotions and moisturizers.

§ 3201.95 Shaving products.

(a) *Definition.* Products designed for every step of the shaving process, including shaving creams, gels, soaps, lotions, and aftershave balms.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 92 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased shaving products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased shaving products.

§ 3201.96 Specialty precision cleaners and solvents.

(a) *Definition.* Cleaners and solvents used in specialty applications. These materials may be used in neat solution, diluted with water, or in hand wiping applications.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 56 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased specialty precision cleaners and solvents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased specialty precision cleaners and solvents.

§ 3201.97 Sun care products.

(a) *Definition.* Products including sunscreens, sun blocks, and suntan lotions that are topical products that absorb or reflect the sun's ultraviolet radiation to protect the skin.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 53 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased sun care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased sun care products.

§ 3201.98 Wastewater systems coatings.

(a) *Definition.* Coatings that protect wastewater containment tanks, liners, roofing, flooring, joint caulking, manholes and related structures from corrosion. Protective coatings may cover the entire system or be used to fill cracks in systems.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 47 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wastewater systems coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wastewater systems coatings.

§ 3201.99 Water clarifying agents.

(a) *Definition.* Products designed to clarify and improve the quality of water by reducing contaminants such as excess nitrites, nitrates, phosphates, ammonia, and built-up sludge from decaying waste and other organic matter.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 92 percent, which shall be

based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water clarifying agents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased water clarifying agents.

Dated: May 22, 2012.

Pearlie S. Reed,

Assistant Secretary For Administration, U.S. Department of Agriculture.

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