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Presidential Documents

Title 3—

The President

Executive Order 13619 of July 11, 2012

Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, hereby modify the scope of the national emergency declared in Executive Order 13047 of May 20, 1997, as modified in scope in Executive Order 13448 of October 18, 2007, and relied upon for additional steps taken in Executive Order 13310 of July 28, 2003, Executive Order 13448 of October 18, 2007, and Executive Order 13464 of April 30, 2008. The Government of Burma has made progress towards political reform in a number of areas, including by releasing hundreds of political prisoners, pursuing ceasefire talks with several armed ethnic groups, and pursuing a substantive dialogue with the democratic opposition. Recognizing that such reform is fragile, I hereby find that the continued detention of political prisoners, efforts to undermine or obstruct the political reform process, efforts to undermine or obstruct the peace process with ethnic minorities, military trade with North Korea, and human rights abuses in Burma particularly in ethnic areas, effectuated by persons within or outside the Government of Burma, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State:

(i) to have engaged in acts that directly or indirectly threaten the peace, security, or stability of Burma, such as actions that have the purpose or effect of undermining or obstructing the political reform process or the peace process with ethnic minorities in Burma;

(ii) to be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses in Burma;

(iii) to have, directly or indirectly, imported, exported, reexported, sold or supplied arms or related materiel from North Korea or the Government of North Korea to Burma or the Government of Burma;

(iv) to be a senior official of an entity that has engaged in the acts described in subsection (a)(i)–(iii) of this section;

(v) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the acts described in subsection (a)(i)–(iii) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(vi) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby amend: (a) Executive Order 13464 of April 30, 2008, by removing ''logistical, or technical'' in section 1(b)(ii) and replacing it with ''or technological''; and

(b) Executive Order 13448 of October 18, 2007, by removing ''logistical, or technical'' in section 1(b)(iv) and replacing it with ''or technological.''

Sec. 3. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13047, as modified in scope in Executive Order 13448 and in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 4. The prohibitions in section 1 of this order include but are not limited to: (a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 5. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in subsection 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 6. Nothing in section 1 of this order, section 1 of Executive Order 13464 of April 30, 2008, section 1 of Executive Order 13448 of October 18, 2007, sections 1 through 3 of Executive Order 13310 of July 28, 2003, or sections 1 and 2 of Executive Order 13047 shall prohibit transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof, except to the extent that engaging in such transactions would require the issuance of a statutory waiver and such a waiver is not issued.

Sec. 7. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 8. For the purposes of this order: (a) the term ''person'' means an individual or entity;

(b) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 9. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence

in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13047, as modified in scope in Executive Order 13448 and in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 11. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
Washington, July 11, 2012.

[FR Doc. 2012–17264
Filed 7–12–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 135
Friday, July 13, 2012

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM59

Prevailing Rate Systems; Abolishment of the Washington, DC, Special Wage Schedule for Printing Positions

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing an interim rule to abolish the Washington, DC, Federal Wage System (FWS) special wage schedule for printing and lithographic positions. Printing and lithographic employees in the Washington, DC, wage area will now be paid from the regular Washington, DC, appropriated fund FWS wage schedule. This change is necessary because Federal employment in printing and lithographic occupations in the Washington, DC, wage area has declined sharply in recent years, and a separate wage schedule is no longer viable or beneficial to employees.

DATES: *Effective date:* This regulation is effective on July 13, 2012. We must receive comments on or before August 13, 2012. *Applicability date:* Agencies will place employees who are paid from the Washington, DC, special wage schedule on the Washington, DC, regular wage schedule on the first day of the first applicable pay period beginning on or after October 21, 2012.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; email *pay-leave-policy@opm.gov;* or Fax: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-leave-policy@opm.gov;* or Fax: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing an interim rule to abolish the Washington, DC, Federal Wage System (FWS) special wage schedule for printing and lithographic positions. The Department of Defense (DOD) recommended that we abolish this special wage schedule because Federal employment in printing and lithographic occupations in the Washington, DC, wage area has declined sharply in recent years, from 235 employees in 2004 to 24 today. Of the 24 remaining employees, there are 20 nonsupervisory (XP), 2 leaders (XL), and 2 supervisors (XS) employed by 10 agencies, and DOD expects the decline to continue.

None of the 24 employees benefit from being paid from the special printing schedule compared to what they would be paid under the regular wage schedule for the Washington, DC, wage area. OPM regulations provide that special printing schedules must have three step rates. Section 532.279(g) of title 5, Code of Federal Regulations, provides that no step 3 rate on a special printing schedule may be less than the maximum rate of the corresponding grade on the regular wage schedule for the wage area. This means that each step 3 printing survey rate is compared to the step 5 regular schedule rate, and the higher rate for each grade is selected for the special printing schedule. The step 3 rates for the first 10 XP and XL grades and all XS grades in the special printing schedule are equal to the step 5 rates in the Washington, DC, regular wage schedule. Although the remaining grades in the XP and XL schedules are higher than the Washington, DC, regular wage schedule step 5 rates, there are no employees in these remaining grades.

Printing and lithographic employees will convert to the Washington, DC, FWS regular wage schedule on a grade-by-grade basis. Each employee's new rate of pay will be set at the step-rate for the applicable grade of the regular wage schedule that equals the employee's existing rate of pay. If an employee's existing rate of pay falls between two steps on the regular schedule, the new rate will be set at the higher of the two steps. If an employee's existing rate of pay is higher than the highest rate for his or her grade on the regular schedule, the employee will, if otherwise eligible, be entitled to pay retention.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change.

Since the special wage schedule for printing and lithographic occupations in the Washington, DC, wage area was the sole special printing schedule remaining, this interim rule removes section 532.279 from title 5, Code of Federal Regulations.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. The notice of proposed rulemaking is being waived and the regulation is being made effective in less than 30 days because notice and comment on this matter is unnecessary. Federal employment in printing and lithographic occupations in the Washington, DC, wage area has declined sharply in recent years and is expected to continue to decline until there are no printing and lithographic employees left in the wage area; no affected employees will lose pay as result of converting to the FWS regular wage schedule; and, requiring DOD to conduct a full-scale wage survey for the diminishing number of employees in printing and lithographic positions in the Washington, DC, wage area in August 7, 2012, would be an unnecessary expenditure of resources.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Removed]

■ 2. Remove § 532.279.

[FR Doc. 2012–17123 Filed 7–12–12; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 759 and 762

Rural Utilities Service

Rural Housing Service

Rural Business-Cooperative Service

Farm Service Agency

7 CFR Part 1945

RIN 0560–AH17

Disaster Designation Process

AGENCY: Farm Service Agency, Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is revising its disaster designation regulations, with minor changes from the proposed rule. The rule simplifies procedures for Secretarial designations of disaster areas. This rule includes provisions for nearly automatic disaster designation in the case of severe drought. The rule also provides procedures FSA may use to delegate disaster designation authority to FSA State level officials. The rule removes the requirement that a State Governor or Indian Tribal Council must request a Secretarial disaster designation before a designation can be made. Also, this rule moves the disaster designation regulations to the same chapter of the Code of Federal Regulations (CFR) as the FSA Emergency Loan (EM) Program regulations. FSA expects that the simplified process will result in faster designations of disaster areas, and result in more timely disaster assistance.

DATES: This rule is effective on July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Peterson; telephone: (202) 720–7641. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This final rule amends procedures for designating counties as disaster areas. Some USDA programs past and present, administered by FSA have eligibility criteria that include whether losses occurred within a disaster area. For example, the Secretary of Agriculture is authorized to make emergency loans available (7 U.S.C. 1961) to farmers whose operations have been substantially affected by a natural disaster in a designated disaster county. Disaster designations have been used to qualify producers in those counties for other programs, such as certain crop disaster payment programs under past legislation and it is possible that future legislation will also tie program eligibility to Secretarial designations. The authority to make those designations and administer the designation system has been delegated to FSA. Until now, FSA regulations regarding the disaster designation process were in 7 CFR part 1945.

On November 14, 2011, FSA published a proposed rule to amend the disaster designation regulations to provide for changes in the designation process (76 FR 70368–70374). In general, that rule proposed to simplify the disaster designation process and to delegate the authority for designation to the State level of FSA. It also proposed to move the disaster designation regulations from 7 CFR part 1945 to 7 CFR part 759. The latter (part 759) is in a part of the CFR where there are general regulations that apply to multiple programs administered by FSA. We received 18 comments during the 60-day comment period. Commenters included individuals, State agencies, universities, FSA employees, and producer associations. Almost all of the comments supported the rule. Some supporting comments asked for minor clarifications or changes. The comments opposing the rule included suggestions that are beyond FSA's authority, such as a suggestion requiring State agencies to participate in our disaster designation process. In response to comments, we are removing a proposed definition because it is not actually used in the other parts of the regulations, and we are clarifying the Secretary's delegation authority in several respects with minor changes to those in the proposed rule. For example, some references to the eligibility of contiguous counties are amended to refer to the separate regulations that apply to the disaster assistance programs. The delegation authority change clarifies that the delegation authority for disaster declarations may be delegated to the State level of FSA but that such a delegation is not automatic, or assumed, but is discretionary and will require specific delegation action. That is a change from the proposed rule, which proposed a delegation to the FSA State level as the default procedure. There were also a few comments asking for clarification of internal FSA procedures. We will provide clarification on internal FSA procedures in the handbooks, because we believe that in this instance that is the appropriate location for the level of detail about internal procedures reflected in the comments. FSA handbooks are available to the public.

This document first discusses the disaster designation process as specified in this rule, and then discusses our responses to the comments received. Except for the changes in response to comments noted above (removing a definition not used, changing delegation of authority from a default process to an optional process, and clarifying contiguous county applicability), the disaster designation process specified in this rule is the same as in the proposed rule.

Disaster Designation Process Background

There are four types of disaster determinations that can affect the administration of benefits by FSA:

(1) USDA Secretarial disaster designations,

(2) Presidential major disaster and Presidential emergency declarations,

(3) FSA Administrator's Physical Loss Notifications, and

(4) Quarantine designations by the Secretary under the Plant Protection Act or animal quarantine laws as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990 (referenced in 7 CFR part 761, which includes a definition of ''quarantine'' in accordance with 7 U.S.C. 1961).

FSA administers the making of USDA Secretarial disaster designations. Those declarations specify:

(1) The specific disaster that resulted in the designation,

(2) The incidence period (dates) of that disaster, and

(3) The specific counties that are included in the designation.

Of the four types of disaster determinations listed above, the USDA Secretarial disaster designation is the one that most often impacts FSA programs. Previously, its process was the most complicated of the four. This rule simplifies the process of making those determinations.

This rule reduces the number of steps in the process. Before, the process required actions by the Secretary of Agriculture, a State Governor or Indian Tribal Council, FSA National office, the FSA State Executive Director (SED), FSA county offices, the County Emergency Board (CEB), and the State Emergency Board (SEB). This process specified in this rule will in the most complex case only require action by the Secretary (or the Secretary's designee), the CEB, the SEB, and the SED. In the case of a severe drought, it will only require action by the Secretary (or the Secretary's designee). While the Secretary retains the authority to make any and all determinations, this rule provides procedures for that responsibility to be delegated to FSA at the State level. If the Secretary chooses, the SED will be delegated authority to make the designation on behalf of the Secretary, based on a recommendation from the SEB. (The SED is the chairperson of the SEB.) The Secretary retains the authority and flexibility to determine which SEDs will be delegated authority and when.

The rule eliminates the requirement that a request from a State Governor or Indian Tribal Council is needed before a disaster designation can be made. Under this rule, an Indian Tribal Council or Governor may still initiate a request for designation to the County Emergency Board (CEB), SEB, or Secretary, but that request would no longer be required to initiate the process. In response to a request by a Governor or Tribal Council for information about pending potential disaster designations with respect to a specific disaster, the Secretary will advise the Governor or Indian Tribal Council(s) of any designation requests that are under review in their State or Tribal region. This rule also eliminates the requirement for FSA National office review of the information submitted by the SEB to justify a disaster designation for a county. However, the FSA National office will perform spot check reviews.

This rule provides for a nearly automatic designation of any county in which drought conditions as reported in the U.S. Drought Monitor (*http://www.droughtmonitor.unl.edu*) meet the drought intensity value of at least D2 (Drought—Severe) for 8 consecutive weeks in any portion of the county. Further, any county that has a portion of its area in a drought intensity value of D3 (Drought—Extreme) or higher at any time during the growing season of the affected crops would be considered a disaster area.

This rule also revises the definition of ''natural disaster'' to be consistent with other existing FSA regulations that use that term.

In addition to the substantive changes to the disaster designation process, this rule implements the provisions specified in the proposed rule that reorganize the disaster designation regulations. This rule moves the disaster designation regulations from 7 CFR part 1945 to 7 CFR part 759. This rule also makes the clarifying changes that were in the proposed rule, including changes to remove internal FSA processes that are not needed in the rule, but are instead made in the handbook, where they more properly belong. A conforming change is made to amend 7 CFR part 762, ''Guaranteed Farm Loans,'' to remove a reference to 7 CFR part 1945 and replace it with a reference to new part 759.

Discussion of Comments

The following provides a summary of public comments received on the proposed rule and FSA's response, including changes we are making in response to the comments.

Definitions

Comment: Removing the list of examples of unusual and adverse weather conditions from the definition of ''natural disaster'' could lead to potential program abuse and fraud. It would allow nearly any simple event like a spring rain during hay cutting to be considered a natural disaster. Therefore, that change should not be made. The definition and list of examples should not be modified or removed.

Response: The definition of ''natural disaster'' in this rule adequately describes a disaster as an unusual or severe weather condition or other natural phenomena that causes severe losses. The definition in this rule is consistent with other FSA regulations that use that term. A list of examples could be problematic if it was interpreted to mean that only those disaster conditions listed were possible eligible disaster situations. In those cases where the designation is not automatic (that is, not based on officially-published drought data), the rule provides an ample opportunity for review. No change is made in response to this comment.

Comment: The definition of CEB should be amended to specify that local Cooperative Extension agents or educators who have responsibilities for reporting the occurrence of a disaster, assessing the extent of a disaster, and for requesting approval in declaring a county a disaster are included as members of the CEB. Similarly, the term SEB should likewise be amended to include Cooperative Extension agents having program responsibilities at the State level.

Response: The CEB and SEB do consider input from State and local experts on local disaster conditions. Extension agents can and do attend meetings and provide input. However, USDA does not have the authority to require Extension agents or other local non-federal partners to participate or attend as members of the CEB or SEB. Even if they were willing to participate, the determination must remain within USDA and it has been deemed best to limit the CEB and SEB membership accordingly. This will also assure consistency in the makeup of the CEBs and the SEBs. No change is made in response to this comment.

Comment: FSA should include State government agriculture and emergency management agency representatives on the SEB. They must receive communications about disaster designations, and must be allowed to provide input on the approval process.

Response: FSA agrees that State level persons who are engaged in work related to identifying and reporting disasters and other State or local government work can provide valuable information and input that a CEB or SEB may consider in making a CEB or SEB recommendation. Such representatives are invited to attend and provide input. However, as with the previous comments, FSA believe that the actual boards should be comprised of USDA staff only. This is particularly with respect to nonfederal persons as the designation is a federal function. Also, it is relevant to note that the boards are not outside advisory boards and therefore not subject to the special procedures that can apply to such organizations.

Comment: The definition of contiguous county should be amended to specify how rivers, lakes, and other bodies of water are viewed. For example, if counties are separated by a large body of water (Lake Michigan), are the counties on each side of the lake contiguous?

Response: The definition of ''contiguous county'' already provides for the inclusion of a county whose boundary touches a ''primary county.'' The rule makes no distinction for boundaries that touch in water, and is not defining county boundaries in a different way than those boundaries are legally defined by States and local jurisdictions. In the past, counties on each side and separated by a wide body of water, such as Lake Michigan or the Pacific Ocean, have not been viewed as contiguous by USDA because the legal boundaries of those counties are not contiguous. No change in the definition is necessary.

Comment: The definition of ''production losses (severe)'' needs to be clarified because it is unclear whether production losses include physical losses. If the intention is to limit production losses to only losses of production, the definition should state that physical losses are not included. There is a difference between physical and production losses resulting from natural disaster.

Response: In the context of the rule ''physical losses'' means losses to a building or to stored goods and the like. Production losses—losses of growing crops—as defined in this rule do not include physical losses. The definition of ''production losses (severe)'' is clear that a loss of at least 30 percent or more of at least one crop (not property or things included in the rule's definition of physical losses) is a severe production loss for purposes of the rule. FSA does not believe that either the definition of production losses (severe) or the definition of severe physical losses require further amendment or clarification.

Comment: The definition for ''normal year's dollar value'' is unnecessary as the term is not used in the rule. Additionally, the definition is in conflict with other FSA regulations.

Response: In response to this comment, the proposed definition has been removed and is not in this final rule.

Disaster Area Determination and Notification Process

Comment: Of the methods in § 759.5 for declaring a disaster (automatic process for drought, SEB recommendation, production losses of at least 30 percent, and Secretarial discretion for exceptions), only that in paragraph (b) (regarding recommendations by CEBs and SEBs), seems to require review by the FSA Deputy Administrator for Farm Programs. If the intent is not to use the method in paragraph (b) most of the time, but always use the other more lenient methods whenever possible, then there is no point in having that method, so paragraph (b) should be removed.

Response: The CEB and SEB criteria requires the finding of a 30 percent production loss and will likely be the most used option. By nature, those recommendations require review of some kind and therefore the rule provides for review by the Deputy Administrator. However, the rule allows for delegation of that review to the SED. Any SED disaster designation action may be reviewed by the Deputy Administrator for Farm Programs (DAFP) as appropriate. The special discretion for special cases where production losses are not at least 30 percent or where the automatic drought criteria are not met is intended for special cases only. We think that the review provisions are necessary and appropriate to assure as much consistency as possible. No change is made in response to this comment.

Comment: USDA should notify Governors and State personnel when it receives a request for a designation from a CEB. It is important for Governors and States to have real time knowledge of agricultural disaster information and to ensure effective coordination and sharing of information. FSA should also notify Governors and State personnel when a disaster declaration is about to be made, before the general publication notification is made by USDA.

Response: FSA will provide that notice when requested once the disaster has occurred with respect to designations for that particular disaster. Because of the streamlined procedures and the desire for a quick determination where such a determination is warranted and possible, FSA does not anticipate that every Governor and State personnel will ask for pre-notification. FSA will amend internal operating guidelines and handbooks to provide procedures for responding to requests for information about pending disaster designations from interested parties, including Governors and Tribal Councils. The procedure will be in the handbooks and internal guidelines rather than in the rule.

Comment: The CEB does not meet regularly and in most cases the FSA County Executive Director (CED) compiles the information necessary for supporting designation requests. Recommend making CEB interchangeable with the CED.

Response: FSA recognizes the valuable contribution by the CED in obtaining the information that will be used by a CEB or SEB to recommend the disaster designation. However, the CEB is comprised of representatives of several USDA agencies, including but not limited to FSA, that have responsibilities for reporting disasters and assessing the resulting damage caused. It provides a valuable coordination function between USDA agencies. CEB will meet as needed to promptly implement the procedures in this rule. No change is made to the rule in response to this comment.

Comment: The regulation does not specify how information required by the CEB and SEB is collected and documented. There should be more specifics about what is required. For example, GIS maps should be required for all disaster designation requests, not just for drought.

Response: The proposed rule provides procedure for the nearly automatic designations based on the Drought Monitor as well as the reliance upon the Loss Assessment Report (LAR) for those designation requests not meeting the automatic designation criteria. Information from which a LAR can be developed or produced can come from various sources. FSA does not intend to restrict or mandate the sources of information that may be considered by a CEB or SEB in assessing losses. However, FSA will issue internal operating guidelines that will provide instructions regarding necessary information and documentation that will be necessary to support recommendations. In the case of drought, the process will be nearly automatic, based on documentation provided by the Drought Monitor itself. We say ''nearly'' automatic because of the function that will be performed by FSA to identify eligible counties from the official reports and to prepare the notice. No change is made to the rule in response to this comment, but the subject matter will be addressed in FSA handbooks.

Comment: The streamlined automatic designation process for drought could create designations for multiple counties in times of regional disasters. That could be confusing and cause disaster designations when one is not appropriate because the entire county was not impacted.

Response: A disaster declaration is not the only eligibility requirement for FSA disaster assistance programs that depend on a declaration. Most also require some threshold of documented losses. While it is possible that a drought will not impact an entire county that has been declared a disaster, in that case the producers in the county who were not impacted will be unlikely to meet the other criteria for benefit

eligibility. The rules for designating a county as a disaster area when requirements are met based on information that may only be applicable to part of the county are not being modified by this rule. Generally, there is no requirement that the peril or perils that cause a county to be designated a disaster area have impacted all or most of a county. The authorizing legislation for FSA programs that rely on disaster designations consistently refer to county level disaster declarations, with no provisions to make designations for smaller areas. Furthermore, even if a more discrete declaration were permitted, attempting to identify specific affected locations within a county would be time-consuming, uncertain, and would slow the process of making aid available without a justifiable and substantial countervailing benefit. Individual producers must still establish their loss and must establish that it is related to the disaster. No change is made in response to this comment.

Comment: In the case of drought, the regulation should specify that when large areas of a State are impacted, counties affected should be combined as much as possible. The regulations should permit the SED to combine declarations, even if that means a 30- to 60-day delay until the data from the additional counties are known. That would make the disaster response process easier for States.

Response: The current regulations permit a disaster declaration that includes multiple counties. That is not changing with this rule. However, in the case of a drought, the Secretary will designate that area a disaster area when the drought intensity threshold is met, without waiting to see if nearby counties reach the severe or extreme drought threshold. We see no persuasive point in delaying the process to see if other counties qualify. No change is made in response to this comment.

Comment: The Drought Monitor is a valid tool; however, the problem is defining the line location for the drought area as it relates to a whole county. There may be instances where the Drought Monitor may accurately show that a small percent of a county has suffered due to drought; however, based on that data, an entire county may get the designation (based on drought). Recommend the CEB or CED determine if drought monitor conditions are reflective of conditions for the county and not just for the location of the monitor.

Response: As specified in § 759.5(a) of this rule, a loss assessment report (LAR) developed by the CEB is not required for disaster designation in the case of severe drought. Also, as noted above, a disaster declaration is not the only eligibility requirement for most FSA disaster assistance programs, and the authorizing legislation for FSA programs that rely on disaster designations consistently refer to county level disaster declarations, with no provisions to make designations for smaller areas. No change is made in response to this comment.

Comment: The rule is unclear how an individual farmer, State Governor, Indian tribal council, or local governing body will initiate a request for designation.

Response: Anyone can contact the Secretary or FSA and request a designation using any means, including a phone call, letter, or email, to report production losses or drought conditions to the CEB, as specified in this rule in § 759.5. Time and prudent considerations may govern how that contact is made. In any case, we do not believe that it is necessary to specify the method of contact in the rule itself to allow flexibility.

Comment: If anyone can request a disaster designation, this could greatly increase the workload for local staff. Recommend keeping the requirement for a request by the Governor or Indian Tribal Council.

Response: The benefits to producers of allowing anyone to report losses, facilitating a more expedited disaster designation process, outweigh any perceived or alleged increases in workload.

Comment: The new process will be more objective for drought. In the past, it was possible that some people could try to use undue influence to force the CEB to request a disaster even though conditions may not warrant a county-wide declaration process. What is being done to ensure that will not happen with the new process?

Response: The general drought authority will rely on published reports. Where the CEB is involved in the process, there will be review of the disaster recommendation by the SEB and by the Secretary's designee. We believe that the provisions for review are sufficient and persons concerned about any disaster declaration are always free to make that feeling known to generate greater review in particular cases. No change is made in response to this comment.

Comment: Governors or Indian tribal councils should have to seek designations. State governments and Indian tribal councils should not be removed from the process. A State may not want a designation approved. The drought might not be as severe as the Drought Monitor makes it seem, and a disaster declaration could scare away tourists.

Response: USDA has the responsibility to designate disasters using consistent criteria for the entire nation, so that producers in all States and counties have an opportunity to be eligible for disaster assistance if they suffered losses in a disaster area. No change is made in response to this comment.

Comment: The proposed designation process could compromise the integrity of the designation process by removing safeguards realized with a National review of designation requests. By removing the FSA National office review by impartial reviewers, politically appointed SEDs will be under increasing pressure to approve disaster designations, perhaps wrongly.

Response: The FSA National office will still be responsible for oversight and spot check of the process as needed and we believe that the opportunity for review in the regulations is sufficient. Also, as indicated, problems with individual determination can always be raised to generate additional review. In this rule, § 759.5 specifies that if the Secretary so chooses, authority may be delegated to make the designation at the State level, but that delegation is not automatic. At the State level, the SED may act based on a recommendation from the SEB. Such delegations may be limited to particular disasters. Section 759.6 has also been changed from the proposed rule to remove proposed language referring to a disaster designation made by the SED to reflect that there must be a specific delegation as no SED is empowered by the regulations themselves to make the designation.

Comment: Keep the old more complex process. Simplifying the process will result in more fraud, increasing the total government deficit.

Response: As noted above, the FSA National office will conduct spot checks of disaster designations to ensure program integrity. The revised process is expected to result in faster disaster designations, but not more eligible disaster designations, as the rule does not materially change the conditions under which a designation could be made.

Comment: Need clarification on the discretionary exceptions from the definition of production losses 7 CFR 1945.6(c)(3)(iii)(C). Are they being removed? The previous definition allowed a disaster declaration if production losses have not met the 30 percent loss threshold, but other

conditions exist, including producers unable to get financing. According to the table in the preamble to the proposed rule, and the proposed new definition of production losses, it looks like the discretionary exceptions for production losses are removed from the definition section. Does that mean that the lack of getting a lender to finance is no longer included in the definition of production losses, and that we will be unable to obtain a disaster declaration based on financial hardship?

Response: This rule does not remove the provisions allowing the Secretary discretionary authority to declare a disaster even if the 30 percent production loss threshold has not been met. The discretionary exception provisions have been moved, not removed. The discretionary authority disaster designation process is specified in § 759.5, rather than in the definitions section. It includes the number of farmers unable to obtain emergency financing as one of the factors the Secretary may consider in determining whether to use this discretionary authority. This rule does not modify EM procedures or policies. No change is made in response to this comment.

Comment: The current designation process enables a Governor to best manage an agricultural disaster, including taking the necessary steps within the State in determining how and where the State is best served by seeking Federal relief through a disaster designation. Do not take the Governors out of the process. If each county has to independently advocate relief, the larger counties with more resources will be able to more vigorously and expeditiously make disaster designation requests, at the expense of more rural counties. This would not be fair, and would disable the Governor's ability to prioritize statewide needs.

Response: The simplified and streamlined process does not remove authority of Governors to seek designations for any of the counties located in their respective State. The proposed rule also does not prohibit a Governor from taking any State level action in response to whatever concerns or needs that might arise following an emergency. In fact, the expedited designation process should be able to assist all localities with a faster disaster designation process. Local emergency response resources and their distribution are outside the scope of this rule. FSA will designate counties based on factual information about disaster conditions in counties large and small. No change is made in response to this comment.

Comment: What if the same disaster causes both production and physical losses? Does the rule mean that both a Secretarial declaration and an Administrator's declaration of physical loss would be required in that case? If so, that seems more complicated, not less complicated, than the current procedure.

Response: As specified in this rule in § 759.6, the Administrator's declaration of physical loss process is used when only physical losses occur. When both production and physical losses occur, the Secretarial disaster designation process is used. No change is made in response to this comment.

Comment: Eliminate the Presidential, Secretarial, and Administrator designations processes for the FSA EM and the FSA Supplemental Revenue Assistance Payments (SURE) Program. The current process is complicated and time consuming. Proposed rule is unclear if there will be any reduction of paperwork or other time requirements on county FSA offices. The rule does not appear to have very many benefits for individual producers.

Response: USDA does not have authority to modify the disaster designation eligibility requirements for the SURE (should it be reauthorized) or EM program because these requirements are specified in authorizing laws. The streamlined process of processing requests for designations should benefit producers by providing disaster benefits more quickly. No change is made in response to this comment.

General Comments

Comment: USDA should consider increasing the maximum income levels for benefit eligibility to allow farmers and ranchers in high cost areas to take advantage of more FSA program benefits.

Response: USDA does not have authority to change the adjusted gross income provisions that apply to FSA program benefit eligibility to the extent that they are mandated by law and in other instances use of those provisions may help target benefits to those whose need is the greatest. In any event, this comment and issue are outside the scope of this rule. No change is made in response to this comment.

Comment: Benefits for adjoining counties should be discontinued to help reduce potential fraud or less than credible claims. Disaster designations should only apply to the county and not other adjoining areas.

Response: The proposed rule was meant to address only the process by which designations are made and hence this comment goes beyond the scope of this rule. The program specific rules include contiguous counties when specifically authorized for that program by law. However, some additional language has been added to clarify that the rules about contiguous counties should be resolved by the regulations particular to each program. That said, the designation regulations have traditionally carried provisions dealing with that issue specifically for the EM program and this rule continues that practice. As some point we will consider moving the substantive EM provisions to the EM regulations themselves. The EM regulations are found in 7 CFR part 764. The EM regulations require a disaster as a predicate for an EM loan and under the general definitions in 7 CFR part 761 a ''disaster'' requires an FSA designation. This rule specifies that the FSA designation will include not only those that involve a Secretarial designation under these rules but the EM Program will also consider as designated counties eligible to trigger EM loans those counties that are the subject of the other kinds of disaster determinations noted above. The provisions addressing EM qualifications appear in 7 CFR 759.6 of the regulations adopted in this rule. To avoid confusion, 7 CFR part 759 as clarified in this rule will specify that unless otherwise indicated in the regulations for the actual benefit program, or in 7 CFR 759.6, for purpose of administering disaster assistance only the primary county will be considered the disaster county. That is, producers in the contiguous county will only be able to qualify for disaster assistance if the disaster assistance regulations or, in the case of EM, 7 CFR 759.6, provide for such eligibility. This is consistent with long-standing practice, and provisions in authorizing laws, and involves no change in policy.

Comment: The more timely designations may place an even greater burden on local governments who have limited staff to help with disaster response and the recovery process.

Response: This rule does not require any specific action by a local government to assist with USDA's disaster designation process. In fact, it removes the requirement for a request for disaster designation by the Governor or Tribal Council. The more rapid designation of disasters should help identify where response is most urgently needed, allowing local governments to focus resources on where it is needed the most. No change is made in response to this comment.

Miscellaneous Change

This rule also removes the abbreviation for NASS, the USDA National Agricultural Statistics Service, which only appeared in a definition in the proposed rule that is not included in this final rule.

Effective Date

The administrative procedure provisions in 5 U.S.C. 553(d) require that a substantive rule be published ''not less than 30 days before its effective date.'' As specified in 5 U.S.C. 553(d), exceptions to the 30-day post publication effective period include: (1) A substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; and (3) as otherwise provided by the agency for good cause found and published with the rule. Here, however, the substance of this final rule was published in the proposed rule that was published more than 30 days prior to the publication of this final rule. Moreover, even if that should not be deemed to suffice, FSA finds that all of the exceptions apply. In fact, the rule relieves restrictions that the Secretary had placed on USDA's own internal processes, policy, and rules in order to expedite and make more efficient timely designations. Also, this rule makes substantive changes only with respect to USDA's own operations and thus involves matters of agency policy not of regulations in the normal sense. This rule accordingly involves, in terms of its changes, an agency statement of policy. Further, this rule will, with no negative countervailing considerations, provide a benefit to the public by providing more timely disaster relief. For that reason, any delay in implementing this rule is in the opinion of the agency, contrary to the public interest. Accordingly, this rule is made effective immediately upon filing for public inspection.

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 final rule.

Regulatory Flexibility Act

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. New provisions of this rule will not impact a substantial number of small entities to a greater extent than large entities. FSA anticipates that the rule will not require submission of any additional information by the public. It is expected to be revenue neutral, neither increasing nor decreasing benefits for producers as a whole. Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Review

FSA has determined that these changes would not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, in accordance with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799), no environmental assessment or environmental impact statement will be prepared.

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. This rule neither provides Federal financial assistance or direct Federal development; it does not provide either grants or cooperative agreements. Therefore, this rule is not subject to Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This rule preempts State and local laws, regulations, or policies that are in conflict with the provisions of this rule. The rule will not have retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' As this rule does not require any action by any State, 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 final 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.'' This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not, to our knowledge conflict with any Tribal law and therefore does not preempt Tribal law. Were there a conflict, the provisions of the regulations would prevail as far as administering the federal programs that are affected by the rule.

Before publishing the proposed rule, FSA consulted with the USDA Office of Tribal Relations and has concluded that this rule will not, to our knowledge, have a substantial direct effect on Indian tribes and no formal Tribal consultation under E.O. 13175 is required. FSA will conduct an informational forum (telephone call or webinar) to answer questions about this rule from all interested Indian Tribes soon after this rule has been published.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and 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 final rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and Tribal governments or the private sector. Thus, this proposed rule does not trigger the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

The amendments in this final rule require no revision to the information collection that was previously approved by OMB under control number 0560–0170. Although this rule streamlines the disaster designation process, including removing the requirement for a State Governor or Indian Tribal Council to initiate a request for a Secretarial disaster designation, it does not prohibit that action and may therefore not result in a reduction in burden hours. Any change in burden hours will be documented in the next information collection request.

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.

Federal Assistance Program

These changes affect the following FSA program listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans

List of Subjects

7 CFR Part 759

Administrative practice and procedure, Agriculture, Authority delegations, Disaster assistance, Loan programs—Agriculture, Reporting and recordkeeping requirements.

7 CFR Part 762

Agriculture, Credit, Loan programs—Agriculture.

7 CFR Part 1945

Agriculture, Disaster assistance, Drug traffic control, Loan programs—Agriculture, Reporting and recordkeeping requirements.

For the reasons discussed above, FSA adds 7 CFR part 759, amends 7 CFR part 762, and under the authority of 7 U.S.C. 1989, removes 7 CFR part 1945 as follows:

CHAPTER VII—FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

■ 1. Add a new part 759 to read as follows:

PART 759—DISASTER DESIGNATIONS AND NOTIFICATIONS

Sec.

759.1 Administration.
759.2 Purpose.
759.3 Abbreviations and definitions.
759.5 Secretarial disaster area determination and notification process.
759.6 EM to be made available.

Authority: 5 U.S.C. 301, 7 U.S.C. 1961 and 1989.

§ 759.1 Administration.

(a) This part will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this part as amended or supplemented.

(c) The Administrator will take any action required by the regulations of this part that the Administrator determines has not already been taken. The Administrator will also:

(1) Correct or require correction of any action taken that is not in accordance with the regulations of this part; or

(2) Require withholding taking any action that is not in accordance with this part.

(d) No provision or delegation in these regulations will preclude the Administrator or a designee or other such person, from determining any question arising under this part, or from reversing or modifying any determination made under this part.

(e) Absent a delegation to the contrary, this part will be administered by the Deputy Administrator for Farm Programs of FSA on behalf of the Administrator of FSA or the Secretary, but nothing in this part will inhibit the ability of the Administrator of FSA or the person holding the equivalent position in the event of a reorganization to delegate the functions of DAFP under these regulations to another person. Likewise, nothing shall inhibit the ability of the Secretary to reassign any duties with respect to the designations of disasters under this part.

§ 759.2 Purpose.

(a) This part specifies the types of incidents that can result in an area being determined a disaster area, which under other regulations makes qualified farmers in such areas eligible for Emergency loans (EM) or eligible for such other assistance that may be available, based on Secretarial disaster designations. Nothing in this part overrides provision of those regulations that govern the actual administration and availability of the disaster assistance regulations.

(b) This part specifies the responsibility of the County Emergency Board (CEB), State Emergency Board (SEB), and the State Executive Director (SED) in regard to Secretarial Designations with regards to disasters. It also addresses matters relating to the handling of a Presidential declaration of disaster or the imposition of a USDA quarantine by the Secretary with respect to triggering the availability of EM loans.

§ 759.3 Abbreviations and definitions.

(a) *Abbreviations.* The following abbreviations apply to this part.

CEB means the County Emergency Board.

CED means the County Executive Director.

DAFP means the Deputy Administrator for Farm Programs of the Farm Service Agency.

EM means Emergency loan administered under 7 CFR part 764.

FSA means the Farm Service Agency.

LAR means the Loss Assessment Report.

SEB means the State Emergency Board.

SED means the State Executive Director.

USDA means the United States Department of Agriculture.

(b) *Definitions.* The following definitions apply to this part.

Administrator means the Administrator of FSA.

Contiguous county is used in reference to a primary county as defined in this section. A contiguous county is any county whose boundary touches at any point with that of the primary county. For programs other than the EM Program, disaster assistance regulations will specify whether benefits will be available only in the primary counties or also in the contiguous counties. For the EM Program that issue is addressed in § 759.6, unless specified otherwise in the disaster assistance regulations for other programs or in § 759.6 for the EM Program, only the ''primary'' county will be considered the qualifying ''disaster county.'' Therefore, if the disaster assistance regulations specify that they cover the disaster area and contiguous counties, then the only eligible counties would be the primary county and those contiguous to that

county. Coverage would not include coverage of those counties that are in turn contiguous to those counties that are contiguous to the primary county.

County is used when referring to a geographical area, a local administrative subdivision of a State or a similar political subdivision of the United States generally considered to be in county usage, for example, it includes an area referred to as a ''county'' or ''parish.'' Except where otherwise specified, the use of the term county or similar political subdivision is for administrative purposes only.

CEB is comprised of the representatives of several USDA agencies that have responsibilities for reporting the occurrence of, and assessing the damage caused by, a natural disaster, and for requesting approval in declaring a county a disaster area.

CED is the person in charge of administering the local FSA county office for a particular county.

Disaster area is the county or counties declared or designated as a disaster area as a result of natural disaster related losses. The disaster area only includes the primary counties, but benefits may be available in the counties contiguous to the primary county if so provided by the disaster assistance regulations or, in the case of the EM Program, in § 759.6.

LAR is a loss assessment report prepared by the CEB relating to the State and county where the potential disaster occurred and for which county or counties the CEB is responsible. The LAR includes as applicable, but is not limited to, starting and ending dates of the disaster, crop year affected, type of disaster incident, area of county affected by disaster; total number of farms affected, crop loss or pasture loss data associated with the applicable disaster (or both types of losses), livestock destroyed, and other property losses.

Natural disaster is a disaster in which unusual and adverse weather conditions or other natural phenomena have substantially affected farmers by causing severe physical losses, severe production losses, or both.

Primary county is a county determined to be a disaster area.

Presidential declaration is a declaration of a disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–2) requiring Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

Production losses (severe) within a county are those in which there has been a reduction county-wide of at least a 30 percent or more loss of production of at least one crop in the county.

SEB means the State Emergency Board which is comprised of the representatives of several USDA agencies having emergency program responsibilities at the State level. The board is required to respond to emergencies and carry out the Secretary's emergency preparedness responsibilities.

SED is the person who serves as the Chairperson of the USDA SEB in each State, is responsible for providing the leadership and coordination for all USDA emergency programs at the State level, and is subject to the supervision of DAFP.

Severe physical losses means, for the purpose of determining an Administrator's declaration of physical loss, losses that consist of severe damage to, or destruction of: Physical farm property including farmland (except sheet erosion); structures on the land including, but not limited to, building, fences, dams; machinery, equipment, supplies, and tools; livestock, livestock products, poultry and poultry products; harvested crops and stored crops.

Substantially affected when used to refer to producers and to the relationship of a particular producer to a particular disaster means a producer who has sustained qualifying physical or production losses, as defined in this section, as a result of the natural disaster.

U.S. Drought Monitor is a system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners that is produced on a weekly basis to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center.

United States means each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Extension of disaster assistance, following a disaster designation, to insular areas of the United States not covered by this definition of ''United States'' will be only as authorized by law, and as determined by the Administrator on behalf of the Secretary to be appropriate.

§ 759.5 Secretarial disaster area determination and notification process.

(a) *U.S. Drought Monitor.* With respect to drought and without requiring an LAR:

(1) If any portion of a county is physically located in an area with a Drought Monitor Intensity Classification value of D3 (drought-extreme) or higher during any part of the growing season of the crops affected by the disaster in the county, then the county will be designated a disaster area by the Secretary.

(2) If any portion of a county meets the threshold Drought Monitor Intensity Classification value of D2 (drought-severe) for at least 8 consecutive weeks during the growing season of affected crops, then the county will be designated a disaster area by the Secretary.

(b) *CEB and SEB recommendations.* In instances where counties have been impacted by a disaster but the county has not been designated a disaster area under the provisions of paragraph (a) of this section, CEB will make a disaster designation recommendation request to SEB when a disaster has resulted in severe production losses. The determination of the sufficiency of the production losses will be governed by the provisions in paragraph (c) of this section. The CEB may make such efforts as are needed to identify counties that have been impacted and had such production losses. A farmer, Indian Tribal Council, or local governing body may initiate the process by reporting production losses or drought conditions to CEB and suggesting that there be a recommendation in favor of designating a county as a disaster area. Recommendations by a CEB in favor of a disaster designation by a CEB under this paragraph are subject to the following:

(1) A LAR is required as part of a CEB disaster designation request. CEB will submit a disaster designation request with a LAR to SEB for review and recommendation for approval by the Secretary. CEB's written request and SEB recommendation must be submitted within three months of the last day of the occurrence of a natural disaster.

(2) If SEB determines a qualifying natural disaster and loss have occurred, SEB will forward the recommendation to the Administrator. The natural disaster may include drought conditions that were not sufficiently severe to meet the criteria in paragraph (a) of this section. Since the U.S. Drought Monitor tracks only drought conditions, not specifically agricultural losses resulting from those conditions, it is possible for

a drought that does not meet the criteria in paragraph (a) of this section to result in production losses that constitute a natural disaster.

(3) The Secretary or the Secretary's designee will make disaster area determinations. The Secretary may delegate the authority to the SED. In such case, the SED will act on behalf of the Secretary, subject to review by DAFP as may be appropriate and consistent with the delegation. The delegation of authority to the SED may be revoked by the authority making that delegation or by other authorized person. In all cases, DAFP may reverse any SED determination made in accordance with this section unless the delegation to the SED specifies that such review is not allowed.

(c) *Eligible production losses.* For purposes of making determinations under paragraph (b) of this section, in order for an area to be declared a disaster area under paragraph (b) of this section based on production losses, the county must have had production losses of 30 percent of at least one crop in the county as the result of a natural disaster.

(d) *Discretionary exception to production losses for designating a county as a disaster county.* For purposes of the EM program only, unless otherwise specified in the designation, a county may be designated by DAFP as a designated disaster county even though the conditions specified in paragraphs (a) through (c) of this section are not present so long as the disaster has otherwise produced such significant production losses, or other such extenuating circumstances so as to justify, in the opinion of the Secretary, the designation of a county as a disaster area. In making this determination, the Secretary may consider all relevant factors including such factors as the nature and extent of production losses; the number of farmers who have sustained qualifying production losses; the number of farmers that other lenders in the county indicate they will not be in position to provide emergency financing; whether the losses will cause undue hardship to a certain segment of farmers in the county; whether damage to particular crops has resulted in undue hardship; whether other Federal or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM; and any other factors considered relevant.

§ 759.6 EM to be made available.

(a) For purposes of the EM Program under part 764, subpart I, of this chapter, a county will be considered an eligible disaster area as designated by FSA for coverage of the EM Program as follows:

(1) *Secretarial designations.* When production losses meet the requirements in § 759.5 and the county has been designated as a disaster area for that reason, or when the discretionary exception to production losses for EM under § 759.5(d) has been exercised, the primary and contiguous counties will be areas in which otherwise eligible producers can receive EM loans.

(2) *Physical loss notification.* When only qualifying physical losses occur, the SED will submit a request to the FSA Administrator to make a determination that a natural disaster has occurred in a county, resulting in severe physical losses. If the FSA Administrator determines that such a natural disaster has occurred, then EM can be made available to eligible farmers for physical losses only in the primary county (the county that was the subject of that determination) and the counties contiguous to that county.

(3) *USDA quarantine.* Any quarantine imposed by the Secretary of Agriculture under the Plant Protection Act or the animal quarantine laws, as defined in section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990, automatically authorizes EM for production and physical losses resulting from the quarantine in a primary county (the county in which the quarantine was in force) and (where the quarantine effects extend beyond that county) the counties contiguous to that primary county.

(4) *Presidential declaration.* Whenever the President declares a Major Disaster Declaration or an Emergency Declaration, FSA will make EM available to eligible applicants in declared and contiguous counties, provided:

(i) The Presidential declaration is not solely for Category A or Category B Public Assistance or Hazard Mitigation Grant Assistance, and

(ii) The Presidential Major Disaster declaration is for losses due to severe, general disaster conditions including but not limited to conditions such as flood, hurricane, or earthquake.

(b) [Reserved]

PART 762—GUARANTEED FARM LOANS

■ 2. The authority citation for part 762 would continue to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 762.106 [Amended]

■ 3. Amend § 762.106(b)(2) and (c)(4) by removing the reference ''part 1945, subpart A of this title'' and adding in its place each time it appears ''§ 761.2(b) and part 759 of this chapter''.

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1945 [REMOVED]

■ 4. Remove part 1945.

Signed on July 10, 2012.

Karis T. Gutter,

Under Secretary, Farm and Foreign Agricultural Services.

Signed on July 10, 2012.

Dallas Tonsager,

Under Secretary, Rural Development.

[FR Doc. 2012–17137 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1902

RIN 0575–AC94

Federal Deposit Insurance Corporation Limit Change

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service and Farm Service Agency, USDA.

ACTION: Direct final rule.

SUMMARY: Rural Development is amending its regulations to address the change in the standard maximum deposit insurance amount under the Federal Deposit Insurance Corporation (FDIC).

DATES: This rule is effective without further action September 26, 2012 unless we receive written adverse comments on or before September 11, 2012. If adverse comment is received, we will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400

Independence Avenue SW., Washington, DC 20250–0742.

• *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Price, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0786, Washington, DC 20250–0786; email: *linda.price@wdc.usda.gov;* telephone (202) 690–2151.

SUPPLEMENTARY INFORMATION:

Executive Order 12866—Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The programs described by this rule are listed in the Catalog of Federal Domestic Assistance Programs under number(s) 10.405 Farm Labor Housing Loans and Grants, 10.410 Very Low to Moderate Income Housing Loans, 10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans, 10.415 Rural Rental Housing Loans, 10.417 Very Low-Income Housing Repair Loans and Grants, 10.420 Rural Self-Help Housing Technical Assistance, 10.427 Rural Rental Assistance Payments, 10.433 Rural Housing Preservation Grants, 10.444 Direct Housing-Natural Disaster Loans and Grants, 10.446 Rural Community Development Initiative, 10.447 The Rural Development Multi-Family Housing Revitalization Demonstration Program, 10.448 Rural Development Multi-Family Housing Voucher Demonstration Program, 10.759 Part 1774 Special Evaluation Assistance for Rural Communities and Household Programs (SEARCH), 10.760 Water and Waste Disposal Systems for Rural Communities, 10.761 Technical Assistance and Training Grants, 10.762 Solid Waste Management Grants, 10.763 Emergency Community Water Assistance Grants, 10.766 Community Facilities Loans and Grants, 10.770 Water and Waste Disposal Loans and Grants (section 306C), 10.780 Community Facilities Loans and Grants, 10.781 Water and Waste Disposal Systems for Rural Communities—ARRA, 10.788 Very low to Moderate Income Housing Loans—Direct, 10.864 Grant Program to Establish a Fund for Financing Water and Wastewater Projects.

Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because of all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint or discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9419, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

Civil Rights Impact Statement

No major civil rights impact is likely to result from the announcement of this Notice. It will not have a negative civil rights impact on very-low income, low-income, moderate income and minority poplulations.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

Executive Order 12372, Intergovernmental consultation

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Consultation will be completed at the time of the action performed.

Executive Order 12988, Civil Justice

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its Agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this final rule impose substantial direct compliance costs on State and local Governments. Therefore, consultation with States is not required.

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal Governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175.

If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage with Rural Development on this rule, please contact Rural Development's Native American Coordinator at *AIAN@wdc.usda.gov.*

Paperwork Reduction Act

This rule contains no new reporting or recordkeeping burdens under OMB control number 0575–0158 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

Rural Development 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 citizens to access Government information and services electronically.

I. Background

Section 335(a), of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, July 21, 2010) (''Act'') increased the standard maximum deposit insurance amount to $250,000 under the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)). This change is also reflected in FDIC's regulations at 12 CFR 330.1(o). The change made under the Act was in response to the instability of the financial markets. The permanent increase from $100,000 to $250,000 took a measure of insecurity out of the market. Rural Development funds, disbursed to a financial institution on behalf of a Rural Development borrower, are now protected up to $250,000. Similar to what is currently stated in 7 CFR 1902.6 and 1902.7, anything above the FDIC maximum insured amount will be required to be secured by pledging collateral.

II. Discussion of Change

The Agency is revising 7 CFR 1902.6(d) and 1902.7(a), to reflect the FDIC's change in the standard maximum deposit insurance amount. Accordingly, the Agency is revising the above referenced regulations in this final rule to change the reference from $100,000 to a more general reference of the maximum amount insurable by the Federal government. By making this change, Rural Development's regulations will remain consistent with the FDIC regulations even if the FDIC limit is revised again or the authority for deposit insurance is transferred to another Federal government entity.

List of Subjects in 7 CFR Part 1902

Accounting; Banks, banking; Grant programs—Housing and community development; Loan programs—Agriculture; Loan programs—Housing and community development.

For the reasons set forth in the preamble, chapter XVIII, title 7, of the Code of Federal Regulations is amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY DEPARTMENT OF AGRICULTURE

PART 1902—SUPERVISED BANK ACCOUNTS

■ 1. The authority citation for part 1902 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 6991, et seq.; 42 U.S.C. 1480; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

Subpart A—Supervised Bank Accounts of Loan, Grant, and Other Funds

■ 2. Paragraph (d) § 1902.6 is revised to read as follows.

§ 1902.6 Establishing supervised bank accounts.

* * * * *

(d) For each borrower, if the amount of any loan and grant funds, plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed the maximum amount insurable by the Federal government, the financial institution will be required to pledge collateral for the excess over that limit before the deposit is made (see § 1902.7 of this subpart). If the supervised bank account is a joint account, any amount over the maximum amount insurable by the federal government must be collateralized.

* * * * *

■ 3. Paragraph (a) of § 1902.7 is revised to read as follows:

§ 1902.7 Pledging collateral for deposit of funds in supervised bank accounts.

(a) Funds in excess of the maximum amount insurable by the Federal government, per financial institution, deposited for borrowers in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank (FRB) in an amount not less than the excess. If the supervised bank account is a joint account, any amount over the maximum amount insurable by the federal government must be collateralized.

* * * * *

Dated: June 8, 2012.

Dallas Tonsager,

Under Secretary, Rural Development.

Dated: June 1, 2012.

Michael T. Scuse,

Under Secretary, Farm and Foreign Agriculture Services.

[FR Doc. 2012–17061 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–XV–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule Update

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Establishment of FOIA Fee Schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its Freedom of Information Act (FOIA) Fee Schedule Update pursuant to the Board's regulations.

DATES: *Effective Date:* July 23, 2012.

FOR FURTHER INFORMATION CONTACT: Debra H. Richardson, Deputy General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On June 1, 2012 the Board published for comment in the **Federal Register** its Proposed FOIA Fee Schedule, 77 FR 32433. No comments were received in response to that notice, and the Board is now establishing the Fee Schedule.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. The previous Fee Schedule Update went into effect on July 29, 2011. 76 FR 43819.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge	$82.00 per hour.
Copy Charge (paper)	$.12 per page, if done in-house, or generally available commercial rate (approximately $.10 per page).
Electronic Media	$5.00.
Copy Charge (audio cassette)	$3.00 per cassette.
Duplication of DVD	$25.00 for each individual DVD; $16.50 for each additional individual DVD.
Copy Charge for large documents (e.g., maps, diagrams)	Actual commercial rates.

Dated: July 10, 2012.

Debra H. Richardson,

Deputy General Manager.

[FR Doc. 2012–17097 Filed 7–12–12; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0310; Airspace Docket No. 12–ANM–6]

Modification of Class E Airspace; Plentywood, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Plentywood Sher-Wood Airport, Plentywood, MT. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Plentywood Sher-Wood Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also makes a minor adjustment to the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On April 23, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Plentywood, MT (77 FR 24159). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication it was brought to the attention of the FAA a minor adjustment to the geographic coordinates of the airport needed to be made.

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Plentywood Sher-Wood Airport, Plentywood, MT. Controlled airspace is necessary to accommodate IFR aircraft using RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. The geographic coordinates of the airport are adjusted to coincide with the FAA's aeronautical database.

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace

Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM MT E5 Plentywood, MT [Modified]

Plentywood Sher-Wood Airport, MT
(Lat. 48°47′20″ N., long. 104°31′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Plentywood Sher-Wood Airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 49°00′00″ N., long. 105°02′00″ W.; to lat. 49°00′00″ N., long. 104°02′00″ W.; to lat. 48°32′35″ N., long. 104°02′00″ W.; to lat. 48°27′00″ N., long. 104°11′12″ W.; to lat. 48°26′00″ N., long. 104°41′00″ W.; to lat. 48°17′00″ N., long. 104°43′00″ W.; to lat. 48°17′00″ N., long. 105°52′00″ W.; to lat. 48°32′00″ N., long. 105°51′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on July 3, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–16946 Filed 7–12–12; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Second Amendment to July 14, 2011 Order for Swap Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On May 16, 2012, the Commodity Futures Trading Commission (''CFTC'' or the ''Commission'') published in the **Federal Register** a Notice of Proposed Amendment (''Notice'') to extend the temporary exemptive relief the Commission granted on July 14, 2011 (''July 14 Order'') from certain provisions of the Commodity Exchange Act (''CEA'') that otherwise would have taken effect on the general effective date of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''the Dodd-Frank Act'')—July 16, 2011. This final order extends the July 14 Order with certain modifications. Specifically, it removes references to the entities terms, including ''swap dealer,'' ''major swap participant,'' and ''eligible contract participant'' in light of the final joint rulemaking of the CFTC and Securities and Exchange Commission (''SEC'') further defining those terms issued on April 18, 2012; extends the potential latest expiration date of the July 14 Order to December 31, 2012, or, depending on the nature of the relief, such other compliance date as may be determined by the Commission; allows the clearing of agricultural swaps, as described herein; and removes any reference to the exempt commercial market (''ECM'') and exempt board of trade (''EBOT'') grandfather relief previously issued by the Commission.

DATES: This final order is effective July 3, 2012.

FOR FURTHER INFORMATION CONTACT: Mark D. Higgins, Counsel, (202) 418–5864, *mhiggins@cftc.gov,* Office of the General Counsel; David Aron, Counsel, (202) 418–6621, *daron@cftc.gov,* Office of the General Counsel; David Van Wagner, Chief Counsel, (202) 418–5481, *dvanwagner@cftc.gov,* Division of Market Oversight; Ali Hosseini, Special Counsel, (202) 418–6144, *ahosseini@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or Anne Polaski, Special Counsel, (312) 596–0575, *apolaski@cftc.gov,* Division of Clearing and Risk; Commodity Futures Trading Commission, 525 West Monroe, Chicago, Illinois 60661.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2011, the Commission exercised its exemptive authority under CEA section 4(c) [1] and its authority under section 712(f) of the Dodd-Frank Act by issuing the July 14 Order that addressed the potential that the final, joint CFTC–SEC rulemakings further defining the terms in sections 712(d) [2] and 721(c) [3] would not be in effect as of July 16, 2011 (*i.e.,* the general effective date set forth in section 754 of the Dodd-Frank Act).[4] In so doing, the Commission sought to address concerns that had been raised about the applicability of various regulatory requirements to certain agreements, contracts, and transactions after July 16, 2011, and thereby ensure that current practices would not be unduly disrupted during the transition to the new regulatory regime.[5] The July 14 Order provided that the relief granted thereunder would expire no later than December 31, 2011.[6]

On December 23, 2011, the Commission published in the **Federal Register** a final order (the ''First Amended July 14 Order'') amending the July 14 Order in two ways.[7] First, the Commission extended the potential latest expiry date from December 31, 2011 to July 16, 2012 or, depending on the nature of the relief, such other compliance date as may be determined by the Commission, to address the potential that, as of December 31, 2011, the aforementioned joint CFTC–SEC joint rulemakings would not be effective. Second, the Commission included within the relief set forth in the First Amended July 14 Order any agreement, contract or transaction that fully meets the conditions in part 35 as in effect prior to December 31, 2011. This amendment addressed the fact that such transactions, which were not included within the scope of the original July 14 Order because the exemptive rules in part 35 covered them

[1] 7 U.S.C. 6(c).

[2] Section 712(d)(1) provides: ''Notwithstanding any other provision of this title and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors [of the Federal Reserve System], shall further define the terms 'swap', 'security-based swap', 'swap dealer', 'security-based swap dealer', 'major swap participant', 'major security-based swap participant', and 'security-based swap agreement' in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).''

[3] Section 721(c) provides: ''To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms 'swap', 'swap dealer', 'major swap participant', and 'eligible contract participant'.''

[4] Effective Date for Swap Regulation, 76 FR 42508 (issued and made effective by the Commission on July 14, 2011; published in the **Federal Register** on July 19, 2011). Section 712(f) of the Dodd-Frank Act states that ''in order to prepare for the effective dates of the provisions of this Act,'' including the general effective date set forth in section 754, the Commission may ''exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act.'' Section 754 specifies that unless otherwise provided in Title VII, provisions requiring a rulemaking become effective ''not less than 60 days after publication of the final rule'' (but not before July 16, 2011).

[5] Concurrent with the July 14 Order, the Commission's Division of Clearing and Intermediary Oversight (which is now two divisions—the Division of Clearing and Risk (''DCR'') and the Division of Swap Dealer and Intermediary Oversight (''DSIO'')) and the Division of Market Oversight (''DMO'') (together ''the Divisions'') identified certain provisions of the Dodd-Frank Act and CEA as amended that would take effect on July 16, 2011, but that may not be eligible for the exemptive relief provided by the Commission in its July 14 Order—specifically, the amendments made to the CEA by Dodd-Frank Act sections 724(c), 725(a), and 731. On July 14, 2011, the Divisions issued Staff No-Action Relief addressing the application of these provisions after July 16, 2011. Available at: *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/11-04.pdf.*

[6] 76 FR at 42522 (July 19, 2011).

[7] Amendment to July 14, 2011 Order for Swap Regulation, 76 FR 80233 (Dec. 23, 2011).

at that time, required temporary relief because part 35 would not be available as of December 31, 2011.[8] In so doing, the Commission clarified that new part 35 and the exemptive relief issued in the First Amended July 14 Order, and any interaction of the two, do not operate to expand the pre-Dodd-Frank Act scope of transactions eligible to be transacted on either an ECM or EBOT to include transactions in agricultural commodities.

Discussion of the Notice of Proposed Amendment

On May 16, 2012, the Commission published in the **Federal Register** a Notice of Proposed Amendment (''Notice'') that would further amend the First Amended July 14 Order in the following four ways. First, in light of the final, joint CFTC–SEC rulemaking further defining the entities terms in sections 712(d), including ''swap dealer,'' ''major swap participant,'' and ''eligible contract participant,'' issued on April 18, 2012,[9] the Notice proposed to remove references to those terms. Second, the Notice proposed to extend the latest potential expiry date from July 16, 2012 to December 31, 2012 or, depending on the nature of the relief, such other compliance date as may be determined by the Commission. The Notice stated that the extension would ensure that market practices will not be unduly disrupted during the transition to the new regulatory regime.

Third, the Notice proposed to further amend the First Amended July 14 Order to provide that agricultural swaps, whether entered into bilaterally, on a DCM, or a SEF, may be cleared in the same manner that any other swap may be cleared and without the need for the Commission to issue any further exemption under section 4(c) of the CEA. The Notice stated that this amendment is intended to harmonize the First Amended July 14 Order and the final rules amending part 35 of the Commission's regulations, to the extent that the July 14 Order, as amended, maintained the pre-Dodd-Frank Act part 35 prohibition against the clearing of agricultural swaps. The Notice clarified that while the proposed Second Amended July 14 Order would remove the clearing prohibition for agricultural swaps, it would not permit agricultural swaps to be entered into or executed on an ECM or EBOT.

The Commission noted that ECMs and EBOTs both operate some form of trading facility without any self-regulatory responsibilities. The Commission stated its general belief that any form of exchange trading in agricultural swaps should only be permitted in a self-regulated environment. In other words, unlike exempt and excluded commodities, which were generally allowed to be transacted on a trading facility (*i.e.,* platform-traded) in an unregulated environment under the CEA prior to the Dodd-Frank Act[10] and now during the transition to the Dodd-Frank Act regulatory regime, agricultural swaps, which were not allowed to be platform-traded on an ECM or EBOT under the CEA prior to Dodd-Frank Act, may not be platform-traded during the transition to the Dodd-Frank Act regulatory regime. Accordingly, under the Notice and in conjunction with 17 CFR part 35, as effective on and after December 31, 2011, the Notice stated that agricultural swaps may only be entered into or executed bilaterally, on a DCM,[11] or on a SEF.[12]

In connection with swaps executed on a DCM (whether agricultural swaps or otherwise), the Commission clarified that a DCM may list such swaps for trading under the DCM's rules related to futures contracts without exemptive relief.[13] As required for futures, a DCM must submit such swaps to the Commission under either § 40.2 (listing products for trading by certification)[14] or § 40.3 (voluntary submission of new products for Commission review and approval)[15] of the Commission's regulations. Swaps that are traded on a DCM are required to be cleared by a DCO.[16] In order for a DCO to be able to clear a swap listed for trading on a DCM, the DCO must be eligible to clear such swap pursuant to § 39.5(a)(1) or (2),[17] and must submit the swap to the Commission pursuant to § 39.5(b).[18]

Fourth, the Notice proposed to further amend the First Amended July 14 Order to remove any reference to the ECM/EBOT Grandfather Order, which expires on July 16, 2012.[19] The Notice stated that after July 16, 2012, ECMs and EBOTs, as well as markets that rely on pre-Dodd-Frank CEA section 2(d)(2) (''2(d)(2) Markets''), would only be able to rely on the Second Amended July 14 Order, as proposed therein. The Notice proposed that the relief for ECMs and EBOTs, as well as for 2(d)(2) Markets, granted under the proposed Second Amended July 14 Order shall expire upon the effective date of the DCM or SEF final rules, whichever is later, unless the ECM or EBOT, or 2(d)(2) Markets, files a DCM or SEF application on or before the effective date of the DCM or SEF final rules, in which case the relief shall remain in place during the pendency of the application. The Notice clarified that for these purposes, an application will be considered no longer pending upon the application being approved, provisionally approved,[20] withdrawn, or denied.

The Commission sought comment on all aspects of the Notice.

Discussion of the Final Order

The Commission received five comments that related to the Notice.[21] While generally supportive of

[8] The Commission promulgated a rule pursuant to section 723(c)(3) of the Dodd-Frank Act, and CEA sections 4(c) and 4c(b), that, effective December 31, 2011, repealed the existing part 35 relief and replaced it with new § 35.1 of the Commission's regulations. *See* Agricultural Swaps, 76 FR 49291 (Aug. 10, 2011). Rule 35.1 generally provides that ''agricultural swaps may be transacted subject to all provisions of the CEA, and any Commission rule, regulation or order thereunder, that is otherwise applicable to swaps. [It] also clarifies that by issuing a rule allowing agricultural swaps to transact subject to the laws and rules applicable to all other swaps, the Commission is allowing agricultural swaps to transact on [designated contract markets (''DCMs''), swap execution facilities (''SEFs'')], or otherwise to the same extent that all other swaps are allowed to trade on DCMs, SEFs, or otherwise.'' *Id.* at 49296.

[9] CFTC–SEC, Further Definition of ''Swap Dealer'', ''Security-Based Swap Dealer'', ''Major Swap Participant'', ''Major Security-Based Swap Participant'', and ''Eligible Contract Participant'' (issued Apr. 18, 2012) (to be codified at 17 CFR pt. 1), 77 FR 30596 (May 23, 2012), available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister041812b.pdf.*

[10] One notable exception to this general approach was the heightened regulatory requirements for ECM-listed contracts that served a significant price discovery function under the pre-Dodd-Frank CEA. It is generally recognized, however, that the regulatory regime for ECM significant price discovery function contracts, which included nine core principles, was less rigorous than those applicable to either DCMs (pre- or post-Dodd-Frank) or SEFs. *See* CEA Section 2(h)(7)(C)(ii)(I)–(IX) (2008) *amended by* the Dodd-Frank Act.

[11] *See* December 23 Order, 76 FR at 80236, note 11 (Dec. 23, 2011).

[12] *See* 17 CFR 35.1(b).

[13] *See* 76 FR at 80236, note 22 (Dec. 23, 2011).

[14] 17 CFR 40.2.

[15] 17 CFR 40.3.

[16] *See* 7 U.S.C. 5(d)(11)(A).

[17] 17 CFR 39.5(a).

[18] 17 CFR 39.5(b).

[19] The Commission issued the ECM/EBOT Grandfather Order pursuant to sections 723(c) and 734(c) of the Dodd-Frank Act which authorized the Commission to permit ECMs and EBOTs, respectively, to continue to operate pursuant to CEA sections 2(h)(3) and 5d for no more than one year after the general effective date of the Dodd-Frank Act's amendments to the CEA.

[20] For these purposes, an application is ''provisionally approved'' on the date that such provisional approval becomes effective such that the ECM, EBOT, or 2(d)(2) Market may then rely on such provisional approval to operate as a DCM or SEF, as applicable.

[21] Letter from Diana L. Preston, Vice President and Senior Counsel, Center for Securities, Trust & Investments, American Bankers Association, to David Stawick, Secretary, Commodity Futures Trading Commission (May 30, 2012); Letter from

Continued

the Notice, the comments raised two issues for the Commission's consideration in this final order: (1) The expiry date applicable to ECMs currently operating pursuant to grandfather relief authorized by section 723(c)(l)–(2) of the Dodd-Frank Act and their market participants and clearing organizations; and (2) the effectiveness of CEA section 2(e) in light of the further definition of the term ''eligible contract participant'' (''ECP''). In addition, one commenter specifically supported the Commission's proposal to permit the clearing of agricultural swaps without further exemption.[22] The Coalition of Physical Energy Companies also supported the Proposed Amendment and believed that the Commission should undertake its implementation of the Dodd-Frank Act in a deliberative manner that carefully establishes necessary regulations and avoids inadvertent impacts and over-broad application of the statute.[23]

The comments and Commission determinations regarding the two substantive issues raised by commenters are discussed in the sections that follow.

1. Duration of Relief Available to ECM/EBOTs

a. Comments

While supportive of the Notice, CME Group, on behalf of its four DCMs, requested that the Commission clarify one ambiguity it perceived with the Notice—that is, the provision of the Notice stating that the relief proposed shall expire on the earlier of (1) December 31, 2012 or (2) ''the effective date of the DCM or SEF final rules, whichever is later,'' unless the ECM or EBOT files a DCM or SEF application ''on or before the effective date of the DCM or SEF final rules, in which case the relief shall remain in place during the pendency of the application.'' [24] According to CME Group, the second part of the proposed expiration date is ambiguous because it fails to specify which of the numerous rule proposals concerning SEFs and DCMs must be finalized before relief will terminate.[25]

CME Group stated that one way to remove this perceived ambiguity would be for the Commission to list each rulemaking that must take effect before the relief will terminate. CME Group also stated that, at a minimum, the ECM and EBOT relief should remain in place until at least the effective date of CFTC implementing rules concerning: (1) All DCM and SEF core principles and (2) block trade size requirements for swaps. Alternatively, CME Group stated that the Commission could address the concern by stating in a final order that the relief remains in effect until a future date the Commission will specify in a future order that will provide at least 60 days notice to market participants and other affected parties.[26]

Nodal Exchange, which is currently operating as an ECM, sought assurance that the proposed relief would remain in place if an ECM applies to be a DCM after the effective date of the DCM rules, yet still on or before the effective date of the SEF rules.[27] To that end, Nodal Exchange offered a change to the operative language of the draft order. Specifically, Nodal Exchange recommended that the phrase at the end of Section (3) of the proposed order be modified to include a second ''whichever is later'' clause, as emphasized below:

> or (ii) the effective date of the designated contract market (''DCM'') or swap execution facility (''SEF'') final rules, whichever is later, unless the ECM, EBOT, or 2(d)(2) Market files a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules, *whichever is later,* in which case the relief shall remain in place during the pendency of the application.

Nodal Exchange explained that this change is necessary because it must file a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules, but to date, the final rules for DCMs that defer implementation of Core Principle 9 and the proposed rules for SEFs would significantly impact Nodal Exchange such that a determination of which registration will be most appropriate is not possible until both the DCM and SEF final rules are published.[28] Before submitting the appropriate application, Nodal Exchange stated that it will need to assess (1) how the final regulations implement DCM Core Principle 9 and (2) the finalized rules for SEFs, especially with regard to how the Commission addresses the SEF rules regarding ''pre-trade price transparency.'' [29]

b. Commission Determination

The Commission has determined to amend the draft order to include a ''whichever is later'' clause in provision (b) of section 3 of the Second Amended July 14 Order. That qualifying provision will read as follows: ''or (ii) the effective date of the designated contract market (''DCM'') or swap execution facility (''SEF'') final rules, whichever is later, unless the ECM, EBOT, or 2(d)(2) Market files a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules, whichever is later, in which case the relief shall remain in place during the pendency of the application.'' [30] To be clear, the phrase ''DCM or SEF final rules'' in that provision refers to the following rulemakings: (1) Core Principles and Other Requirements for

Kathleen Cronin, Senior Managing Director, General Counsel and Corporate Secretary, CME Group Inc., to David Stawick, Secretary, Commodity Futures Trading Commission (May 30, 2012); Letter from David M. Perlman, Partner, Bracewell & Giuliani, LLP on behalf of the Coalition of Physical Energy Companies, to David Stawick, Secretary, Commodity Futures Trading Commission (May 30, 2012); Letter from Richard W. Holmes, Jr., Vice President and Counsel, Fifth Third Bank, to David Stawick, Secretary, Commodity Futures Trading Commission (May 30, 2012); Letter from Paul Cusenza, Chief Executive Officer, Nodal Exchange, LLC, to David Stawick, Secretary, Commodity Futures Trading Commission (May 30, 2012). The comment letters are on file with the CFTC and are available via the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1201.*

[22] *See* CME Group Letter at 2. In discussing this aspect of the proposed Second Amended July 14 Order, CME Group noted that for agricultural swaps listed on a DCM, ''a DCM will have the flexibility either to self-certify a new agricultural swap contract under Rule 40.2, or to submit the contract for CFTC approval pursuant to Rule 40.3.'' *Id.* In adopting, as proposed, the provisions relating to agricultural swaps, the Commission is affirming the discussion of agricultural swaps contained in the Notice, which included the explanation that in addition to a DCM submitting swaps to the Commission under either § 40.2 or § 40.3, ''In order for a DCO to be able to clear a swap listed for trading on a DCM, the DCO must be able to clear such swap pursuant to § 39.5(a)(1) or (2), [footnote omitted] and must submit the swap to the Commission pursuant to § 39.5(b).'' *See* 77 FR at 28820–21.

[23] COPE Letter at 1–2.

[24] CME Group Letter at 2.

[25] *Id.*

[26] *Id.*

[27] Nodal Exchange Letter at 1–2.

[28] *Id.*

[29] *Id.*

[30] The Commission currently receives notice filings from ECMs and EBOTs, and thus has a general familiarity with the nature and number of markets operating pursuant to ECM and EBOT exemptive relief. *See* 17 CFR 36.2(b) and 17 CFR 36.3(a). In order for the Commission to gain a similar familiarity with 2(d)(2) Markets, and to facilitate their eventual transition to registered DCM or registered SEF status, 2(d)(2) Markets operating or intending to operate pursuant to the exemptive relief in this Second Amended Order must provide the Commission with notice of their operations (or intent to so operate) on or before July 16, 2012, or as reasonably soon thereafter as is practicable. Notices should be sent to the Commission's Division of Market Oversight, 1155 21st St. NW., Washington, DC 20581 (or electronically, to *DMOLetters@cftc.gov*), and should include the name and address of the 2(d)(2) Market, and the name and telephone number of a contact person. Such notice will assist the Commission in preparing to review any subsequent application for registration, or provisional registration, as a SEF or DCM submitted by such 2(d)(2) Market. Notwithstanding the provision of such notice, the Commission notes that any subsequent SEF or DCM registration application by a 2(d)(2) Market will still undergo a separate, complete, and independent evaluation by the Commission, just as will every SEF and/or DCM application submitted by an ECM and/or EBOT.

Designated Contract Markets;[31] (2) Core Principles and Other Requirements for Swap Execution Facilities;[32] and (3) a rulemaking on DCM Core Principle 9.[33] The Commission believes that these changes and clarifications are necessary and in the public interest because finalization of the aforementioned rules is integral to the business decision of whether entities currently operating as ECMs, EBOTs, or 2(d)(2) Markets will transition to DCM or SEF status.

2. Status of CEA Section 2(e) and ECPs

a. Comments

According to Fifth Third Bank, compliance with the Dodd-Frank Act requirements should not become mandatory until the CFTC and SEC provide further guidance as to the meaning of the ''revised definition of ECP.''[34] Fifth Third Bank stated that section 2(e) of the CEA, as amended by the Dodd-Frank Act, which makes it unlawful for non-ECPs to enter into over-the-counter swaps, together with the rescission of the Commission's 1989 Policy Statement Concerning Swap Transactions, represent a major change in the rules under which banks have been operating for many years.[35] Fifth Third Bank contended that banks (and other swap counterparties) will need to know how to determine whether or not a person is an ECP with a considerable degree of certainty well before the mandatory compliance date for CEA section 2(e) so that they can (1) prepare compliance procedures, questionnaires, and other forms, and (2) train their personnel how to determine whether a person is or is not an ECP. Fifth Third Bank expressed particular concern regarding how to interpret the phrase ''amounts invested on a discretionary basis'' in the context of CEA section 1a(18)(A)(xi).[36] For these reasons, Fifth Third Bank stated that the proposed Second Amended July 14 Order should not assume that the term ''ECP'' has been adequately defined. In its view, compliance with CEA section 2(e) should not become mandatory until at least 60 days after the CFTC and SEC have provided further guidance regarding the meaning of the term ''ECP.''[37]

Similarly, citing some of the same issues as Fifth Third Bank, the American Bankers Association urged the Commission to amend the proposed order to provide for a continuation of the existing temporary exemption ''solely with respect to Section 2(e) until the later of (i) the Proposed Revised Effective Date, or (ii) no less than 60 days after a substantive rule or interpretive guidance on Section 2(e) becomes effective for such purpose (issued either by the Commission or jointly with the SEC).''[38]

b. Commission Determination

On April 18, 2012, the Commission and the SEC adopted final rules jointly further defining, among other terms, ''eligible contract participant.''[39] In those rules, the Commissions provided both new categories of ECPs, including a new category based in part on the line of business element of the Commission's Policy Statement Concerning Swap Transactions,[40] and interpretations regarding the further definition of the term ''ECP.'' The Commission and the SEC also delayed compliance with certain aspects of the ECP definition until December 31, 2012.[41]

While the Commissions or their staff may, from time to time, issue additional guidance regarding the definition of the term ''ECP,'' the Commission and the SEC jointly have further defined the term ''eligible contract participant,'' fulfilling their mandate under Dodd-Frank Act section 712(d)(1) to jointly further define the term ''ECP.'' In light of the foregoing, the Commission declines requests to modify this final order to delay the effectiveness of section 2(e) beyond the relief already provided.

Nevertheless, because the Commission and the SEC may issue additional guidance concerning, among other issues of concern to commenters, the term ''amounts invested on a discretionary basis'' in the context of CEA section 1a(18)(A)(xi) after the effective date of section 2(e), the Commission provides the following guidance as to how it intends to exercise its enforcement discretion with respect to certain unintentional violations of section 2(e) by swap counterparties who are making good faith efforts to comply with section 2(e).[42] More specifically, where a person finds that it has entered into a swap with a counterparty that the Commission and SEC later further define or interpret as not an ECP, absent other material factors, the Commission will not bring an enforcement action for violation of section 2(e) if the person has implemented and followed reasonably designed policies and procedures to verify the ECP status of a swap counterparty[43] and, notwithstanding good faith compliance with such policies and procedures,[44] the person enters into a swap with a non-ECP counterparty.

One example of a fact pattern that the Commission does not believe would exhibit good faith compliance would be treating as an ECP an individual who has total assets, excluding personal property (which the Commission does not expect to treat as ''assets invested on a discretionary basis''), that are less than the relevant CEA section 1a(18)(A)(xi) dollar threshold. Conversely, if the individual swap counterparty could be

[31] Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612 (June 19, 2012) (''Final DCM Core Principles Release'').

[32] 76 FR 1214 (January 7, 2011).

[33] In the Final DCM Core Principles Release, the Commission stated that additional time is appropriate before finalizing the proposed rules for DCM Core Principle 9 and that the Commission plans and expects to consider the final rule for DCM Core Principle 9 when it considers the final rule for the SEF Core Principles.

The phrase ''DCM or SEF final rules'' does not include the Commission's rulemaking on block trade size requirements for swaps or its rulemaking on the process for a DCM or SEF to make a swap available to trade. *See* Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 77 FR 15460 (March 15, 2012); Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, 76 FR 77728 (December 14, 2011). Those rules will be uniformly applied to both DCM- and SEF-traded swaps and, accordingly, their respective requirements should not have a bearing on whether an ECM, EBOT, or 2(d)(2) Market chooses to apply to become a DCM or a SEF.

[34] Fifth Third Bank Letter at 2.

[35] *Id.*

[36] Id. at 4–5.

[37] *Id.* at 5.

[38] American Bankers Association Letter at 1–2.

[39] *See* Further Definition of ''Swap Dealer,'' Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'', 77 FR 30596 (May 23, 2012) (''Final ECP Definition Release'').

[40] *See* 17 CFR 1.3(m)(7).

[41] *See* Final ECP Definition Release at 30596, 30700 (setting forth the compliance dates for Commission regulations 1.3(m)(5), (6) and (8)(iii)).

[42] Because CEA section 2(e) refers both to ECPs and swaps, both of which, per Dodd-Frank Act section 754, must be further defined before CEA section 2(e) could take effect, now that ECP has been further defined, the further definition of the term ''swap'' is the sole remaining trigger for the effectiveness of CEA section 2(e).

[43] In that regard, *see generally* Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 FR 9734 (Feb. 17, 2012) (''External Business Conduct Standards Final Release''). *See also* Final ECP Definition Release at 30646 n. 585 (noting that ''market participants must make the determination of ECP status with respect to the parties to transactions in security-based swaps and mixed swaps prior to the offer to sell or the offer to buy or purchase the security-based swap or mixed swap''), 30652 (with respect to determining the ECP status of Forex Pools and referring to the External Business Conduct Standards Final Release), and 30653 n. 656 (with respect to determining the ECP status of Forex Pools)

[44] For example, an entity could demonstrate good-faith compliance by first seeking, including in connection with the design of its policies and procedures, additional guidance from counsel or from Commission staff, which could address questions on a case-by-case basis with the benefit of specific facts and circumstances.

an ECP if the Commission and the SEC further define or interpret some or all of the individual's assets, other than personal property, to be ''assets invested on a discretionary basis,'' absent other material factors, the CFTC would not expect to bring an enforcement action against the counterparty for entering into a swap in contravention of CEA section 2(e). Of course, once the Commission and the SEC further define or interpret a counterparty to be a non-ECP, CEA section 2(e) would prohibit entering into new swaps with such ineligible counterparties. This compliance guidance does not apply to any aspect of the ECP definition that was: (1) Not amended by the Dodd-Frank Act; (2) covered by a regulation promulgated in the Final ECP Definition Release; or (3) the subject of an interpretation or other guidance set forth in the Final ECP Definition Release.

Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') [45] imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA. These amendments to the July 14 Order will not require a new collection of information from any persons or entities that will be subject to the final order.

B. Cost-Benefit Considerations

Section 15(a) of the CEA[46] requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. CEA section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The Commission requested comments on the consideration of costs and benefits of the proposed amendments discussed in the Notice. One commenter, the American Bankers Association, stated that the Commission's consideration of costs and benefits in the July 14 Order did not take into account the costs that would result if CEA section 2(e) were made effective in the absence of further interpretive or regulatory guidance from the Commission.[47] American Bankers Association states that these costs include the chilling effect on legitimate hedging activity and reduced credit availability, particularly for end users. American Bankers Association further stated that this chilling effect would be compounded by another major concern of its member banks—whether swaps could potentially be subject to challenges for invalidity under state laws. According to the American Bankers Association, a significant benefit of providing temporary relief under section 2(e) in the manner suggested would be the legal certainty this would create under state law for swaps that currently qualify for the line of business provision, and the provision of such temporary relief would be consistent with the Commission's goal of striving to ''ensure that current practices will not be unduly disrupted during the transition to the new regulatory regime,'' and allow additional time for its member banks to find solutions to their CEA section 2(e) concerns.[48]

As stated above, the rules further defining the term ''ECP'' were finalized by the Commissions on April 18, 2012. In those rules, the Commissions considered the costs and benefits of the further definitions and guidance regarding the same, including the costs and benefits of legal certainty. Further, the American Bankers Association comment regarding the costs and benefits of the amendments to CEA section 2(e) made by the Dodd-Frank Act are beyond the scope of this final order, which is limited to amending the temporary exemptive relief first granted by the Commission in the July 14 Order.

Regarding benefits, this final order continues the primary benefit described in the July 14 Order, which is to facilitate an orderly transition to the comprehensive regulatory framework for swaps regulation set out in Title VII of the Dodd-Frank Act. More specifically, this final order temporarily extends the time market participants and the public have to comply with certain provisions of the CEA that reference one or more of the terms to be further defined, and provides guidance with respect to the same in response to various comments. Accordingly, as this final order is an amendment to the July 14 Order, the Commission's consideration of costs and benefits, as set forth in the July 14 Order, may be incorporated here by reference.

Second Amended July 14 Order

The Second Amended July 14 Order shall read as follows:

The Commission, to provide for the orderly implementation of the requirements of Title VII of the Dodd-Frank Act, pursuant to sections 4(c) and 4c(b) of the CEA and section 712(f) of the Dodd-Frank Act, hereby issues this Order consistent with the determinations set forth above, which are incorporated in this final Order, *as amended,* by reference, and:

(1) Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, as added or amended by the Dodd-Frank Act, that reference one or more of the terms regarding instruments subject to further definition under sections 712(d) and 721(c) of the Dodd-Frank Act, which provisions are listed in Category 2 of the Appendix to this Order; *provided, however,* that the foregoing exemption:

a. Applies only with respect to those requirements or portions of such provisions that specifically relate to such referenced terms; and

b. With respect to any such provision of the CEA, shall expire upon the earlier of: (i) the effective date of the applicable final rule further defining the relevant term referenced in the provision; or (ii) December 31, 2012.

(2) *Agricultural Commodity Swaps.* Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions in an agricultural commodity, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, if the agreement, contract, or transaction complies with part 35 of the Commission's regulations as in effect prior to December 31, 2011, including any agreement, contract, or transaction that complies with such provisions then in effect notwithstanding that:

a. The agreement, contract, or transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or

b. The creditworthiness of any party having an actual or potential obligation under the agreement, contract, or transaction would not be a material

[45] 44 U.S.C. 3507(d).

[46] 7 U.S.C. 19(a).

[47] American Bankers Association Letter at 4.

[48] *Id.*

consideration in entering into or determining the terms of the agreement, contract, or transaction *i.e.,* the agreement, contract, or transaction may be cleared.

This exemption shall expire upon the earlier of (i) December 31, 2012; or (ii) such other compliance date as may be determined by the Commission.

(3) *Exempt and Excluded Commodity Swaps.* Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, if the agreement, contract, or transaction complies with part 35 of the Commission's regulations as in effect prior to December 31, 2011, including any agreement, contract, or transaction in an exempt or excluded (but not agricultural) commodity that complies with such provisions then in effect notwithstanding that:

a. The agreement, contract, or transaction may be executed on a multilateral transaction execution facility;

b. The agreement, contract, or transaction may be cleared;

c. Persons offering or entering into the agreement, contract or transaction may not be eligible swap participants, provided that all parties are eligible contract participants as defined in the CEA prior to the date of enactment of the Dodd-Frank Act;

d. The agreement, contract, or transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or

e. No more than one of the parties to the agreement, contract, or transaction is entering into the agreement, contract, or transaction in conjunction with its line of business, but is neither an eligible contract participant nor an eligible swap participant, and the agreement, contract, or transaction was not and is not marketed to the public;

Provided, however, that:

a. Such agreements, contracts, and transactions in exempt or excluded commodities (and persons offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction) fall within the scope of any of the CEA sections 2(d), 2(e), 2(g), 2(h), and 5d provisions or the line of business provision as in effect prior to July 16, 2011; and

b. This exemption shall expire upon the earlier of: (i) December 31, 2012; or (ii) such other compliance date as may be determined by the Commission; except that, for agreements, contracts, and transactions executed on an exempt commercial market (''ECM''), exempt board of trade (''EBOT''), or pursuant to CEA section 2(d)(2) as in effect prior to July 16, 2011 (''2(d)(2) Market''), this exemption shall expire upon the earlier of (i) December 31, 2012; or (ii) the effective date of the designated contract market (''DCM'') or swap execution facility (''SEF'') final rules, whichever is later, unless the ECM, EBOT, or 2(d)(2) Market files a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules, whichever is later, in which case the relief shall remain in place during the pendency of the application. For these purposes, an application will be considered no longer pending when the application has been approved, provisionally approved, withdrawn, or denied.

(4) Provided that the foregoing exemptions in paragraphs (1), (2), and (3) above shall not:

a. Limit in any way the Commission's authority with respect to any person, entity, or transaction pursuant to CEA sections 2(a)(1)(B), 4b, 4o, 6(c), 6(d), 6c, 8(a), 9(a)(2), or 13, or the regulations of the Commission promulgated pursuant to such authorities, including regulations pursuant to CEA section 4c(b) proscribing fraud;

b. Apply to any provision of the Dodd-Frank Act or the CEA that became effective prior to July 16, 2011;

c. Affect any effective or compliance date set forth in any rulemaking issued by the Commission to implement provisions of the Dodd-Frank Act;

d. Limit in any way the Commission's authority under section 712(f) of the Dodd-Frank Act to issue rules, orders, or exemptions prior to the effective date of any provision of the Dodd-Frank Act and the CEA, in order to prepare for the effective date of such provision, provided that such rule, order, or exemption shall not become effective prior to the effective date of the provision; and

e. Affect the applicability of any provision of the CEA to futures contracts or options on futures contracts, or to cash markets.

In its discretion, the Commission may condition, suspend, terminate, or otherwise modify this Order, as appropriate, on its own motion. This final Order, as amended, shall be effective immediately.

Issued in Washington, DC, on July 3, 2012 by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

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

Appendix 1—Statement of Chairman Gary Gensler

I support the exemptive order regarding the effective dates of certain Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provisions.

Today's exemptive order makes five changes to the exemptive order issued on December 19, 2011.

First, the proposed exemptive order extends the sunset date from July 16, 2012, to December 31, 2012.

Second, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) have now completed the rule further defining the term ''swap dealer'' and ''securities-based swap dealer.'' Thus, the exemptive order no longer provides relief as it once did until those terms were further defined.

The Commissions are also mandated by the Dodd-Frank Act to further define the term ''swap'' and ''securities-based swap.'' The staffs are making great progress, and I anticipate the Commissions will take up this final definitions rule in the near term. Until that rule is finalized, the exemptive order appropriately provides relief from the effective dates of certain Dodd-Frank provisions.

Third, in advance of the completion of the definitions rule, market participants requested clarity regarding transacting in agricultural swaps. The exemptive order allows agricultural swaps cleared through a derivatives clearing organization or traded on a designated contract market to be transacted and cleared as any other swap. This is consistent with the agricultural swaps rule the Commission already finalized, which allows farmers, ranchers, packers, processors and other end-users to manage their risk.

Fourth, unregistered trading facilities that offer swaps for trading were required under Dodd-Frank to register as swap execution facilities (SEFs) or designated contract markets (DCM) by July of this year. These facilities include exempt boards of trade, exempt commercial markets and markets excluded from regulation under section 2(d)(2). Given the Commission has yet to finalize rules on SEFs, this order gives these platforms additional time for such a transition.

Fifth, the Commission is providing guidance regarding enforcement of rules that require that certain off-exchange swap transactions only be entered into by eligible contract participants (ECPs). The guidance provides that if a person takes reasonable steps to verify that its counterparty is an ECP, but the counterparty turns out not to be an ECP based on subsequent Commission guidance, absent other material factors, the

CFTC will not bring an enforcement action against the person.

[FR Doc. 2012–16987 Filed 7–12–12; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 12–13]

RIN 1515–AD90

Extension of Import Restrictions on Archaeological Objects and Ecclesiastical and Ritual Ethnological Materials From Cyprus

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

ACTION: Final rule.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on Pre-Classical and Classical archaeological objects and Byzantine ecclesiastical and ritual ethnological materials from Cyprus. These restrictions, which were last extended by CBP Dec. 07–52, are due to expire on July 16, 2012, unless extended. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined to extend the bilateral Agreement between the Republic of Cyprus and the United States to continue the imposition of import restrictions on cultural property from Cyprus. The Designated List of cultural property described in CBP Dec. 07–52 is revised in this document to reflect that the types of ecclesiastical and ritual ethnological articles dating from the Byzantine period previously listed on the CBP Dec. 07–52 Designated List as protected are now protected also if dating from the Post-Byzantine period (c. 1500 A.D. to 1850 A.D.) The revised Designated List also clarifies that certain mosaics of stone and wall hangings (specifically, to include images of Saints among images of Christ, Archangels, and the Apostles) are covered under the import restrictions published today. The import restrictions imposed on the archaeological and ethnological materials covered under the Agreement will remain in effect for a 5-year period, and the CBP regulations are being amended accordingly. These restrictions are being extended pursuant to determinations of the State Department under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

DATES: *Effective Date:* July 16, 2012.

FOR FURTHER INFORMATION CONTACT: For legal aspects, George F. McCray, Esq., Chief, Cargo Security, Carriers and Immigration Branch, Regulations and Rulings, Office of International Trade, (202) 325–0082. For operational aspects, Virginia McPherson, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6563.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (hereafter, the Cultural Property Implementation Act or the Act) (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), signatory nations (State Parties) may enter into bilateral or multilateral agreements to impose import restrictions on eligible archaeological and ethnological materials under procedures and requirements prescribed by the Act. Under the Act and applicable CBP regulations (19 CFR 12.104g), the restrictions are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, each such period not to exceed five years, where it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

In certain limited circumstances, the Cultural Property Implementation Act authorizes the imposition of restrictions on an emergency basis upon the request of a State Party (19 U.S.C. 2603(c)(1)). Under the Act and applicable CBP regulations (19 CFR 12.104g(b)), emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered materials (19 U.S.C. 2603(c)(3)).

On April 12, 1999, under the authority of the Cultural Property Implementation Act, the former U.S. Customs Service published Treasury Decision (T.D.) 99–35 in the **Federal Register** (64 FR 17529) imposing emergency import restrictions on certain Byzantine ecclesiastical and ritual ethnological materials from Cyprus and accordingly amending 19 CFR 12.104g(b) pertaining to emergency import restrictions. These restrictions were effective for a period of 5 years from September 4, 1998, the date the Republic of Cyprus made the request for emergency protection. On August 29, 2003, these restrictions were extended, by publication of CBP Dec. 03–25 in the **Federal Register** (68 FR 51903), for an additional 3-year period, to September 4, 2006.

In a separate action, on July 16, 2002, the United States entered into a bilateral Agreement with the Republic of Cyprus concerning the imposition of import restrictions on certain archaeological materials of Cyprus representing the Pre-Classical and Classical periods of its cultural heritage (the 2002 Agreement).[1] On July 19, 2002, the former United States Customs Service published T.D. 02–37 in the **Federal Register** (67 FR 47447), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of archaeological materials covered by the restrictions. These restrictions were to be effective through July 16, 2007.

On August 17, 2006, the Republic of Cyprus and the United States amended the 2002 Agreement (covering the Pre-Classical and Classical archaeological materials) to include the list of Byzantine ecclesiastical and ritual ethnological materials that had been (and, at that time, were still) protected pursuant to the emergency action described above. The amendment of the 2002 Agreement to cover both the subject archaeological materials and the subject ethnological materials was reflected in CBP Dec. 06–22, which was published in the **Federal Register** (71 FR 51724) on August 31, 2006. CBP Dec. 06–22 contains the list of Byzantine ecclesiastical and ritual ethnological materials from Cyprus previously protected pursuant to emergency action and announced that import restrictions, as of August 31, 2006, were imposed on this cultural property pursuant to the amended Agreement (19 U.S.C. 2603(c)(4)). Thus, as of that date, the restrictions covering both the archaeological materials and the ethnological materials described in CBP Dec. 06–22 were set to be effective

[1] Formally, the Agreement is a Memorandum of Understanding, but the term Agreement is used in this document.

through July 16, 2007. (The amended Agreement was subsequently extended by the Parties, effective on July 16, 2007.)

On July 13, 2007, CBP published CBP Dec. 07–52 in the **Federal Register** (72 FR 38470) which further extended the import restrictions to July 16, 2012. The Designated List was published with the Decision.

On October 18, 2011, the Department of State received a request by the Republic of Cyprus to extend the amended Agreement and to extend the historical timeframe to protect ecclesiastical and ritual ethnological materials of the Post-Byzantine period, c. 1500 A.D. to 1850 A.D. On June 15, 2012, after the Department of State proposed to so extend the amended Agreement and reviewed the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, State Department, determined that the cultural heritage of Cyprus continues to be in jeopardy from pillage of certain archaeological objects and certain ethnological materials and made the necessary determination to extend the import restrictions for an additional five-year period to July 16, 2017. Diplomatic notes have been exchanged reflecting the extension of the restrictions, as described in this document and as applicable to the revised Designated List set forth in this document, for a five-year period.

Thus, CBP is amending 19 CFR 12.104g(a) accordingly. Importation of such materials from Cyprus will be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

In this document, the Designated List of articles that was published in CBP Dec. 07–52 is also amended to extend the historical timeframe of the restricted ecclesiastical and ritual ethnological materials to include the Post-Byzantine period, c. 1500 A.D. to 1850 A.D. In addition, the section of the Designated List pertaining to the covered ethnological materials has been revised to clarify coverage of certain mosaics of stone and wall hangings (specifically, to include images of Saints among images of Christ, Archangels, and the Apostles). The articles described in the Designated List set forth below are protected pursuant to the amended Agreement. It is noted that there are no revisions to the section of the Designated List pertaining to covered archaeological objects. It is reprinted as a convenience.

The Designated List of Pre-Classical and Classical Period Archaeological Objects and Ecclesiastical and Ritual Ethnological Materials, and accompanying image database, may also be found at the following Internet Web site address: *http://exchanges.state.gov/heritage/culprop/pefact/html,* under ''III. Categories of Objects Subject to Import Restriction,'' by clicking on ''*Designated List*'' and on ''*Cyprus Section of the Image Database.*''

List of Archaeological Objects From Cyprus Representing Pre-Classical and Classical Periods Ranging in Date From Approximately the 8th Millennium B.C. to Approximately 330 A.D.

I. Ceramic

A. Vessels

1. Neolithic and Chalcolithic (c. 7500–2300 B.C.)—Bowls and jars, including spouted vessels. Varieties include Combed ware, Black Lustrous ware, Red Lustrous ware, and Red-on-White painted ware. Approximately 10–24 cm in height.

2. Early Bronze Age (c. 2300–1850 B.C.)—Forms are hand-made and include bowls, jugs, juglets, jars, and specialized forms, such as askoi, pyxides, gourd-shape, multiple-body vessels, and vessels with figurines attached. Cut-away spouts, multiple spouts, basket handles, and round bases commonly occur. Incised, punctured, molded, and applied ornament, as well as polishing and slip, are included in the range of decorative techniques. Approximately 13–60 cm in height.

3. Middle Bronze Age (c. 1850–1550 B.C.)—Forms are hand-made and include bowls, jugs, juglets, jars, zoomorphic askoi, bottles, amphorae, and amphoriskoi. Some have multiple spouts and basket or ribbon handles. Decorative techniques include red and brown paint, incised or applied decoration, and polishing. Varieties include Red Polished ware, White Painted ware, Black Slip ware, Red Slip ware, and Red-on-Black ware. Approximately 4–25 cm in height.

4. Late Bronze Age (c. 1550–1050 B.C.)—Forms include bowls, jars, jugs and juglets, tankards, rhyta, bottles, kraters, alabastra, stemmed cups, cups, stirrup jars, amphorae, and amphoriskoi. A wide variety of spouts, handles, and bases are common. Zoomorphic vessels also occur. Decorative techniques include painted design in red or brown, polishing, and punctured or incised decoration. Varieties include White Slip, Base Ring ware, White Shaved ware, Red Lustrous ware, Bichrome Wheel-made ware, and Proto-White Painted ware. Some examples of local or imported Mycenaean Late Helladic III have also been found. Approximately 5–50 cm in height.

5. Cypro-Geometric I–III (c. 1050–750 B.C.)—Forms include bowls, jugs, juglets, jars, cups, skyphoi, amphorae, amphoriskos, and tripods. A variety of spouts, handles and base forms are used. Decorative techniques include paint in dark brown and red, ribbing, polish, and applied projections. Varieties include White Painted I–II wares, Black Slip I–II wares, Bichrome II–III wares, and Black-on-Red ware. Approximately 7–30 cm in height.

6. Cypro-Archaic I–II (c. 750–475 B.C.)—Forms include bowls, plates, jugs and juglets, cups, kraters, amphoriskoi, oinochoai, and amphorae. Many of the forms are painted with bands, lines, concentric circles, and other geometric and floral patterns. Animal designs occur in the Free Field style. Molded decoration in the form of female figurines may also be applied. Red and dark brown paint is used on Bichrome ware. Black paint on a red polished surface is common on Black-on-Red ware. Other varieties include Bichrome Red, Polychromem Red, and Plain White. Approximately 12–45 cm in height.

7. Cypro-Classical I–II (c. 475–325 B.C.)—Forms include bowls, shallow dishes, jugs and juglets, oinochoai, and amphorae. The use of painted decoration in red and brown, as well as blue/green and black continues. Some vessels have molded female figurines applied. Decorative designs include floral and geometric patterns. Burnishing also occurs. Varieties include Polychrome Red, Black-on-Red, Polychrome Red, Stroke Burnished, and White Painted wares. Approximately 6–40 cm in height.

8. Hellenistic (c. 325 B.C.–50 B.C.)—Forms include bowls, dishes, cups, unguentaria, jugs and juglets, pyxides, and amphorae. Most of the ceramic vessels of the period are undecorated. Those that are decorated use red, brown, or white paint in simple geometric patterns. Ribbing is also a common decorative technique. Some floral patterns are also used. Varieties include Glazed Painted ware and Glazed ware. Imports include Megarian bowls. Approximately 5–25 cm in height.

9. Roman (c. 50 B.C.–330 A.D.)—Forms include bowls, dishes, cups, jugs and juglets, unguentaria, amphorae, and cooking pots. Decorativetechniques include incision, embossing, molded decoration, grooved decoration, and paint. Varieties include Terra Sigillata and Glazed and Green Glazed wares. Approximately 5–55 cm in height.

B. Sculpture

1. Terracotta Figurines (Small Statuettes)

(a) Neolithic to Late Bronze Age (c. 7500–1050 B.C.)—Figurines are small, hand-made, and schematic in form. Most represent female figures, often standing and sometimes seated and giving birth or cradling an infant. Features and attributes are marked with incisions or paint. Figurines occur in Red-on-White ware, Red Polished ware, Red-Drab Polished ware, and Base Ring ware. Approximately 10–25 cm in height.

(b) Cypro-Geometric to Cypro-Archaic (c. 1050–475 B.C.)—Figurines show a greater diversity of form than earlier figurines. Female figurines are still common, but forms also include male horse-and-rider figurines; warrior figures; animals such as birds, bulls and pigs; tubular figurines; boat models; and human masks. In the Cypro-Archaic period, terra cotta models illustrate a variety of daily activities, including the process of making pottery and grinding grain. Other examples include musicians and men in chariots. Approximately 7–19 cm in height.

(c) Cypro-Classical to Roman (c. 475 B.C.–330 A.D.)—Figurines mirror the classical tradition of Greece and Roman. Types include draped women, nude youths, and winged figures. Approximately 9–20 cm in height.

2. Large Scale Terracotta Figurines—Dating to the Cypro-Archaic period (c. 750–475 B.C.), full figures about half life-size, are commonly found in sanctuaries. Illustrated examples include the head of a woman decorated with rosettes and a bearded male with spiral-decorated helmet. Approximately 50–150 cm in height.

3. Funerary Statuettes—Dating to the Cypro-Classical period (c. 475–325 B.C.), these illustrate both male and female figures draped, often seated, as expressions of mourning. Approximately 25–50 cm in height.

C. Inscriptions

Writing on clay is restricted to the Late Bronze Age (c. 1550–1050 B.C.). These occur on clay tablets, weights, and clay balls. Approximately 2–7 cm in height.

II. Stone

A. Vessels

Ground stone vessels occur from the Neolithic to the Hellenistic period (c. 7500–50 B.C.). Early vessels are from local hard stone. Most are bowl-shaped; some are trough-shaped with spouts and handles. Neolithic vessels often have incised or perforated decoration. Late Bronze Age vessels include amphoriskoi and kraters with handles. Sometimes these have incised decoration. Alabaster was also used for stone vessels in the Late Bronze Age and Hellenistic period. In the latter period, stone vessels are produced in the same shapes as ceramic vessels: amphorae, unguentaria, etc. Approximately 10–30 cm in height.

B. Sculpture

1. Neolithic to Chalcolithic (c. 7500–2300 B.C.)—Forms include small scale human heads, fiddle-shaped human figures, steatopygous female figures, cruciform idols with incised decoration, and animal figures. Andesite and limestone are commonly used in these periods. Approximately 5–30 cm in height.

2. Cypro-Classical (c. 475–325 B.C.)—Small scale to life-size human figures, whole and fragments, in limestone and marble, are similar to the Classical tradition in local styles. Examples include the limestone head of a youth in Neo-Cypriote style, votive female figures in Proto-Cypriot style, a kouros in Archaic Greek style, statues and statuettes representing Classical gods such as Zeus and Aphrodite, as well as portrait heads of the Greek and Roman periods. Approximately 10–200 cm in height.

C. Architectural Elements

Sculpted stone building elements occur from the 5th century B.C. through the 3rd century A.D. These include columns and column capitals, relief decoration, chancel panels, window frames, revetments, offering tables, coats of arms, and gargoyles.

D. Seals

Dating from the Neolithic (7500 B.C.) through 3rd century A.D., conical seals, scarabs, cylinder seals, and bread stamps are incised with geometric decoration, pictoral scenes, and inscriptions. Approximately 2–12 cm in height.

E. Amulets and Pendants

Dating to the Chalcolithic period, these pendants are made of picrolite and are oval or rectangular in form. Approximately 4–5 cm in length.

F. Inscriptions

Inscribed stone materials date from the 6th century B.C. through the 3rd century A.D. During the Cypro-Classical period, funerary stelae, and votive plaques were inscribed. From the 1st to the 3rd century A.D. funerary plaques, mosaic floors, and building plaques were inscribed.

G. Funerary Stelae (Uninscribed)

Funerary stelae date from the 6th century B.C. to the end of the Hellenistic period (c. 50 B.C.). Marble and other stone sculptural monuments have relief decoration of animals or human figures seated or standing. Stone coffins also have relief decoration. Approximately 50–155 cm in height.

H. Floor Mosaics

Floor mosaics date as early as the 4th century B.C. in domestic and public contexts and continue to be produced through the 3rd century A.D. Examples include the mosaics at Nea Paphos, Kourion, and Kouklia.

III. Metal

A. Copper/Bronze

1. Vessels—Dating from the Bronze Age (c. 2300 B.C.) through the 3rd century A.D., bronze vessel forms include bowls, cups, amphorae, jugs, juglets, pyxides, dippers, lamp stands, dishes, and plates. Approximately 4–30 cm in height.

2. Bronze Stands—Dating from the Late Bronze Age (c. 1550 B.C.) through the end of the Classical period (c. 325 B.C.), are bronze stands with animal decoration.

3. Sculpture—Dating from the Late Bronze Age (c. 1550) to the end of the Hellenistic period (c. 50 B.C.), small figural sculpture includes human forms with attached attributes such as spears or goblets, animal figures, animal- and vessel-shaped weights, and Classical representations of gods and mythological figures. Approximately 5–25 cm in height.

4. Personal Objects—Dating from the Early Bronze Age (c. 2300 B.C.) to the end of the Roman period (330 A.D.), forms include toggle pins, straight pins, fibulae, and mirrors.

B. Silver

1. Vessels—Dating from the Bronze Age (c. 2300 B.C.) through the end of the Roman period (330 A.D.), forms include bowls, dishes, coffee services, and ceremonial objects such as incense burners. These are often decorated with molded or incised geometric motifs or figural scenes.

2. Jewelry—Dating from the Cypro-Geometric period (c. 1050 B.C.) through the end of the Roman period (330 A.D.), forms include fibulae, rings, bracelets, and spoons.

C. Gold Jewelry

Gold jewelry has been found on Cyprus from the Early Bronze Age (c. 2300 B.C.) through the end of the Roman period (330 A.D.). Items include

hair ornaments, bands, frontlets, pectorals, earrings, necklaces, rings, pendants, plaques, beads, and bracelets.

D. Coins of Cypriot Types

Coins of Cypriot types made of gold, silver, and bronze including but not limited to:

1. Issues of the ancient kingdoms of Amathus, Kition, Kourion, Idalion, Lapethos, Marion, Paphos, Soli, and Salamis dating from the end of the 6th century B.C. to 332 B.C.

2. Issues of the Hellenistic period, such as those of Paphos, Salamis, and Kition from 332 B.C. to c. 30 B.C.

3. Provincial and local issues of the Roman period from c. 30 B.C. to 235 A.D. Often these have a bust or head on one side and the image of a temple (the Temple of Aphrodite at Palaipaphos) or statue (statue of Zeus Salaminios) on the other.

List of Ecclesiastical and Ritual Ethnological Material From Cyprus Representing the Byzantine and Post-Byzantine Periods Dating From Approximately the 4th Century A.D. to 1850 A.D.

I. Metal

A. Bronze

Ceremonial objects include crosses, censers (incense burners), rings, and buckles for ecclesiastical garments. The objects may be decorated with engraved or modeled designs or Greek inscriptions. Crosses, rings and buckles are often set with semi-precious stones.

B. Lead

Lead objects date to the Byzantine period and include ampulla (small bottle-shaped forms) used in religious observance.

C. Silver and Gold

Ceremonial vessels and objects used in ritual and as components of church treasure. Ceremonial objects include censers (incense burners), book covers, liturgical crosses, archbishop's crowns, buckles, and chests. These are often decorated with molded or incised geometric motifs or scenes from the Bible, and encrusted with semi-precious or precious stones. The gems themselves may be engraved with religious figures or inscriptions. Church treasure may include all of the above, as well as rings, earrings, and necklaces (some decorated with ecclesiastical themes) and other implements (e.g., spoons).

II. Wood

Artifacts made of wood are primarily those intended for ritual or ecclesiastical use during the Byzantine period. These include painted icons, painted wood screens (iconostases), carved doors, crosses, painted wooded beams from churches or monasteries, thrones, chests and musical instruments. Religious figures (Christ, the Apostles, the Virgin, and others) predominate in the painted and carved figural decoration. Ecclesiastical furniture and architectural elements may also be decorated with geometric or floral designs.

III. Ivory and Bone

Ecclesiastical and ritual objects of ivory and bone boxes, plaques, pendants, candelabra, stamp rings, crosses. Carved and engraved decoration includes religious figures, scenes from the Bible, and floral and geometric designs.

IV. Glass

Ecclesiastical objects such as lamps and ritual vessels.

V. Textiles—Ritual Garments

Ecclesiastical garments and other ritual textiles from the Byzantine period. Robes, vestments and altar clothes are often of a fine fabric and richly embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

VI. Stone

A. Wall Mosaics

Dating to the Byzantine period, wall mosaics are found in ecclesiastical buildings. These generally portray images of Christ, Archangels, the Apostles, and Saints in scenes of Biblical events. Surrounding panels may contain animal, floral, or geometric designs.

B. Floor Mosaics

Floor mosaics from ecclesiastical contexts. Examples include the mosaics at Nea Paphos, Kourion, Kouklia, Chrysopolitissa Basilica and Campanopetra Basilica. Floor mosaics may have animal, floral, geometric designs, or inscriptions.

VII. Frescoes/Wall Paintings

Wall paintings from the Byzantine period religious structures (churches, monasteries, chapels, etc.) Like the mosaics, wall paintings generally portray images of Christ, Archangels, the Apostles, and Saints in scenes of Biblical events. Surrounding paintings may contain animal, floral, or geometric designs.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reasons, a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g(a) [Amended]

■ 2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Cyprus by, in the column headed ''Cultural Property,'' removing the words ''Byzantine period'' and adding in their place the words ''Byzantine and Post-Byzantine periods'' and removing the words ''the 15th century A.D.'' and adding in their place the words ''1850 A.D.'', and, in the column headed ''Decision No.,'' removing the reference to ''CBP Dec.

07–52 and adding in its place ''CBP Dec. 12–13''.

Thomas Winkowski,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: July 5, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012–16989 Filed 7–12–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9590]

RIN 1545–BJ82

Health Insurance Premium Tax Credit

Correction

In rule document 2012–12421 appearing on pages 30377–30400 in the issue of Wednesday, May 23, 2012, make the following corrections:

■ 1. On page 30385, in the third column, in the third line, ''Washington, DC All'' should read ''Washington DC. All''.

§ 1.36B–4 [Corrected]

■ 2. On page 30399, in the second column, in § 1.36B–4(b)(6), in *Example 9,* in the last two lines of paragraph (ii), the equation in parentheses should read ''($60,000 × .095)''.

[FR Doc. C1–2012–12421 Filed 7–12–12; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in August 2012. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective August 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for August 2012.[1]

The August 2012 interest assumptions under the benefit payments regulation will be 1.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for July 2012, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during August 2012, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 226, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
226	8–1–12	9–1–12	1.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 226, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
226	8–1–12	9–1–12	1.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 10th day of July 2012.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–17165 Filed 7–12–12; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0538]

RIN 1625–AA00

Safety Zone; Newburgh to Beacon Swim, Newburgh, Hudson River, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Hudson River, NY in the vicinity of Newburgh, NY for the annual Newburgh Beacon Swim event. This temporary safety zone is necessary to protect swimmers, spectators and vessels from the hazards associated with swimmers competing in a swim across the Hudson River. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port (COTP) New York or the designated representative.

DATES: This rule is effective from 9:30 a.m. until 11:30 a.m. on July 21, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0538]. 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 Ensign Kimberly Farnsworth, Coast Guard; Telephone (718) 354–4163, email *Kimberly.A.Farnsworth@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**
CFR Code of Federal Regulations
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Regulatory History and Information

The Newburgh Beacon Swim is an annual recurring event that has a permanent safety zone found at 33 CFR 165.160. The effective date for the permanent safety zone is the last weekend in July with a rain date as the first weekend in August each year.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying this event would be contrary to the public interest.

The Newburgh Beacon Swim event will occur this year on July 21, 2012. On May 24, 2012, the sponsor of the event advised the Coast Guard that due to optimal tide, current, and weather conditions needed to promote the safety of the swim participants, they were changing the date of the event from the last weekend in July (with a rain date as the first weekend in August) to July 21, 2012, thereby rendering the permanent safety zone set forth in 33 CFR 165.160 inapplicable for this year's event.

Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the safety of life on the navigable waters from the hazards of swimming in the Hudson River, particularly in the vicinity of the shipping channel. The safety zone is necessary to provide for the safety of event participants, spectator crafts, and other vessels operating near the event area. For the safety concerns noted, it is in the public interest to have this

regulation in effect during this event. In addition, any change to the date of the event could potentially cause economic hardship on the marine event sponsor and negatively impact other activities being held in conjunction with these events (*e.g.,* the ''Hudson River Day Celebration'') by potentially causing numerous event participant cancellations.

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

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The Coast Guard received an application to hold the annual Newburgh Beacon Swim on the waters of the Hudson River in the vicinity of Newburgh, NY. With this application, the event sponsor requested that the event be permitted to take place on Saturday, July 21, 2012 rather than the usual last weekend in July. The deviation from the permanent regulation was requested to avoid unsafe tide and current conditions expected to occur during the last weekend in July and to have the event in conjunction with the ''Hudson River Day Celebration.''

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone on the waters of the Hudson River in the vicinity of Newburgh, NY for the annual Newburgh Beacon Swim event. This temporary rule will restrict vessels from a portion of the Hudson River during the swim event on Saturday, July 21, 2012.

D. 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.

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.

We expect the economic impact of this rule to be very minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons. Vessels will only be restricted from the safety zone for a short duration of time. Before activating the zone, we will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners. Additionally, the Coast Guard promulgated a permanent safety zone found in 33 CFR Part 165 for the event area in the past and no adverse comments or notice of any negative impact caused by the safety zone were received.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(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 a portion of the Hudson River during the effective period.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will be enforced for only 2 hours. Vessel traffic can pass safely through the safety zone with permission from the COTP or a designated representative. Before activating the zone, we will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

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 the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

■ 2. Add § 165.T01–0538 to read as follows:

§ 165.T01–0538 Safety Zone; Newburgh Beacon Swim, Newburgh, Hudson River, NY.

(a) *Regulated Area.* The following area is a regulated area: All navigable waters of the Hudson River, NY in the vicinity of Newburgh, NY bound by the following points: 41°30′33.67″ N 073°0′20.09″ W; thence to 41°30′29.17″ N 073°59′06.89″ W; thence to 41°30′11.53″ N 073°59′14.83″ W; thence to 41°30′15.15″ N 073°0′17.80″ W; thence north along the shoreline to the point of the beginning. This area is approximately 1500 yards south of the Newburgh-Beacon Bridges.

(b) *Effective Date.* This rule is effective from 9:30 a.m. until 11:30 a.m. on July 21, 2012.

(c) *Definitions.* The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for event coordinators and support vessels, will be allowed to transit the safety zone without the permission of the COTP. Vessels not associated with the event that are permitted to enter the regulated areas shall maintain a separation of at least 100 yards from the participants.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

(5) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, unless authorized by COTP or the designated representative.

(6) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

Dated: June 27, 2012.

G.A. Loebl,

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

[FR Doc. 2012–17085 Filed 7–12–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 0

RIN 2900–AO33

Core Values and Characteristics of the Department

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) regulations concerning the standards of ethical conduct and related responsibilities of its employees by adding a new subpart for VA's Core Values and Characteristics. These

foundational values and organizational characteristics define VA employees and articulate what VA stands for, respectively, and they are a set of guidelines that will be applied Department-wide to all VA employees. This final rule establishes VA's Core Values and Characteristics, and ensures their proper application to the VA workforce.

DATES: *Effective Date:* July 13, 2012.

FOR FURTHER INFORMATION CONTACT: Robert McFetridge, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–4902. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rulemaking amends 38 CFR part 0 to establish VA regulations regarding VA's core values for its employees and the desired characteristics for the organization. These regulations set into place internal guidelines to which VA expects its employees to adhere in their interactions with each other and with veterans, their families, and their caretakers. The Core Values and Characteristics are the product of a 2-year collaborative and comprehensive development process, which was motivated by a desire to unite the entire VA workforce under one set of guiding principles. VA recognizes that every single worker plays a critical role in supporting the overall strategic vision and mission of the agency and also contributes to its professional reputation as an organization. Beginning in 2009, participating representatives from the many different VA organizations provided considerable input into the creation of the Core Values and Characteristics. VA also considered input from its workforce through surveys, feedback, and discussion. Based on these activities, and the recommendations of the different panels and groups, the Secretary of Veterans Affairs approved the guidelines, and on June 20, 2011, he announced them to the entire agency.

The Core Values define VA employees and describe how VA may be distinguished from other organizations. They define VA's culture and underscore its commitment to veterans. These Core Values are: Integrity, Commitment, Advocacy, Respect, and Excellence. The Values represent VA's beliefs and provide a baseline for the standards of behavior expected of all VA employees. Together, the first letters of the Core Values spell ''I CARE,'' a motto which should be adopted by every member of the VA workforce.

The Core Characteristics define what VA stands for and how it would like to be recognized as an organization. They help guide the execution of VA's mission, shape its strategy, and influence resource allocation and other key decisions made within VA. These Characteristics are: Trustworthy, Accessible, Quality, Innovative, Agile, and Integrated. They are a common set of principles around which VA's actions are organized and describe the traits all VA organizations should possess and demonstrate. The VA Characteristics are relevant today, but also forward-looking. They identify the qualities needed to successfully accomplish VA's current missions and also support the ongoing transformation to a 21st Century organization.

The adoption of these Core Values and Characteristics will not only reaffirm practices already used by many VA employees, but it will also establish one set of guidelines applicable across the entire VA workforce. They are not entirely new concepts, and they are in large part derived from many values VA has demonstrated throughout its existence. Codifying these principles will ensure they receive the proper emphasis at all levels within VA, are clearly understood by the workforce, and, most importantly, become an enduring part of the VA culture. The ''I CARE'' logo will be prominently displayed in all VA facilities, as the agency wishes to use these principles to send a strong signal to veterans, family members, and other beneficiaries that the agency takes pride in what it does and cares deeply about its mission. The Core Values and Characteristics demonstrate that VA is a ''people-centric'' organization.

In order to maintain these Core Values and Characteristics over time, VA may periodically review whether the guidelines are achieving their intended purpose and remain relevant in the current environment. VA is open to revising the Core Values and Characteristics to adapt them to changing times, as necessary. They are not linked to any particular person or group, so although people come and go within VA all the time, the Core Values and Characteristics are meant to endure. There are no immediate plans to change existing formal processes for evaluating employees based on the Core Values and Characteristics. However, in Fiscal Year 2012, VA will be implementing a formalized program to recognize the VA personnel and organizations which best exemplify the Core Values and Characteristics.

The current title of part 0, ''Standards of ethical conduct and related responsibilities,'' is being broadened to include the concept of ''values'' in the title. That addition reflects the inclusion of VA's Core Values and Characteristics as principles that are separate and distinct from the standards of ethical conduct for federal employees.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule does not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Order 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as ''any regulatory action 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.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Administrative Procedure Act

This final rule establishes internal guidelines relating to agency practice or procedure and sets forth general statements of agency policy. Accordingly, this rule is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553. See 5 U.S.C. 553(b)(A) and (d)(2).

Catalog of Federal Domestic Assistance Numbers

There are no Catalog of Federal Domestic Assistance program numbers for this rule.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 5, 2012, for publication.

List of Subjects in 38 CFR Part 0

Conflict of interests, Employee ethics and related responsibilities, Government employees.

Dated: July 9, 2012.

Robert C. McFetridge,

Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 0 is amended as follows:

PART 0—VALUES, STANDARDS OF ETHICAL CONDUCT, AND RELATED RESPONSIBILITIES

■ 1. The authority citation for 38 CFR part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 38 U.S.C. 501; see sections 201, 301, and 502(a) of E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Revise the heading of part 0 to read as set forth above.

Subparts A & B [Redesignated]

■ 3. Redesignate subparts A and B as subparts B and C, respectively.

■ 4. Add new subpart A to read as follows:

Subpart A—Core Values and Characteristics of the Department

Sec.
0.600 General.
0.601 Core Values.
0.602 Core Characteristics.

Subpart A—Core Values and Characteristics of the Department

§ 0.600 General.

This section describes the Core Values and Characteristics that serve as internal guidelines for employees of the Department of Veterans Affairs (VA). These Core Values and Characteristics define VA employees, articulate what VA stands for, and underscore its moral obligation to veterans, their families, and other beneficiaries. They are intended to establish one overarching set of guidelines that apply to all VA Administrations and staff offices, confirming the values already instilled in many VA employees and enforcing their commitment to provide the best service possible to veterans, their families, and their caretakers.

§ 0.601 Core Values.

VA's Core Values define VA employees. They describe the organization's culture and character, and serve as the foundation for the way VA employees should interact with each other, as well as with people outside the organization. They also serve as a common bond between all employees regardless of their grade, specialty area, or location. These Core Values are Integrity, Commitment, Advocacy, Respect, and Excellence. Together, the first letters of the Core Values spell ''I CARE,'' and VA employees should adopt this motto and these Core Values in their day-to-day operations.

(a) *Integrity.* VA employees will act with high moral principle, adhere to the highest professional standards, and maintain the trust and confidence of all with whom they engage.

(b) *Commitment.* VA employees will work diligently to serve veterans and other beneficiaries, be driven by an earnest belief in VA's mission, and fulfill their individual responsibilities and organizational responsibilities.

(c) *Advocacy.* VA employees will be truly veteran-centric by identifying, fully considering, and appropriately advancing the interests of veterans and other beneficiaries.

(d) *Respect.* VA employees will treat all those they serve and with whom they work with dignity and respect, and they will show respect to earn it.

(e) *Excellence.* VA employees will strive for the highest quality and continuous improvement, and be thoughtful and decisive in leadership, accountable for their actions, willing to admit mistakes, and rigorous in correcting them.

§ 0.602 Core Characteristics.

While Core Values define VA employees, the Core Characteristics define what VA stands for and what VA strives to be as an organization. These are aspirational goals that VA wants its employees, veterans, and the American people to associate with the Department and with its workforce. These Core characteristics describe the traits all VA organizations should possess and demonstrate, and they identify the qualities needed to successfully accomplish today's missions and also support the ongoing transformation to a 21st Century VA. These characteristics are:

(a) *Trustworthy.* VA earns the trust of those it serves, every day, through the actions of its employees. They provide care, benefits, and services with compassion, dependability, effectiveness, and transparency.

(b) *Accessible.* VA engages and welcomes veterans and other beneficiaries, facilitating their use of the entire array of its services. Each interaction will be positive and productive.

(c) *Quality.* VA provides the highest standard of care and services to veterans and beneficiaries while managing the cost of its programs and being efficient stewards of all resources entrusted to it by the American people. VA is a model of unrivalled excellence due to employees who are empowered, trusted by their leaders, and respected for their competence and dedication.

(d) *Innovative.* VA prizes curiosity and initiative, encourages creative contributions from all employees, seeks continuous improvement, and adapts to

remain at the forefront in knowledge, proficiency, and capability to deliver the highest standard of care and services to all of the people it serves.

(e) *Agile.* VA anticipates and adapts quickly to current challenges and new requirements by continuously assessing the environment in which it operates and devising solutions to better serve veterans, other beneficiaries, and Service members.

(f) *Integrated.* VA links care and services across the Department; other federal, state, and local agencies; partners; and Veterans Services Organizations to provide useful and understandable programs to veterans and other beneficiaries. VA's relationship with the Department of Defense is unique, and VA will nurture it for the benefit of veterans and Service members.

[FR Doc. 2012–17069 Filed 7–12–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0924; FRL–9698–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nonattainment New Source Review; Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. These revisions pertaining to Pennsylvania's nonattainment New Source Review (NSR) program incorporate preconstruction permitting regulations for fine particulate matter ($PM_{2.5}$) into the Pennsylvania SIP. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on August 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–R03–OAR–2011–0924. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 84268, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814–2084, or by email at *duke.gerallyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On March 29, 2012 (77 FR 18987), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a SIP revision pertaining to Pennsylvania's nonattainment New Source Review (NSR) program which incorporates preconstruction permitting regulations for fine particulate matter ($PM_{2.5}$) into the Pennsylvania SIP. The formal SIP revision was submitted by Pennsylvania on September 23, 2011.

The purpose of this SIP is to incorporate the nonattainment preconstruction permitting requirements for $PM_{2.5}$ that are set forth in the federal rules, ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (NSR $PM_{2.5}$ Rule), which was published on May 16, 2008 (73 FR 28321).

II. Summary of SIP Revision

The SIP revision submitted by Pennsylvania consists of amendments to the general provisions of 25 Pa. Code Chapter 121 and major nonattainment NSR permitting regulations of 25 Pa. Code Chapter 127. The amendments establish the major source thresholds, significant emission rates and offset ratios for $PM_{2.5}$ and its precursors. They also establish nitrogen oxides (NO_X) and sulfur dioxide (SO_2) as precursors to $PM_{2.5}$, and establish procedures for interpollutant trading for offsets, pursuant to the NSR $PM_{2.5}$ Rule. Clarifying amendments for Chapter 127 and minor editorial changes also are made. The amendments submitted by Pennsylvania for approval into the SIP became effective on September 3, 2011.

Other specific requirements of the regulations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. One public comment was received on the NPR. The comment did not directly relate to the SIP revision so no response to the comment is necessary.

III. Final Action

EPA is approving the September 23, 2011 SIP revision to incorporate federal preconstruction permitting requirements for $PM_{2.5}$ and its precursors in nonattainment areas along with clarifying amendments, at 25 Pa. Code Section 121.1 and 25 Pa. Code Chapter 127, subchapter E, as a revision to the Pennsylvania SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action pertaining to NSR requirements for $PM_{2.5}$ may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 26, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by revising the existing entries for Title 25, Sections 121.1, 127.201, 127.201a, 127.202, 127.203, 127.203a, 127.204, 127.206, and 127.210.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Title 25—Environmental Protection Article III—Air Resources				
Chapter 121—General Provisions				
Section 121.1	Definitions	9/3/11	7/13/12 [*Insert page number where the document begins*].	Added definition of $PM_{2.5}$, modified definitions of ''regulated NSR pollutant'' and ''significant,'' and removed existing term, ''maximum allowable emissions.''
*	*	*	*	* * *
Chapter 127—Construction, Modification, Reactivation and Operation of Sources				
*	*	*	*	* * *
Subchapter E—New Source Review				
Section 127.201	General requirements	9/3/11	7/13/12 [*Insert page number where the document begins*].	Revised.
Section 127.201a.	Measurements, abbreviations and acronyms.	9/3/11	7/13/12 [*Insert page number where the document begins*].	Revised.
Section 127.202	Effective date	9/3/11	7/13/12 [*Insert page number where the document begins*].	Revised.
Section 127.203	Facilities subject to special permit requirements.	9/3/11	7/13/12 [*Insert page number where the document begins*].	Revised.
Section 127.203a.	Applicability determination.	9/3/11	7/13/12 [*Insert page number where the document begins*].	Revised.

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Section 127.204	Emissions subject to this Subchapter.	9/3/11	7/13/12 [*Insert page number where the document begins*].	Revised.
*	*	*	*	*
Section 127.206	ERC general requirements.	9/3/11	7/13/12 [*Insert page number where the document begins*].	Revised.
*	*	*	*	*
Section 127.210	Offset ratios	9/3/11	7/13/12 [*Insert page number where the document begins*].	Revised.
*	*	*	*	*

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[FR Doc. 2012–16943 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0208; FRL–9697–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology for the 1997 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to the requirements for meeting reasonably available control technology (RACT) for oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) for the 1997 8-hour ozone national ambient air quality standard (NAAQS). These requirements are based on: A certification that previously adopted RACT controls in Maryland's SIP, which were approved by EPA under the 1-hour ozone NAAQS, are based on the currently available technically and economically feasible controls and continue to represent RACT for the 1997 8-hour ozone NAAQS implementation purposes; a negative declaration demonstrating that no facilities exist in Maryland for the applicable control technique guideline (CTG) categories; and adoption of new or more stringent RACT determinations. This action is being taken in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on August 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0208. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the state submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814–2037, or by email at *lewis.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On May 14, 2012 (77 FR 28338), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The formal SIP revision (MDE SIP Number 11–08) was submitted by the Maryland Department of the Environment on October 17, 2011. EPA proposed to approve the Maryland SIP revision for the requirements of RACT for NO_X and VOCs set forth in the CAA with respect to the 1997 8-hour ozone standard.

II. Summary of SIP Revision

Maryland's SIP revision contains the requirements of RACT set forth in the CAA under the 1997 8-hour ozone NAAQS. Maryland's SIP revision satisfies the 1997 8-hour ozone standard RACT requirements through (1) certification that previously adopted RACT controls in Maryland's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls and continue to represent RACT for the 8-hour implementation purpose; (2) a negative declaration demonstrating that no facilities exist in Maryland for the applicable CTG categories; and (3) adoption of new or more stringent RACT determinations. Other specific requirements of the CAA and EPA's review and rationale for our proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving a revision to the Maryland SIP submitted by the State of Maryland, through the Maryland Department of the Environment, on October 17, 2011 that addresses the 1997 8-hour ozone NAAQS. EPA has determined that Maryland has met the requirements of RACT for NO_X and VOCs set forth in the CAA with respect to the 1997 8-hour ozone standard.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to Maryland's RACT provisions for NO_X and VOCs with respect to the 1997 8-hour ozone may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: June 27, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for ''RACT under the 1997 8-hour ozone NAAQS'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
RACT under the 1997 8-hour ozone NAAQS.	Statewide	10/17/11	7/13/12 [*Insert page number where the document begins*].	

[FR Doc. 2012–16949 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0002; FRL–9695–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the limited approval of the Regional Haze State Implementation Plan (SIP) (hereafter RH SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). EPA is taking this action because Pennsylvania's SIP revision, as a whole, strengthens the Pennsylvania SIP. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas

through a regional haze program. EPA is also approving this revision as meeting the infrastructure requirements relating to visibility protection for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS.

DATES: This final rule is effective on August 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0002. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the Commonwealth's submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by email at *linden.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On January 26, 2012, EPA published a notice of proposed rulemaking (NPR) for Pennsylvania (77 FR 3984). The NPR proposed limited approval of Pennsylvania's RH SIP. The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) on December 20, 2010. This revision also meets the requirements of CAA section 110(a)(2)(D)(i)(II) and (a)(2)(J), relating to visibility protection for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

II. Summary of SIP Revision

The SIP revision includes a long term strategy with enforceable measures ensuring reasonable progress towards meeting the reasonable progress goals for the first planning period through 2018. Pennsylvania's RH SIP contains the emission reductions needed to achieve Pennsylvania's share of emission reductions for the Class I areas they impact. The specific requirements of the CAA and EPA's Regional Haze Rule (64 FR 35714, July 1, 1999) and the rationale for EPA's proposed action are explained in the NPR and are not restated here. EPA received several adverse comments and one letter of support on the January 26, 2012 NPR. One of those adverse comments requested a change to PADEP's best available retrofit technology (BART) determination for GenOn Energy's Cheswick Generating Station. Pennsylvania can revise this determination in a future SIP revision to address comments raised by GenOn Energy. A summary of the comments submitted and EPA's responses are provided in section III of this document.

III. Summary of Public Comments and EPA Responses

Comment: EPA proposed approval of Pennsylvania's RH SIP on January 26, 2012 with a docket that includes most of the RH SIP submission from PADEP except Appendix Z, which is the comment and response document.

Response: PADEP did not submit an Appendix Z, nor was it referenced in the rulemaking. The PADEP comment and response document is Appendix AA and can be found in the EPA docket for this action, docket No. EPA–R03–OAR–2012–0002.

Comment: The commenter stated that Pennsylvania has 15 BART-eligible electric generating units (EGUs) that include 28 individual units that are among the largest uncontrolled sources for nitrogen oxides (NO_X) and sulfur dioxide (SO_2). The commenter claimed PADEP did not conduct any five-step determinations for BART at these EGUs for NO_X and SO_2. It relied upon the pending ''cross state air pollution rule (CSAPR) Better than BART'' determination.

Response: In today's action, EPA is finalizing a limited approval of Pennsylvania's RH SIP based on its reliance on the Clean Air Interstate Rule (CAIR). EPA did not propose to find that participation in the Transport Rule[1] is an alternative to BART in this action. EPA addressed these comments concerning the Transport Rule as a BART alternative in a final action that was published on June 7, 2012 (77 FR 33642). EPA's response to these comments can be found in Docket ID No. EPA–HQ–OAR–2011–0729 at *www.regulations.gov.*

Comment: The commenter stated that BART determinations must consider filterable PM_{10}, $PM_{2.5}$ and condensable PM. The commenter stated that the PADEP BART determinations are expressed in total PM, but the cost analyses were conducted based on filterable PM_{10}. The commenter requested EPA to disapprove PADEP's determinations and adopt a FIP that establishes BART limits for filterable PM_{10}, $PM_{2.5}$ and condensable PM because PADEP set BART limits for filterable PM_{10} and filterable PM.

Response: EPA disagrees with the commenter that the PM BART limits should be disapproved. The controls on the facilities considered by PADEP for the emission limits in the BART determinations are effective in reducing filterable and condensable particulates. Separate emission limits for each are not required for BART.

Comment: The commenter claimed PADEP's BART determinations and EPA's proposed approval of these determinations are fundamentally flawed, arbitrary, and unlawful. The commenter stated that source-specific process design information is required to make BART determinations which PADEP did not provide. One commenter stated PADEP's BART determinations were fundamentally flawed for steps one through four of the BART determination process. The commenter stated the flaw in step one was that PADEP did not address all available technologies for each BART determination. The commenter stated the flaw in step two was that PADEP did not appropriately interpret technical feasibility of control options in accordance with the *Guidelines for BART Determinations under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereafter the BART Rule). *See* 70 FR 39104 (July 6, 2005). The commenter stated the flaw in step three was that PADEP did not rank the control effectiveness for all EGU and most non-EGU BART determinations. The commenter stated the flaw in step four was that PADEP eliminated technologies based on non-air quality environmental impacts that are common throughout the industry.

Response: Congress crafted the CAA to provide for states to take the lead in developing implementation plans but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of the CAA. In undertaking such a review, EPA does not usurp a state's authority

[1] The Transport Rule is also known as the Cross State Air Pollution Rule (CSAPR) and was proposed by EPA to help states reduce air pollution and attain CAA standards. *See* 75 FR 45210 (August 2, 2010) (proposal) and 76 FR 48208 (August 8, 2011) (final rule).

but ensures that such authority is reasonably exercised. BART determinations under the regional haze program are the responsibility of the states, which have the freedom to determine the weight and significance of the statutorily required five-factors in a BART determination. EPA then reviews a state's determination as included in its regional haze plan. Pennsylvania performed the required BART determinations for its BART-eligible sources. In Appendix J of its RH SIP submittal, Pennsylvania considered the required five-factors and explained its conclusions for each specific source. As identified in Appendix J, Pennsylvania performed its BART determinations evaluating the five-factors required. Appendix J describes the steps Pennsylvania took in evaluating BART and provides a basis for Pennsylvania's BART determinations based on those five-factors. The modeling of source impacts and technology reviews for specific source categories can be found in Pennsylvania's Appendices I, P and Q respectively, which support Pennsylvania's BART determinations found in Appendix J. EPA determined that PADEP did address all available technologies and appropriately determined technical feasibility of those technologies. The ranking of control technologies is not a requirement of step three (evaluating the control effectiveness) in BART determinations. The evaluation of non-air quality impacts as part of step four of the BART determination should be made based on a consideration of the specific circumstances of that source, so the same technology may have a different degree of impact dependent on the source. EPA determined that PADEP did address step four for the BART determinations in accordance with the BART Rule.

Comment: The commenter stated that the PM limit for EGUs is invalid for BART. Pennsylvania used an outdated 0.1 pound per million British thermal unit (lb/MMBtu) limit for filterable PM. The proposed BART limit is much higher than accepted as BART (or as best available control technology known as BACT), and much higher than levels currently being achieved at many other similar facilities.

Response: EPA disagrees that the PM BART limits are invalid. While BACT is similar to BART, BACT has a four factor analysis of environmental impact, energy consumption, economic impact, and other costs. BART determinations however involve a five factor analysis of all technologies available for retrofit, consideration of current control technologies, cost of compliance of controls, remaining useful life of the facility, energy and non air-quality environmental impacts, and visibility impacts. BART is not a required top-down evaluation like BACT. As stated in the BART Rule, the states should retain the discretion to evaluate control options in whatever order they choose, so long as the state explains its analysis of the CAA factors. PADEP did address each of the five factors in its BART determination summaries in Appendix J of the PADEP December 20, 2010 RH SIP submittal. Because BART and BACT involve different evaluations, EPA believes it is reasonable to have different outcomes and different limits for each review. The specific BACT limits cited by the commenter cannot automatically be considered valid for BART.

Comment: BART guidelines provide that maximum available control technology (MACT) for hazardous air pollutants (HAPs) should be taken into account for determining BART as stated in 40 CFR part 51, appendix Y, Section IV.C. The commenter stated that Pennsylvania EGUs are subject to EPA's Mercury and Air Toxics Standards (MATS Rule) which was published on February 16, 2012 (77 FR 9304). The commenter stated that EPA must take these requirements into account in approving any BART determination because all statutory factors should be included. The commenter stated that PADEP's BART determinations for PM limits of 0.1 lb/MMBtu cannot be approved because those limits are much higher than the 0.03 lb/MMBtu limit in the final MATS Rule as a surrogate limit for non-mercury metal HAPs.

Response: EPA agrees that we do require all statutory factors to be included in the BART determinations that are applicable at the time the determinations are done. EPA cannot require BART determinations to predict future requirements and to include those as BART. When EPA issues new rules, the states must adopt them as appropriate. The final MATS Rule was promulgated after the proposed limited approval of the PM BART determinations in the Pennsylvania RH SIP on January 26, 2012.

Comment: The commenter stated that EPA claimed it included all BART-eligible sources in the CSAPR Better-than-BART analysis, but the analysis omitted the BART-eligible oil-fired EGUs as identified by PADEP. These facilities in Pennsylvania are Trigen/Edison Station Units 3 and 4; Trigen/Schuylkill Station Unit 26; Eddystone Units 3 and 4; and Martins Creek Units 3 and 4. EPA's CSAPR Better-than-BART analysis compared projected EGU emissions at the presumptive EGU BART limits to projected emissions under CSAPR. EPA then modeled these scenarios against the 2014 baseline that excludes both BART and CSAPR. The visibility benefits from this modeling were then averaged across all Class I areas. The commenter stated that EPA claims this analysis shows that CSAPR will result in more emissions reductions than BART and cites to 76 FR 82225. The commenter claimed that CSAPR will not achieve greater reasonable progress toward the national visibility goal than source-specific BART for EGUs in Pennsylvania. Even if CSAPR could lawfully substitute for BART, the commenter claimed the instant rulemaking would have to include separate NO_X and SO_2 BART determinations for Pennsylvania EGUs because CSAPR does not in fact perform better than BART.

Response: These comments are beyond the scope of this rulemaking. EPA's response to comments concerning the ''CSAPR is Better-than-BART'' action can be found in Docket ID No. EPA–HQ–OAR–2011–0729 at *www.regulations.gov.*

Comment: The commenter stated that PADEP evaluated step five of the BART determinations in a piecemeal fashion, considering the visibility impact to each Class I area separately and determined controls based on the most highly impacted Class I area. PADEP's approach resulted in significantly underestimating visibility improvements compared to implementing BART for PA sources. Most of the BART-eligible sources are clustered in the southwest corner of the state, near four Class I areas. Most of the remaining BART-eligible sources are clustered in the southeast region of the state, near Brigantine Class I area, with Montour in the middle of the state. The federal land managers (FLMs) made similar comments on the draft Pennsylvania RH SIP. PADEP responded that the BART Rule does not require a ''cumulative'' impact analysis and stated that EPA has provided no guidance on this issue. The commenter disagreed and stated that the BART Rule is clear that multiple sources and Class I areas are to be considered. The commenter cited to 70 FR 39161–62. The commenter claimed EPA recommended that Nebraska Department of Environmental Quality (NDEQ) consider calculating the visibility improvement at multiple Class I areas.

Response: EPA disagrees with this comment in general. The BART Rule pages referred to by the commenter

address determining whether a facility is BART-eligible and not the applicable approach defined later in the guidelines for BART-subject sources. EPA agrees with PADEP that the BART Rule does not require a ''cumulative'' impact analysis as part of the BART determination for a specific source. The guidelines do give the option to evaluate cumulative impacts to multiple Class I areas which EPA does recommend but does not require the state to do. As noted by the language used by EPA to NDEQ, we recommend consideration of the cumulative approach.

Comment: The commenter stated that the PADEP source-specific analyses in Appendix J rejected every single control option as not cost effective using one or both of the following two measures: dollar per ton or dollar per deciview. However, no significance thresholds were established for either. The FLMs also commented on this issue during the PADEP review process. PADEP's response to the FLMs was that it did not establish or use ''bright line thresholds for cost or for visibility improvement in making BART determinations'' in Appendix AA of the Pennsylvania RH SIP submittal. The commenter noted that based on determinations in other states, the acceptable cost effectiveness value ranges from $5,000 per ton to $10,000 per ton. The commenter claimed that many of PADEP's ''no control'' determinations fall well below this range.

Response: EPA's BART guidelines in the BART Rule do not require Pennsylvania to develop a specific threshold, but rather to evaluate each BART determination on a case-by-case basis for each source. EPA has not established a specific cost threshold that makes a particular control option BART based on just a dollars per ton number. All five factors must be compared to determine the level of control that is BART on a case-by-case basis. As discussed in the NPR, EPA finds the BART determinations from PADEP reasonable.

Comment: The commenter stated that EPA unreasonably relies on CSAPR for BART and that EPA failed to adequately review Pennsylvania's BART determinations.

Response: For BART determinations of sources other than EGUs, EPA reviewed PADEP's BART determinations in the December 20, 2010 Pennsylvania RH SIP submittal and approves the conclusions as the determinations are reasonable. Comments related to CSAPR as an alternative to BART for EGUs are beyond the scope of this rulemaking. EPA addressed similar comments concerning the Transport Rule as a BART alternative in a final action that was signed on May 30, 2012 (77 FR 33642, June 7, 2012). The EPA's response to these comments can be found in Docket ID No. EPA–HQ–OAR–2011–0729 at *www.regulations.gov*.

Comment: The commenter stated that EPA's proposed SO_2 reductions from Pennsylvania sources as substitute measures addressing Pennsylvania's failure to adopt the Mid-Atlantic/Northeast Visibility Union (MANE–VU) low sulfur fuel oil strategy are largely reliant upon the Portland Generating Station SO_2 reductions from the federally enforceable order from EPA responding to the CAA section 126 petition from the State of New Jersey. The commenter also states that this order has been appealed in the federal Court of Appeals and should not be relied upon due to its uncertainty.

Response: EPA disagrees with the commenter. The rule issued in response to the CAA section 126 petition from the State of New Jersey for the Portland Generating Station is federally enforceable and can be relied upon because it has not been stayed, nor has it been revoked at this time. The reductions can be relied upon for reasonable progress at this time because it is a federally enforceable measure. If these reductions do not occur, then PADEP may have to address them in the five year look back by submitting a SIP revision.

Comment: The commenter stated that Pennsylvania's failure to adopt the low-sulfur fuel oil strategy that was included in New Jersey's reasonable progress goals cannot be supplemented by SO_2 emission reductions without modeling the impacts as required by 40 CFR 51.308(d)(3)(iii).

Response: EPA disagrees with the commenter. 40 CFR 51.308(d)(3)(iii) provides that a state ''must document the technical basis, including modeling, monitoring and emissions information, on which the State is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. The State may meet this requirement by relying on technical analyses developed by the RPO and approved by all State participants. The State must identify the baseline emissions inventory on which its strategies are based.'' 40 CFR 51.308(d)(3)(iii). EPA did identify the baseline emissions for the measures substituted to address the SO_2 reductions that would have come from Pennsylvania's low-sulfur fuel oil strategy, and the modeling impact of the MANE–VU rule was done by the regional planning organization (RPO). The low-sulfur fuel oil strategy was an area source rule and the substituted emission reductions are from specific sources that are located closer to the Brigantine Class I area. Thus, the substitution of SO_2 reductions does meet the requirements in 40 CFR 51.308(d)(3)(iii).

Comment: The commenter stated that both the EPA proposed action for CSAPR Better-than-BART and EPA's proposed action on Pennsylvania's RH SIP stated that EPA was taking action on long-term strategy in a separate notice. The commenter stated that neither rulemaking acted on the long-term strategy for Pennsylvania which is untenable according to the commenter.

Response: The commenter has made an incorrect assumption. The EPA stated in the proposed action for CSAPR Better-than-BART that we proposed a limited disapproval of the regional haze SIPs that have been submitted by several states including Pennsylvania and that these states ''fully consistent with the EPA's regulations at the time, relied on CAIR requirements to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals'' (76 FR 82221). We further stated that ''CAIR and CAIR FIP requirements, however, will only remain in force to address emissions through the 2011 control period and thus CAIR cannot be relied upon in a SIP as a substitute for BART or as part of a long-term control strategy.'' *Id.* EPA proposed and finalized a limited disapproval for the Pennsylvania RH SIP for the long-term strategy due to reliance on CAIR. The other long-term strategy measures are covered under the limited approval proposed for Pennsylvania's RH SIP in 77 FR 3988. Therefore, all long-term control strategies beyond reliance on CAIR are included in the limited approval previously proposed, and now finalized, by this action. The final limited disapproval and FIP was published on June 7, 2012, addressing the deficiencies of the long-term strategy insofar as it relied on CAIR (77 FR 33642).

Comment: The commenter requested a conditional approval of Pennsylvania's RH SIP requiring the implementation of the lower-sulfur fuel strategy since it was relied upon for establishing the reasonable progress goals for MANE–VU Class I areas. Multiple commenters also stated that EPA's substitution of emission reductions is not permitted under the

Regional Haze Rule for reasonable progress goals for visibility.

Response: EPA does not agree that a conditional approval is appropriate for the Pennsylvania RH SIP given our determination that the plan meets the relevant applicable requirements. As set forth in a prior response, EPA disagrees that substitution of emission reductions is not permitted for reasonable progress goals.

Comment: The commenter stated that EPA should have disapproved Pennsylvania's RH SIP due to PADEP's failure to implement a proposed low-sulfur fuel oil strategy. The commenter stated that EPA should have demanded the additional 5,702 tons of SO_2 emission reductions from Pennsylvania instead of saying that EPA does not anticipate the difference will interfere with the ability of other states to achieve reasonable progress goals.

Response: EPA disagrees with the commenter. Disapproving the entire Pennsylvania RH SIP would have slowed implementation of other controls listed in the RH SIP. As explained in the NPR, we anticipate that the Pennsylvania RH SIP will ensure sufficient emission reductions to meet its share needed for nearby states to achieve their reasonable progress goals. If it is determined that the shortfall of SO_2 emission reductions impedes the achievement of reasonable progress, then at the time of the five year periodic review PADEP may need to submit a SIP revision requiring those additional reductions.

Comment: One commenter stated that the PADEP BART determination for GenOn Energy's Cheswick Generating Station included emission limits including PM which were inconsistent with the plant's current permits. The commenter requested EPA to require PADEP to revise the BART determination.

Response: EPA evaluated the BART determination and agrees with PADEP's determination of the appropriate BART limit based on current controls. In setting the BART limits, PADEP appears to have set emission limits for the facility that are far more stringent than intended. If Pennsylvania submits a revised BART determination for the Cheswick Generating Station, EPA commits to act expeditiously on the revised SIP submittal.

Comment: Two commenters stated that PADEP did not address reasonable progress requirements for addressing MANE–VU's modeled exceedance of the uniform rate of progress (URP) at Dolly Sods Class I area.

Response: Reasonable progress goals are set by the Class I area state. West Virginia did not request any reductions from Pennsylvania to meet the URP as modeled by Visibility Improvement State and Tribal Association of the Southeast (VISTAS). The discrepancies in modeling between the two RPOs were addressed in Pennsylvania's RH SIP submittal. The requirement for the state consultation process was met, and Pennsylvania fulfilled what was requested by West Virginia.

Comment: The commenter stated that Pennsylvania's modeling for the RH SIP submittal did not address the significant growth in emissions from Marcellus Shale natural gas drilling operations and therefore does not support reasonable progress.

Response: EPA disagrees with the commenter because reasonable progress goals are set by the Class I area and are evaluated during the 5 year periodic review. In addition, CAA section 169A(g)(1) requires states to take into consideration a number of factors for reasonable progress. States have flexibility in how to take into consideration these statutory factors and any other factors that are determined to be relevant. As previously explained herein and in the NPR, we anticipate that the Pennsylvania RH SIP will ensure sufficient emission reductions for reasonable progress goals. During the five year periodic review, any significant changes in projected emissions can be addressed.

IV. Final Action

EPA is finalizing its limited approval of the revision to the Pennsylvania SIP submitted on December 20, 2010 that addresses regional haze for the first implementation period in Pennsylvania. EPA is issuing a limited approval of the Pennsylvania SIP because overall the SIP will be stronger and more protective of the environment with the implementation of those measures by Pennsylvania and because the SIP will be stronger with federal approval and enforceability of Pennsylvania's RH SIP than it would without those measures being included in the Pennsylvania SIP. EPA has already finalized the limited disapproval of Pennsylvania's RH SIP in a separate rulemaking (77 FR 33642, June 7, 2012). EPA is also approving this revision as meeting the applicable visibility related requirements of CAA section 110(a)(2) including, but not limited to, section 110(a)(2)(D)(i)(II) and (a)(2)(J), relating to visibility protection for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action finalizing the limited approval of the Pennsylvania Regional Haze SIP may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

List of Subjects in 40 CFR Part 52

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

Dated: June 15, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN— Pennsylvania

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for Regional Haze Plan at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Regional Haze Plan	Statewide	12/20/10	7/13/12 [*Insert page number where the document begins*].	§ 52.2042; Limited Approval.

[FR Doc. 2012–16428 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0398; FRL–9352–2]

Azoxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of azoxystrobin in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) and Syngenta Crop Protection requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 13, 2012. Objections and requests for hearings must be received on or before September 11, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0398; FRL–9352–2, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division, (7505P) Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; email address: *ertman.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0398 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 11, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any confidential business information (CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0398, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of July 20, 2011 (76 FR 43231) (FRL–8880–1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7851) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.507 be amended by:

- Establishing tolerances for residues of the fungicide azoxystrobin, (methyl (E)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and the Z isomer of azoxystrobin, (methyl (Z)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]pheny1]-3-methoxyacrylate) in or on onion, bulb subgroup 3–07A at 1.0 parts per million (ppm); onion, green subgroup 3–07B, at 7.5 ppm; caneberry subgroup 13–07A, at 5.0 ppm; bushberry subgroup 13–07B, at 3.0 ppm; small fruit vine climbing subgroup, except fuzzy kiwifruit, 13–07F, at 1.0 ppm; low growing berry subgroup 13–07G, except cranberry, at 10.0 ppm; vegetable, fruiting, subgroup 8–10A, at 0.2 ppm; vegetable, fruiting, subgroups 8–10B, at 2.0 ppm; fruit, citrus, group 10–10, at 10.0 ppm; rapeseed subgroup 20A, at 1.0 ppm; sunflower subgroup 20B, at 0.5 ppm; cottonseed subgroup 20C, at 0.6 ppm; wasabi, at 50.0 ppm; and dragon fruit, at 2.0 ppm;
- Changing the tolerance for vegetable, tuberous and corm, subgroup 1C from 0.03 ppm to 6.0 ppm; and
- Upon approval of the tolerances above, by removing the established tolerances for onion, bulb at 1.0 ppm; onion, green at 7.5 ppm; caneberry subgroup 13–A at 5.0 ppm; bushberry subgroup 13B at 3.0 ppm; Juneberry at 3.0 ppm; lingonberry at 3.0 ppm; salal at 3.0 ppm; grape at 1.0 ppm; strawberry at 10.0 ppm; tomato at 0.2 ppm; vegetable, fruiting, group 8 except tomato at 2.0 ppm; fruit, citrus, group 10 at 10.0 ppm; canola, seed at 1.0 ppm; cotton, undelinted seed at 0.6 ppm; crambe, seed at 0.5 ppm; flax, seed at 0.5 ppm; mustard, field, seed at 0.5 ppm; mustard, Indian, seed at 0.5 ppm; mustard, seed at 0.5 ppm; rapeseed, Indian at 0.5 ppm; rapeseed, seed at 0.5 ppm; safflower, seed at 0.5 ppm; sunflower, seed at 0.5 ppm; potato at 0.03 ppm.

In the **Federal Register** of November 9, 2011 (76 FR 69690) (FRL–9325–1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7891) by Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.507 be amended by establishing a tolerance for residues of the fungicide azoxystrobin, (methyl (E)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and the Z isomer of azoxystrobin, (methyl (Z)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) in or on sugarcane at 0.2 ppm.

The notices referenced summaries of the petitions prepared by Syngenta, the registrant, which are available in the docket, *http://www.regulations.gov.* There were no comments received in response to these notices of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which tolerances are being established for various commodities. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Azoxystrobin has low acute toxicity via the oral, dermal and inhalation routes of exposure. It is not an eye or skin irritant and is not a skin sensitizer. Dietary administration of azoxystrobin to rats resulted in decreased body weights, decreased food intake and utilization, increased diarrhea and other clinical toxicity observations (increased urinary incontinence, hunched postures and distended abdomens). In addition, liver effects characterized by increased liver weights, increases in alkaline phosphatase and gama glutamyltransferase, decreases in albumin, gross and histological lesions in the liver and bile ducts, were seen in rats. In dogs, effects on liver/biliary function were found after oral administration.

In the acute neurotoxicity study in rats, increased incidence of diarrhea was observed at all dose levels tested including the lowest-observed-adverse-effect-level (LOAEL). Decreased body weight/weight gain and food utilization was noted in the rat subchronic neurotoxicity study. There were no consistent indications of treatment-related neurotoxicity in either the acute or subchronic neurotoxicity studies.

In the rat developmental toxicity study, diarrhea, urinary incontinence and salivation were observed in maternal animals; in the rabbit developmental toxicity study, maternal animals exhibited decreased body weight gain. No adverse treatment-related developmental effects were seen in either study. In the rat reproduction study, offspring and parental effects (decreased body weights and increased adjusted liver weights) were observed at the same dose.

There was no evidence of carcinogenicity in rats and mice at acceptable dose levels. As a result, EPA has classified azoxystrobin as ''not likely to be carcinogenic to humans.'' Azoxystrobin induced a weak mutagenic response in the mouse lymphoma assay, but the activity expressed *in vitro* is not expected to be expressed in whole animals.

Specific information on the studies received and the nature of the adverse effects caused by azoxystrobin as well as the no-observed-adverse-effect-level (NOAEL) and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2011–0398 on pages 38–40 of the document titled ''Azoxystrobin: Human Health Risk Assessment for Proposed Uses on Dragon Fruit, Wasabi, and Tuberous and Corm Vegetables (Subgroup 1C), and from the Revisions to Various Crop Groups (Onion Subgroups 3–07 A, B; Fruiting Vegetable Subgroups 8–10 A, B; Small Fruit and Berry Subgroups 13–07 A, B, F, G, Oilseeds Subgroups A, B, C; and Citrus Fruit Group 10–10).''

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for azoxystrobin used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR AZOXYSTROBIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All Populations)	LOAEL = 200 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 3x UF_L	Acute RfD = 0.67 mg/kg/day aPAD = 0.67 mg/kg/day	Acute Neurotoxicity—Rat. LOAEL = 200 mg/kg/day based on diarrhea at 2-hours post dose at all dose levels up to and including to LOAEL.
Chronic dietary (All Populations)	NOAEL= 18 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.18 mg/kg/day cPAD = 0.18 mg/kg/day	Combined Chronic Toxicity/Carcinogenicity Feeding Study—Rat. LOAEL = 82.4/117 mg/kg/day (M/F) based on reduced body weights in both sexes and bile duct lesions in males.
Incidental oral short-term (1 to 30 days).	NOAEL= 25 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Prenatal Developmental Oral Toxicity—Rat. LOAEL = 100 mg/kg/day based on increased maternal diarrhea, urinary incontinence, and salivation.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR AZOXYSTROBIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Inhalation short-term (1 to 30 days).	Oral study NOAEL= 25 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Prenatal Developmental Oral Toxicity—Rat. LOAEL = 100 mg/kg/day based on increased maternal diarrhea, urinary incontinence, and salivation.

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. mg/kg/day = milligrams/kilogram/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to azoxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing azoxystrobin tolerances in 40 CFR 180.507. EPA assessed dietary exposures from azoxystrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for azoxystrobin. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, the acute dietary assessment used tolerance levels for all commodities, except citrus fruits where the highest residue from crop field trials was used, and 100 percent crop treated (PCT) for all commodities. Default processing factors were assumed except for where tolerances were established for processed commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, the chronic dietary analysis for azoxystrobin was conducted using tolerance levels and average PCT estimates when available. Default processing factors were assumed except for where tolerances were established for processed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that azoxystrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Almonds, 25%; apricots, 10%; artichokes, 25%; asparagus, 2.5%; green beans, 10%; blackberries, 5%; blueberries, 10%; broccoli, 5%; cabbage, 10%; cantaloupes, 10%; carrots, 10%; cauliflower, 2.5%; celery, 10%; cherries, 5%; corn, 2.5%; cotton, 5%; cucumbers, 20%; dry beans/peas, 1%; garlic, 60%; grapefruit, 20%; grapes, 5%; hazelnuts (filberts), 5%; lettuce, 2.5%; onions, 10%; oranges, 5%; peaches, 5%; peanuts, 15%; green peas, 2.5%; pecans, 2.5%; peppers, 15%; pistachios, 15%; potatoes, 35%; prunes, 2.5%; pumpkins, 20%; raspberries, 5%; rice, 35%; soybeans, 2.5%; spinach, 10%; squash, 15%; strawberries, 30%; sugar beets, 5%; sweet corn, 10%; tangerines, 15%; tomatoes, 15%; walnuts, 1%; watermelon, 20%; wheat, 2.5%.

In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1%. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated

is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which azoxystrobin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for azoxystrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of azoxystrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), Screening Concentration in Ground Water (SCI-GROW), the Pesticide Root Zone Model (PRZM) and the Exposure Analysis Modeling System (EXAMS) models, the estimated drinking water concentrations (EDWCs) of azoxystrobin for acute exposures are estimated to be 173 parts per billion (ppb) and 33 ppb for chronic exposures. For ground water, the estimated drinking water concentration is 3.1 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 173 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 33 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Azoxystrobin is currently registered for the following uses that could result in residential exposures: Outdoor residential (lawns, ornamentals, flower gardens, vegetables, fruit and nut trees, berries and vines) and recreational (golf courses, parks and athletic fields) sites. Additionally, it is registered for use on indoor carpets/other surfaces by non-commercial applicators, and in treated paints (preservative incorporation). EPA assessed residential exposure using the new 2012 updated residential standard operating procedures (SOPs) that are now used in all human health assessments. For residential handler exposure, the Agency assumed that most residential use will result in short-term (1 to 30 days) dermal and inhalation exposures. The worst-case scenario used was painting with an airless sprayer. Residential handlers are assumed to be wearing short-sleeved shirts, short pants, shoes and socks during application of azoxystrobin. Because there was no dermal endpoint chosen for azoxystrobin, residential handler risk from exposure to azoxystrobin was assessed for the inhalation route only.

The Agency assumed that post-application exposure in residential settings is expected to be short-term in duration only. No dermal endpoint was chosen for azoxystrobin; therefore, a dermal post-application risk assessment was not conducted. Residential post-application inhalation exposure in outdoor settings is considered negligible; however, residential post-application inhalation exposure has been assessed. The scenarios evaluated were short-term post-application inhalation (indoor), short-term incidental oral ingestion from treated indoor surfaces (hand-to-mouth vinyl/hard surfaces and carpet/textile surfaces), and short-term incidental oral ingestion from treated turf (hand-to-mouth, mouthing grass, and soil ingestion).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found azoxystrobin to share a common mechanism of toxicity with any other substances, and azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that azoxystrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for azoxystrobin is complete and includes prenatal developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats. In these studies, offspring toxicity was observed at equivalent or higher doses than those resulting in parental toxicity; thus, there is no evidence of increased susceptibility and there are no residual uncertainties with regard to prenatal and/or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X for short-term, intermediate term, and chronic risk assessment. This determination is based on the following considerations:

i. The toxicity database for azoxystrobin is complete except for immunotoxicity testing. Changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. There are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by azoxystrobin and azoxystrobin does not belong to a class of chemicals (e.g., the organotins,

heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on the above considerations in this unit, EPA does not believe that conducting the immunotoxicity study will result in a dose less than the point of departure already used in this risk assessment, and an additional database uncertainty factor (UF) for potential immunotoxicity does not need to be applied.

ii. Clinical signs noted in the acute and subchronic neurotoxicity studies were not considered treatment related because of a lack of dose-response, inconsistency of observations at different time points, variability of pretreatment values and/or small magnitude of response. There is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that azoxystrobin results in increased susceptibility to in utero rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. The acute dietary exposure assessment was performed based on tolerance-level residues for all crops except citrus, and the chronic dietary exposure assessment was performed based on tolerance level residues for all crops. The acute dietary assessment incorporated 100 PCT information, and the chronic dietary exposure assessment was somewhat refined using PCT information for selected crops. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to azoxystrobin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by azoxystrobin.

Despite these considerations supporting removal of the FQPA SF, EPA has retained the FQPA SF, reduced to 3X, in assessing acute dietary risk. An additional safety factor is needed for acute risk assessment to account for the use of a LOAEL from the acute neurotoxicity study in rats in deriving the acute reference dose used for assessing acute dietary exposure for all populations including infants and children. To account for the use of a LOAEL from the acute neurotoxicity study in rats, the Agency believes that a 3X FQPA SF (as opposed to a 10X) will be adequate to extrapolate a NOAEL in assessing acute risk and that no additional safety factor is needed for short-term, intermediate-term, and chronic risk assessment based on the following considerations:

- The effect seen (transient diarrhea seen in the rat) is of a nature that is relatively insignificant;
- The diarrhea was only seen in studies involving gavage dosing in the rat but not in repeat dosing through dietary administration in rats and mice, and not through gavage dosing in rabbits; and
- The very high dose level needed to reach the acute oral lethal dose (LD_{50}) (>5,000 milligrams/kilogram (mg/kg)), and the overall low toxicity of azoxystrobin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to azoxystrobin will occupy 42% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to azoxystrobin from food and water will utilize 16% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of azoxystrobin is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Azoxystrobin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to azoxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 460 for adult males, 470 for females 13 to 49 years old and 200 for children 1 to 2 years old. Because EPA's level of concern for azoxystrobin is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, azoxystrobin is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for azoxystrobin.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, azoxystrobin is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to azoxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies are available to enforce the tolerance expression and have been submitted to FDA for inclusion in the Pesticide Analytical Manual (PAM) Volume II: A gas chromatography method with nitrogen-phosphorus detection (GC/NPD), RAM 243/04, for the enforcement of tolerances for residues of azoxystrobin and its Z-isomer in crop commodities; and a GC/NPD method, RAM 255/01, for the enforcement of tolerances of azoxystrobin in livestock commodities. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone

number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

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

The following tolerances being established by this document are in harmony with the equivalent Codex MRLs are harmonized (Codex commodities in brackets): Caneberry subgroup 13–07A (berries and other small fruits, except cranberry, grapes and strawberry); berry, low growing, subgroup 13–07G, except cranberry (strawberries); sunflower subgroup 20B (sunflower seed); bushberry, subgroup 13–07B (berries and other small fruits, except cranberry, grapes and strawberry); cottonseed, subgroup 20C (cotton seed); fruit, citrus, group 10–10 (citrus fruits); fruit, small vine climbing, except fuzzy kiwifruit, 13–07F (grape); and pepper/eggplant subgroup 8–10B (fruiting vegetables other than cucurbits except mushrooms and sweet corn). The following tolerances could not be harmonized with Codex MRLs: Berry, low growing subgroup 13–07G, except cranberry (berries and other small fruits, except cranberry, grapes and strawberry); dragon fruit (mango); onion, bulb and green subgroups 3–07A & B (bulb vegetables); tomato subgroup 8–10A (fruiting vegetables other than cucurbits except mushrooms and sweet corn); vegetable, tuberous and corm subgroup 1C (root and tuber vegetables); and wasabi fresh and dry (herbs, fresh and dry). The disharmony is caused by various issues, including different Codex classification for crop grouping, different calculation procedures for establishing MRLs, different use patterns, and different data sets. There are no Codex MRLs) for residues of azoxystrobin and its Z-isomer for sugarcane.

C. Revisions to Petitioned-For Tolerances

Several of the tolerances have been revised from what was proposed in the initial petition. EPA is increasing the proposed crop group tolerances for bushberry, subgroup 13–07B; cottonseed subgroup 20C; citrus fruit, group 10–10; fruit, small vine climbing, except fuzzy kiwifruit subgroup 13–07F, and pepper/eggplant subgroup 8–10B to harmonize the numerical portion of the tolerance with the Codex MRL. Also, based on the Organization for Economic Cooperation and Development (OECD) calculation procedures for the current post-harvest potato use data, EPA increased the requested tolerance for vegetable, tuberous and corm, subgroup 1C from 6.0 ppm to 8.0 ppm. It should be noted that there is an existing tolerance on potato at 0.03 ppm that is based on foliar use. The substantial increase from 0.03 ppm to 8.0 ppm results from the post-harvest use, as opposed to the previous foliar-only use.

EPA is also revising some of the commodity definitions in the tolerance table to be consistent with EPA's preferred terms for food and feed.

V. Conclusion

Therefore, tolerances are established for residues of azoxystrobin, (methyl (E)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and the Z isomer of azoxystrobin, (methyl (Z)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) in or on onion, bulb, subgroup 3–07A at 1.0 ppm; onion, green, subgroup 3–07B at 7.5 ppm; tomato subgroup 8–10A at 0.2 ppm; pepper/eggplant subgroup 8–10B at 3.0 ppm; fruit, citrus, group 10–10 at 15.0 ppm; caneberry subgroup 13–07A at 5.0 ppm; bushberry subgroup 13–07B at 5.0 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; berry, low growing, subgroup 13–07G, except cranberry at 10.0 ppm; rapeseed subgroup 20A at 1.0 ppm; sunflower subgroup 20B at 0.5 ppm; cottonseed subgroup 20C at 0.7 ppm; wasabi, fresh at 50 ppm; wasabi, dry at 260 ppm; dragon fruit at 2.0 ppm; vegetable, tuberous and corm, subgroup 1C at 8.0 ppm, and sugarcane, cane at 0.2 ppm.

And lastly, due to the tolerances established above by this document, the following existing tolerances are removed as unnecessary: Onion, bulb; onion, green; caneberry subgroup 13A; bushberry subgroup 13B; Juneberry; lingonberry; salal; grape; strawberry; tomato; vegetable, fruiting, group 8 except tomato; fruit, citrus, group 10; canola, seed; cotton, undelinted seed; crambe, seed; flax, seed; mustard, field, seed; mustard, Indian, seed; mustard, seed; rapeseed, Indian; rapeseed, seed; safflower, seed; sunflower, seed; potato; okra.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination

with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 3, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.507 revise the table in paragraph (a)(1) to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Acerola	2.0
Almond, hulls	4.0
Animal feed, nongrass, group 18, forage	45
Animal feed, nongrass, group 18, hay	120
Artichoke, globe	4.0
Asparagus	0.04
Atemoya	2.0
Avocado	2.0
Banana	*
Barley, bran	6.0
Barley, forage	25
Barley, grain	3.0
Barley, hay	15.0
Barley, straw	7.0
Berry, low growing, subgroup 13–07G, except cranberry	10.0
Biriba	2.0
Brassica, head and stem, subgroup 5A	3.0
Brassica, leafy greens, subgroup 5B	25
Bushberry subgroup 13–07B	5.0
Caneberry subgroup 13–07A	5.0
Canistel	2.0
Cherimoya	2.0
Cilantro, leaves	30.0
Citrus, dried pulp	20.0
Citrus, oil	40.0
Corn, field, forage	12.0
Corn, field, grain	0.05
Corn, field, refined oil	0.3
Corn, field, stover	25.0
Corn, pop, grain	0.05
Corn, pop, stover	25.0
Corn, sweet, forage	12.0
Corn, sweet, kernel plus cob with husks removed	0.05
Corn, sweet, stover	25.0
Cotton, gin byproducts	45
Cottonseed subgroup 20C	0.7
Cranberry	0.50
Custard apple	2.0
Dragon fruit	2.0
Feijoa	2.0
Fruit, citrus, group 10–10	15.0
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	2.0
Fruit, stone, group 12	1.5
Grain, aspirated fractions	420
Grass, forage	15
Grass, hay	20
Guava	2.0
Herb Subgroup 19A, dried leaves	260
Herb Subgroup 19A, fresh leaves	50
Hop, dried cones	20.0
Ilama	2.0
Jaboticaba	2.0
Jackfruit	2.0
Longan	2.0
Loquat	2.0
Lychee	2.0
Mango	2.0
Nut, tree, group 14	0.02
Onion, bulb, subgroup 3–07A	1.0
Onion, green, subgroup 3–07B	7.5
Papaya	2.0
Passionfruit	2.0
Pawpaw	2.0
Pea and bean, dried shelled, except soybean, subgroup 6C	0.5
Pea and bean, succulent shelled, subgroup 6B	0.5
Peanut	0.2
Peanut, hay	15.0
Peanut, refined oil	0.6
Pepper/eggplant subgroup 8–10B	3.0
Peppermint, tops	30
Persimmon	2.0
Pistachio	0.50
Pulasan	2.0
Rambutan	2.0
Rapeseed subgroup 20A	1.0
Rice, grain	5.0
Rice, hulls	20
Rice, straw	12
Rice, wild, grain	5.0
Sapodilla	2.0
Sapote, black	2.0
Sapote, mamey	2.0
Sapote, white	2.0
Sorghum, grain, forage	25
Sorghum, grain, grain	11
Sorghum, grain, stover	40
Soursop	2.0
Soybean, hay	55.0
Soybean, hulls	1.0
Soybean, seed	0.5
Spanish lime	2.0
Spearmint, tops	30
Spice Subgroup 19B, except black pepper	38
Star apple	2.0
Starfruit	2.0
Sugar apple	2.0
Sugarcane, cane	0.2
Sunflower subgroup 20B	0.5
Tamarind	2.0
Tomato, paste	0.6
Tomato subgroup 8–10A	0.2
Turnip, greens	25
Vegetable, cucurbit, group 9	0.3
Vegetable, foliage of legume, group 7	30.0
Vegetable, leafy, except brassica, group 4	30.0
Vegetable, leaves of root and tuber, group 2	50.0
Vegetable, legume, edible podded, subgroup 6A, except soybean	3.0
Vegetable, root, subgroup 1A	0.5
Vegetable, tuberous and corm, subgroup 1C	8.0
Wasabi, dry	260
Wasabi, fresh	50
Watercress	3.0
Wax jambu	2.0
Wheat, bran	0.20
Wheat, forage	25
Wheat, grain	0.10
Wheat, hay	15
Wheat, straw	4.0

*2.0 (of which not more than 0.1 is contained in the pulp)

* * * * *

[FR Doc. 2012–17021 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–2012–0411; FRL–9694–7]

Louisiana: Final Authorization of State-Initiated Changes and Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: During a review of Louisiana's regulations, the EPA identified a variety of State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this direct Final action. In addition, this document corrects technical errors made in the May 20, 2009, **Federal Register** authorization document for Louisiana.

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Louisiana's hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

DATES: This regulation is effective September 11, 2012, unless the EPA receives adverse written comment on this regulation by the close of business August 13, 2012. If the EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of September 11, 2012 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

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

2. *Email: patterson.alima@epa.gov* or *banks.julia@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue Dallas, Texas 75202–2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or email. The Federal regulations.gov Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 6, 1445 Ross Avenue Dallas, Texas, 75202–2733, phone number (214) 665–8533 or (214) 665–8178. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533 or (214) 665–8178, EPA Region 6, 1445 Ross Avenue Dallas, Texas 75202–2733, and email address *patterson.alima@epa.gov* or *banks.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Authorization of State-Initiated Changes

A. Why are revisions to State programs necessary?

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

B. What decisions have we made in this rule?

We conclude that Louisiana's revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Louisiana's rules more clear or conform more closely to the Federal equivalents and are so minor in nature that a formal application is unnecessary. Therefore, we grant Louisiana final authorization to operate its hazardous waste program with the changes described in the table at Section G below. Louisiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Louisiana, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the statutes and regulations for which Louisiana is being authorized by this direct final action are already effective and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

The EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization or the incorporation-by-reference of the State program, we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes, or the incorporation-by-reference, on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. If you want to comment on this authorization and incorporation-by-reference, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program or the incorporation-by-reference of the State program, we may withdraw only that part of this rule, but the authorization of the program changes or the incorporation-by-reference of the State program that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization or incorporation-by-reference of the State program will become effective and which part is being withdrawn.

F. For what has Louisiana previously been authorized?

The State of Louisiana initially received final authorization on January 24, 1985, effective February 7, 1985 (see 50 FR 3348), to implement its Base Hazardous Waste Management Program. Louisiana received authorization for revisions to its program effective January 29, 1990 (54 FR 48889), October 25, 1991 (56 FR 41958) as corrected October 15, 1991 (56 FR 51762); January 23, 1995 (59 FR 55368) as corrected April 11, 1995 (60 FR 18360); March 8, 1995 (59 FR 66200); January 2, 1996 (60 FR 53704 and 60 FR 53707); June 11, 1996 (61 FR 13777), March 16, 1998 (62 FR 67572), December 22, 1998 (63 FR 56830), October 25, 1999 (64 FR 46302), November 1, 1999 (64 FR 48099), April 28, 2000 (65 FR 10411), March 5, 2001 (66 FR 23), February 9, 2004 (68 FR 68526), August 9, 2005 (70 FR 33852), January 12, 2007 (71 FR 66118), October 15, 2007 (72 FR 45905), July 20, 2009 (74 FR 23645), October 4, 2010 (75 FR 47223), and August 23, 2011 (76 FR 37021).

G. What changes are we authorizing with this action?

The State has made amendments to the provisions listed in the following table. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting Louisiana final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA statutory provisions or RCRA regulations found at 40 CFR as of July 1, 2008. The Louisiana provisions are from the Louisiana Administrative Code (LAC), Title 33, Part V effective December 31, 2009 (except as noted below).

State citation (LAC 33:V)	Federal analog (40 CFR)
State analogs to 40 CFR Part 260 provisions (Hazardous waste management system: General)	
105.I.1	260.21(a).
105.I.2.c	260.21(b)(3).
105.O.1 intro	260.30 intro.
109 Toxic Waste	260.10 related; No Federal analog.
109 Corrosive Waste	260.10 related, No Federal analog.
109 Ignitable Waste	260.10 related; No Federal analog.
109 Incompatible Waste	260.10 "incompatible waste".
109 Reactive Waste	260.10 related; No Federal analog.
109 SPOC	No Federal analog.
State analogs to 40 CFR Part 261 provisions (Identification and listing of hazardous waste)	
105.D.2.I intro	261.4(b)(11) intro.
3105. Table 1 (Chapter 31, Table 1)	261 App. VIII.
4137 (Repealed)	261.6(a)(2) (Duplicate analog in state's regulations).
4999, Appendix E	261 Appendix IX.

State citation (LAC 33:V)	Federal analog (40 CFR)
State analogs to 40 CFR Part 262 provisions (Standards applicable to generators of hazardous waste)	
1107.A.9 and .A.10 (Removed)	262 Appendix (2004 CFR).
1107.A.8	262.20(f).
1107.B	262 Appendix, I related.
1109.D	262.33.
1901.D	262.34(a)(1)(ii) related.
State analogs to 40 CFR Part 263 provisions (Standards applicable to transporters of hazardous waste)	
105.J.2	263.30(c)(2) related; No Federal analog.
1315.E & .F	263.30(c)–(d).
1319.C (Repealed)	263 related; No Federal analog.
State analogs to 40 CFR Part 264 provisions (Standards for owners and operators of hazardous waste treatment, storage, and disposal facilities)	
1509.B intro (Removed)	264.15(b) related; No Federal analog.
1513.B.1	264.52(a).
1516.C.5 & .C.6	264.72(e) & (f).
1517.E (Removed)	264.17 related: No federal analog.
1519.D	264.13 related; No Federal analog.
1529.B.12	264.73(b)(10).
1529.B.13–.16	264.73(b)(11)–(14).
1529.B.17 & .18	264.73(b)(15) & (16).
1529.B.19	264.73(b)(9).
1529.E.1	264.77(a).
1709.E	264.1033(e).
1711.B.1	264.1034(b)(1).
1711.C.1.a	264.1034(c)(1).
1741.B.1	264.1063(b)(1).
1901.A	264.190(a).
1905.H	264.192 related; No Federal analog.
1907.G.3 and .G.4	264.193(g)(3) and (g)(4).
1915.D	264.197 related; No Federal analog.
2101.D	264.170 related; No Federal analog.
2303.K	264.251 related; No Federal analog.
2311.A.1 & .2	264.256(a)&(b).
2503.K.1.k—K.1.m	264.301 related; No Federal analog.
2703.I & J	264.273 related; No Federal analog.
2903.I	264.221(c) related; No Federal analog.
3207.B	264.603 related; No Federal analog.
3105.B.1	264.340(b)(1).
3105.C	264.340(c).
3111.A.4	264.343(c).
3207.C (except .C.2)	264.603 related; No Federal analog.
3315.K	264.97 related; No Federal analog.
3325 and Table 4	264, Appendix IX.
3715.F.8	264.147(f) related; No Federal analog.
3719.A	264.151(a).
State analogs to 40 CFR Part 265 provisions (Interim standards for owners and operators of hazardous waste treatment, storage, and disposal facilities)	
4339	265.51.
4357.B.6	265.73(b)(4).
4357.B.10	265.73(b)(8).
4365.A	265.77(a).
4367.D	265.90(e).
4393.C	265.119(c).
4395	265.120.
4437.E.2	265.193(e)(2).
4437.G.3.b	265.193(g)(3)(ii).
4437.G.3.c	265.193(g)(3)(iii).
4437.I.3 and .I.4	265.193(i)(3) and (i)(4).
4459	265.229.
4501.B.1 and B.2	265.310(a)(1) (July 1, 1993).
4512.D intro. and D.1	265.301(d) intro. and (d)(1).
State analogs to 40 CFR Part 266 provisions (Standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities)	
3001.D.3.a intro	266.100(d)(3)(i) intro.

State citation (LAC 33:V)	Federal analog (40 CFR)
3001.G.1.b	266.100(g)(2).
3007.C.1.h	266.103(c)(1)(viii).
3013.B.3	266.106(b)(3).
3023.E	266.111(e).
3025.B.2.b	266.112(b)(2)(ii).
3099, Appendix A	Part 266, Appendix I/Table I–A—Table I–E.
3099, Appendices B–I	Part 266, Appendices II–IX.
3099, Appendices J–L	Part 266, Appendices XI–XIII.
State analogs to 40 CFR Part 268 provisions (Land disposal restrictions)	
2230.B (except .B.2)	268.45(b) (except (b)(2)).
2246.E intro	268.7(d) intro.
2247.C intro	268.7(b)(4) intro.
2299.Table 10	268.44(o)/Table 1.
State analogs to 40 CFR Part 270 provisions (The hazardous waste permit program)	
303.Q	270.10(k).
305.D.2.f	270.60(c)(3)(vi).
305.D.2.g	270.60(c) related; No Federal analog.
321.C.3.a.iv	270.42(c)(1)(iv).
321.C.10 intro	270.42(j) intro.
519.A	270.14(a).
529.A.2	270.19(a)(2).
529.A.4	270.19(a)(4).
State analogs to 40 CFR Part 270 provisions (Recycled used oil)	
4003.B.1.a	279.10(b)(1)(i).
4003.B.2.c	279.10(b)(2)(iii).

H. Who handles permits after the authorization takes effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no new substantive requirements are a part of these revisions.

I. How does this action affect Indian Country (18 U.S.C. 1151) in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

II. Technical Corrections

The following technical corrections are made to the May 20, 2009 Louisiana authorization **Federal Register** document. The corrections being made address additions or corrections to the list of citations for checklist entries that was included in the published **Federal Register** document and are presented in order of the checklist number, followed by a brief description of the correction being made.

A. Corrections to the 5/20/09 ***Federal Register*** *(74 FR 23645; Effective 7/20/09)*

1. For Checklist 208, the following corrections should be made:

a. The citation ''100.B.6–7'' is corrected to read ''110.B.5–7''.

b. The citation ''100.C.3.aa'' is corrected to read ''110.C.3.aa''

c. The citation ''4727.A.c.i–v'' is corrected to read ''4727.A.3.c.i–v''.

2. For Checklist 214, the following corrections should be made:

a. The citation ''2245.C.1.b.'' is corrected to read ''2245.C.2''.

b. The citation ''2515.E.2'' is corrected to read ''2515.D.''.

c. The citation ''4903.B.b.i–iv'' is corrected to read ''4903.B.3.b.i–iv''.

d. The citation ''4901.D.1.a.iii(d)'' is corrected to read ''4909.D.1.a.iii(d)''.

e. The citation ''4901.Table 7'' is corrected to read ''4909.Table 7''.

III. Incorporation-by-Reference

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What is the history of codification of Louisiana's hazardous waste management program?

The EPA incorporated by reference Louisiana's then authorized hazardous waste management program effective March 16, 1998 (62 FR 67578), and October 4, 2010 (75 FR 47223).

In this document, the EPA is revising Subpart T of 40 CFR part 272 to include the authorization revision actions effective July 20, 2009 (74 FR 23645) and August 23, 2011 (76 FR 37021.

C. What codification decisions have we made in this rule?

The purpose of this **Federal Register** document is to codify Louisiana's base hazardous waste management program and its revisions to that program. The EPA provided notices and opportunity for comments on the Agency's decisions to authorize the Louisiana program, and the EPA is not now reopening the decisions, nor requesting comments, on the Louisiana authorizations as published in the **Federal Register** notices specified in Section I.F of this document.

This document incorporates by reference Louisiana's hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying Louisiana's authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the Louisiana hazardous waste management program.

The EPA is incorporating by reference the Louisiana authorized hazardous waste management program in subpart T of 40 CFR part 272. Section 272.951 incorporates by reference Louisiana's authorized hazardous waste statutes and regulations. Section 272.951 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of Louisiana's codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Louisiana procedural and enforcement authorities. Section 272.951(c)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What state provisions are not part of the codification?

The public needs to be aware that some provisions of Louisiana's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules adopted by Louisiana but for which the State is not authorized;

(3) Unauthorized amendments to authorized State provisions; and

(4) Other new unauthorized State requirements.

State provisions that are ''broader in scope'' than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.951(c)(3) lists the Louisiana regulatory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. ''Broader in scope'' provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Additionally, Louisiana's hazardous waste regulations include amendments which have not been authorized by the EPA. Since the EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by the EPA include amendments to previously authorized State regulations as well as certain Federal rules and new State requirements.

Federal rules Louisiana has adopted but is not authorized for include those published in the **Federal Register** on August 8, 1986 (51 FR 28664); December 1, 1987 (52 FR 45788); and April 12, 1996 (61 FR 16290). In those instances where Louisiana has made unauthorized amendments to previously authorized sections of State code, the EPA is identifying in 40 CFR 272.951(c)(4) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by the EPA. Those unauthorized portions of the State regulations are not Federally enforceable. Thus, notwithstanding the language in Louisiana hazardous waste regulations incorporated by reference at 40 CFR 272.951(c)(1), the EPA will only enforce those portions of the State regulations that are actually authorized by the EPA. For the convenience of the regulated community, the actual State regulatory text authorized by the EPA for the citations listed at 272.951(c)(4) (i.e., without the unauthorized amendments) is compiled as a separate document, *Addendum to the EPA Approved Louisiana Regulatory Requirements Applicable to the Hazardous Waste Management Program, August 2011.* This document is available from EPA Region 6, Sixth Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533, and also Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, phone number (225) 219–3559.

State regulations that are not incorporated by reference in this rule at 40 CFR 272.951(c)(1), or that are not listed in 40 CFR 272.951(c)(2) (''legal basis for the State's implementation of the hazardous waste management program''), 40 CFR 272.951(c)(3) (''broader in scope'') or 40 CFR 272.951(c)(4) (''unauthorized state amendments''), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What will be the effect of federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by the EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including

authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This rule incorporates by reference Louisiana's authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of Louisiana's voluntary participation in the EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective September 11, 2012.

List of Subjects in 40 CFR Parts 271 and 272

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 15, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under part 271 to the State of Louisiana for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows.

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.951 to read as follows:

§ 272.951 Louisiana state-administered Program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Louisiana final authorization for the following elements as submitted to EPA in Louisiana's base program application for final authorization which was approved by EPA effective on February 7, 1985. Subsequent program revision applications were approved effective on January 29, 1990, October 25, 1991 as corrected October 15, 1991; January 23, 1995 as corrected April 11, 1995; March 8, 1995; January 2, 1996; June 11, 1996, March 16, 1998, December 22, 1998, October 25, 1999, November 1, 1999, April 28, 2000, March 5, 2001, February 9, 2004, August 9, 2005, January 12, 2007, October 15, 2007, July 20, 2009, October 4, 2010,

August 23, 2011, and September 11, 2012.

(b) The State of Louisiana has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The Louisiana statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Louisiana regulations that are incorporated by reference in this paragraph from the Office of the State Register, P.O. Box 94095, Baton Rouge, LA 70804–9095; Phone number: (225) 342–5015; Web site: *http://doa.louisiana.gov/osr/lac/lac.htm.* The statutes are available from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164 0526; Phone: 1–800–328–4880; Web site: *http://west.thomson.com.* You may inspect a copy at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (Phone number (214) 665–8533), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(i) The binder entitled ''EPA Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program'', dated August 2011.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Louisiana Statutes Annotated, Revised Statutes, 2000 Main Volume (effective August 15, 1999), Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 2000: Chapter 1, Sections 2002, 2013, 2014.2, 2020, 2021, 2022.1(B), 2023, 2024; Chapter 2, Sections 2026 through 2029, 2033.A–D; Chapter 2–A, Section 2050.8; Chapter 9, Sections 2172, 2174, 2175, 2181, 2183.1.B, 2183.2, 2184.B, 2187, 2188.A and C, 2189.A and B, 2190.A–D, 2191.A–C, 2192, 2193, 2196, 2199, 2200, 2203.B and C, 2204.A(2), A(3) and B; Chapter 13, Sections 2294(6), 2295.C; Chapter 16, Section 2369.

(ii) Louisiana Statutes Annotated, Revised Statutes, 2010 (effective August 15, 2009) Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Chapter 2, 2011.A(1), 2011.B and C, 2011.D (except 2011.D(4), (10)–(12), (16), (19), (20), (23) and (25)), 2011.E–G, 2012, 2014.A (except 2014.A.3), 2017, 2019.A–C, 2022.A (except the first sentence of 2022.A(1)), 2022.B and .C, 2025 (except 2025.D, .F(3), .H and .K); Chapter 3, Sections 2054.B(1), 2054.B(2)(a); Chapter 9, Sections 2180.A–C, 2183.C, and .F–.H, 2186.A–C; Chapter 18, Section 2417.A.

(iii) Louisiana Administrative Code, Title 33, Part I, Office of The Secretary Part I, Subpart 1: Departmental Administrative Procedures: Chapter 5, Sections 501 through 511, effective October 20, 2005; Chapter 7, Section 705, effective October 20, 2006; Chapter 19, Sections 1901 through 1909, effective October 20, 2005; Chapter 23, Sections 2303 through 2309, effective October 20, 2009.

(iv) Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Louisiana Hazardous Waste Regulations, revised as of December 31, 2009: Chapter 1, Sections 101, 107.A.–C; Chapter 3, Sections 301, 311.A, 311.C, 315 introductory paragraph, 323.B.3; 323.B.4.d and e; Chapter 5, Section, 503; Chapter 7, Sections 703, 705, 707, 709 through 721; and Chapter 22, Sections 2201.A, 2201.E, 2201.F.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Louisiana Statutes Annotated, Revised Statutes, 2000 Main Volume (effective August 15, 1999), Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 2000: Chapter 9, Sections 2178 and 2197.

(ii) Louisiana Statutes Annotated, Revised Statutes, 2010 (effective August 15, 2009) Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Chapter 2, Sections 2014.B and D.

(iii) Louisiana Administrative Code, Title 33, Part I, Office of The Secretary Part I, Subpart 1: Departmental Administrative Procedures: Chapter 19, Section 1911, effective October 20, 2009.

(iv) Louisiana Administrative Code, Title 33, Part V, Hazardous Waste And Hazardous Materials, Louisiana Hazardous Waste Regulations, revised as of December 31, 2010: Chapter 1, Section, 108.G.5; Chapter 3, Section 327; Chapter 11, Sections 1101.G and 1109.E.7.f ; Chapter 13, Section 1313; Chapter 51.

(4) *Unauthorized State Amendments.* (i) Louisiana has adopted but is not authorized to implement the HSWA rules that are listed in the Table in lieu of the EPA. The EPA will enforce the Federal HSWA standards for which Louisiana is not authorized until the State receives specific authorization from EPA.

Federal requirement	**Federal Register** reference	Publication date
Exports of Hazardous Waste (HSWA)	51 FR 28664	August 8, 1986.
HSWA Codification Rule 2: Post-Closure Permits (HSWA)	52 FR 45788	December 1, 1987.
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA)	61 FR 16290	April 12, 1996.

(ii)(A) The following authorized provisions of the Louisiana regulations include amendments published in the Louisiana Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Louisiana hazardous waste regulations incorporated by reference at paragraph (c)(1)(i) of this section, EPA will enforce the State provisions that are actually authorized by EPA. The effective dates of the State's authorized provisions are listed in the following Table.

State provision	Effective date of authorized provision
LAC 1111.B.1.c	March 20, 1984.
LAC 1113	March 20, 1984.
LAC 4407.A.12	March 20, 1984.

(B) The actual State regulatory text authorized by EPA (i.e., without the unauthorized amendments) is available as a separate document, *Addendum to the EPA-Approved Louisiana Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, August, 2011.* Copies of the document can be obtained from U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202 also Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Louisiana, signed by the EPA Regional Administrator on June 8, 2011 is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of Louisiana on December, 13, 1996 and revisions, supplements and addenda to that Statement dated January 13, 1998, January 13, 1999, January 27, 1999, August 19, 1999, August 29, 2000, October 17, 2001, February 25, 2003, October 20, 2004, December 19, 2005, September 5, 2006, October 9, 2008, and January 14, 2010 are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272 is amended by revising the listing for ''Louisiana'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Louisiana

The statutory provisions include:

Louisiana Statutes Annotated, Revised Statutes, 2000 Main Volume (effective August 15, 1999), Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 2000: Chapter 2, Section 2022.1(A); Chapter 8, Section 2153(1); Chapter 9, Sections 2173 (except 2173(9)), 2183.1.A, 2184.A, 2188.B, 2189.C, 2202, 2203.A, 2204.A(1) and C; Chapter 13, Sections 2295.A and .B.

Louisiana Statutes Annotated, Revised Statutes, 2010 (effective August 15, 2009) Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Chapter 1, Sections 2003, 2004 introductory paragraph, 2004(2)–(4), 2004(7)–(10), 2004(13), 2004(14) (except 2004(14)(b)–(d)), 2004(15), 2004(18); Chapter 2, Section 2022.A(1), first sentence; Chapter 9, Sections 2183.A, B, D, E, and I; Chapter 18, Section 2417.E(5).

Copies of the Louisiana statutes that are incorporated by reference are available from published by West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164–0526; Phone: 1–800–328–4880; Web site: *http://west.thomson.com.*

The regulatory provisions include:

Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Louisiana Hazardous Waste Regulations, Part V, Subpart 1: Department Of Environmental Quality—Hazardous Waste, revised as of December 31, 2009 (unless otherwise specified):

Chapter 1—General Provisions And Definitions, Sections 103, 105, 108 (except G.5), 109 (except ''Competent Authorities'', ''Concerned Countries'', the two occurrences of ''Consignee'', ''Country of Transit'', ''EPA Acknowledgement of Consent'', ''Exporting Country'', ''Importing Country'', ''Notifier'', ''Organization for Economic Cooperation and Development (OECD) Area'', ''Primary Exporter'', ''Receiving Country'', ''Recognized Trader'', ''Recovery Facility'', ''Recovery Operations'', ''Transfrontier Movement'', ''Transit Country''), 110 (except 110.D.2, .E.2, .F.2, .G.1 and .G.2), 111;

Chapter 3—General Conditions for Transfer Storage and Disposal Facility Permits, Sections 303, 305 (except 305.F and 305.G), 307, 309, 311 (except 311.A and .C), 313, 315.A–.D, 317, 319, 321.A (except the phrase ''in accordance with LAC 33.I.Chapter 15''), 321.B and .C, 322 (except 322.D.1.g), 323 (except 323.B.3, .B.4.d and .B.4.e), 325, 329;

Chapter 5—Permit Application Contents, Sections 501, 505 through 516, 517 (except the following phrases in 517.V: ''or 2271, or a determination made under LAC 33:V.2273,'' and, ''or a determination''), 519 through 528, 529 (except 529.E), 530 through 536, 537 (except 537.B.2.f and .B.2.l), 540 through 699;

Chapter 7—Administrative Procedures for Treatment Storage and Disposal Facility Permits, Sections 701, 706, 708;

Chapter 11—Generators, Sections 1101 (except 1101.B and .G), 1103, 1105, 1107 (except 1107.D.5), 1109 (except 1109.E.3 and .E.7.f), 1111.A, 1111.B.1 introductory paragraph (except the phrase ''to a treatment, storage, or disposal facility within the United States''), 1111.B.1.a.–.c, 1111.B.1.d (except the phrase ''within the United States''), 1111.B.1.e (except the phrase ''within the United States''), 1111.B.1.f–.h, 1111.B.2 (except the phrase ''for a period of at least three years from the date of the report'' and the third and fourth sentences), 1111.C–.E, 1113, 1121, 1199 Appendix A;

Chapter 13—Transporters, Sections 1301 (except 1301.F), 1303, 1305, 1307.A introductory paragraph (except the third sentence), 1307.B, 1307.C (except the last sentence), 1307.D, 1307.E (except the phrase ''and, for exports, an EPA Acknowledgment of Consent'' at .E.2), 1307.F (except the phrase ''and, for exports, an EPA Acknowledgment of Consent'' at 1307.F.2), 1307.G (except .1307.G.4), 1307.H, 1309, 1311, 1315 through 1323;

Chapter 15—Treatment, Storage and Disposal Facilities, Sections 1501 (except 1501.C.3), 1503 through 1515, 1516 (except 1516.B.4), 1517 through 1529, 1531 (except 1531.B), 1533, 1535;

Chapter 17—Air Emission Standards, Sections 1701 through 1799, Appendix Table 1;

Chapter 18—Containment Buildings, Sections 1801, 1802, 1803, (except 1803.B.2);

Chapter 19—Tanks, Sections 1901 through 1907, 1909 (except 1909.D), 1911 through 1921;

Chapter 20—Integration With Maximum Achievable Control Technology (MACT), Section 2001;

Chapter 21—Containers, Sections 2101 through 2119;

Chapter 22—Prohibitions on Land Disposal, Sections 2201.B–.D, 2201.G (except 2201.G.3), 2201.H, 2201.I, 2203.A (except ''Cone of Influence,'' ''Confining Zone,'' ''Formation,'' ''Injection Interval,'' ''Injection Zone,'' ''Mechanical Integrity,'' ''Transmissive Fault or Fracture,'' ''Treatment,'' ''Underground Source of Drinking Water''), 2203.B, 2205, (except the phrase ''or a determination under LAC 33:V.2273,'' in 2205.D), 2207, 2208, 2209 (except the phrase ''or a determination under LAC 33:V.2273,'' in 2209.D.1), 2211, 2213, 2215, 2216 (except the phrase ''or 2271'' in 2216.E.2), 2218 (except the phrase ''or 2271'' in 2218.B.2), 2219, 2221.D–.F, 2223, 2227 (except 2227.B), 2230, 2231.G–.M, 2233, 2236, 2237, 2245 (except 2245.J and .K), 2246, 2247 (except 2247.G and .H), 2299 Appendix (except 2299 Tables 4 and 12);

Chapter 23—Waste Piles, Sections 2301 through 2313, 2315 (except the word ''either'' at the end of the introductory paragraph, the word ''or'' at the end of 2315.B.1, and .B.2), 2317;

Chapter 24—Hazardous Waste Munitions and Explosives Storage, Sections 2401 through 2405;

Chapter 25—Landfills, Sections 2501 through 2523;

Chapter 26—Corrective Action Management Units and Temporary Units, Sections 2601 through 2607;

Chapter 27—Land Treatment, Sections 2701 through 2723;

Chapter 28—Drip Pads, Sections 2801 through 2807, 2809 (except the word ''either'' at the end of 2809.B introductory paragraph, the word ''or'' at the end of 2809.B.1, and .B.2);

Chapter 29—Surface Impoundments, Sections 2901 through 2909, 2911 (except the word ''either'' at end of 2911.B introductory paragraph and 2911.B.1), 2913 through 2919;

Chapter 30—Hazardous Waste Burned in Boilers and Industrial Furnaces, Sections 3001 through 3007, 3009 (except 3009.F), 3011 through 3025, 3099 Appendices A through L;

Chapter 31—Incinerators, Sections 3101 through 3121;

Chapter 32—Miscellaneous Units, Sections 3201, 3203, 3205, 3207 (except 3207.C.2);

Chapter 33—Groundwater Protection, Sections 3301 through 3321, 3322 (except 3322.D), 3323, 3325;

Chapter 35—Closure and Post-Closure, Sections 3501 through 3505, 3507 (except 3507.B), 3509 through 3519, 3521 (except 3521.A.3), 3523 through 3527;

Chapter 37—Financial Requirements 3701, 3703, 3705 (except the last sentence in 3705.D), 3707 through 3719;

Chapter 38—Universal Wastes, Sections 3801 through 3811, 3813, (except ''Mercury-containing Lamp''), 3815 through 3833, 3835 (except the phrase ''other than to those OECD countries * * * requirements of LAC 33:V.Chapter 11.Subchapter B),''), 3837 through 3855, 3857 (except the phrase ''other than to those OECD countries * * * requirements of LAC 33:V.Chapter 11.Subchapter B),''), 3859 through 3869, 3871.A introductory paragraph (except the phrase ''other than to those OECD countries * * * requirements of LAC 33:V.Chapter 11.Subchapter B''), 3871.A.1–.2, 3873 through 3877, 3879 (except 3879.B), 3881, 3883;

Chapter 40—Used Oil, Sections 4001 through 4093;

Chapter 41—Recyclable Materials, Sections 4101, 4105 (except 4105.A.1.a.i and ii, 4105.A.4), 4139, 4141, 4143 (except the word ''and'' at end of 4143.B.4, 4143.B.5), 4145;

Chapter 42—Conditional Exemption for Low-Level Mixed Waste Storage and Disposal, Sections 4201 through 4243;

Chapter 43—Interim Status, Sections 4301.A, 4301.B (June 1995), 4301.B, 4301.C (June 1995), 4301.C –.I, 4302 through 4371, 4373 (except the last two sentences ''The administrative authority * * * as demonstrated in accordance with LAC 33:I.Chapter 13.'' in 4373.K.1), 4375, 4377, 4379 (except 4379.B), 4381 through 4387, 4389 (except 4389.C), 4391 through 4397, 4399 (except 4399.A.6.i), 4401 through 4413, 4417 through 4456, 4457.A (except 4457.A.2), 4457.B (except the phrase: ''If the owner or operator * * * he must'' in the introductory paragraph), 4457.C, 4459 through 4474, 4475 (except the word ''either'' at the end of 4475.B introductory paragraph, the word ''or'' at the end of 4475.B.1, and 4475.B.2); 4476 through 4499, 4501 (except 4501.D.3), 4502 through 4703, 4705 (except the word ''either'' at the end of 4705.B introductory paragraph, the word ''or'' at the end of 4705.B.1, and 4705.B.2); 4707 through 4739;

Chapter 49—Lists of Hazardous Wastes, Sections 4901, 4903, 4907, 4909, 4911 through 4915, 4999 Appendices C through E;

Chapter 53—Military Munitions 5301 through 5311;

Louisiana Administrative Code, Title 33, Part VII, Solid Waste, as amended through June 20, 2000; Sections 301.B.1, 315.N, 521.H.

Copies of the Louisiana Administrative Code as published by the Office of the State Register, P.O. Box 94095, Baton Rouge, LA 70804–9095; Phone: (225) 342–5015; Web site: *http://doa.louisiana.gov/osr/lac/lac.htm.*

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 370

[EPA–HQ–SFUND–2010–0763; FRL–9674–1]

RIN 2050–AG64

Hazardous Chemical Reporting: Revisions to the Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is adding some new data elements and revising some existing data elements on the Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II) under Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). State and local implementing agencies requested that EPA add the new data elements since the additional information would be useful to develop or modify their community emergency response plans. EPA is also revising some existing data elements in the chemical reporting section of the Tier II inventory form to make reporting easier for facilities and make the form more user-friendly for state and local officials.

DATES: This rule becomes effective on January 1, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2010–0763. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 *http://www.regulations.gov/* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, Mail Code 5104A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002; telephone number: (202) 564–8019; fax number: (202) 564–2625; email address: *jacob.sicy@epa.gov.* You may also contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or (703) 412–9810 (in the Washington, DC metropolitan area). The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672 or (703) 412–3323 (in the Washington, DC metropolitan area). You may wish to visit the Office of Emergency Management (OEM) Internet Web site at *www.epa.gov/emergencies/content/epcra.*

SUPPLEMENTARY INFORMATION: Here are the contents of today's preamble.

I. General Information
- A. Who is affected by this final rule?
- B. What is the statutory authority for this final rule?
- C. What is the background for this final rule?
- D. Summary of Proposed Rule

II. Summary of This Action

III. Response to Comments on the Proposed Rule
- A. General Comments Supporting the Proposed Rule
- B. Suggestions for Finalizing Changes to the Tier I and Tier II Inventory Forms
- C. General Comments Opposing the Proposed Rule
- D. Comments on Specific Data Elements Proposed for the Tier I and Tier II Inventory Forms
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  - 2. Number of Full-Time Employees
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  - 4. Facility Phone Number
  - 5. Applicability of EPCRA Section 302 and Clean Air Act Section 112(r)
  - 6. Identification Numbers Under the Toxic Release Inventory and Risk Management Program
  - 7. Facility's Parent Company Contact Information
  - 8. Parent Company Email Address
  - 9. Facility Emergency Coordinator
  - 10. Tier I and Tier II Information Contacts
  - 11. Email Addresses of Owner or Operator and of Emergency Contacts
  - 12. Range Codes and Ranges for Reporting Maximum Amount and Average Daily Amount

IV. Revisions Specific to the Tier II Inventory Form
- A. Chemical Information—Pure Chemical and Mixtures
- B. Storage Types and Conditions

V. Additional Concerns and Suggestions

VI. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive

Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Energy Effects
I. National Technology Transfer and Advancement Act (''NTTAA'')
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Who is affected by this final rule?

Entities that would be affected by this final rule are those organizations and facilities subject to section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and its implementing regulations found in 40 CFR part 370. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 370. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What is the statutory authority for this final rule?

This final rule is being issued under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), (SARA). The Agency also relies on EPCRA section 328 for general rulemaking authority, as well as CAA section 112(r).

C. What is the background of this final rule?

Title III of SARA (EPCRA) establishes authorities for emergency planning and preparedness, emergency release notification reporting, community right-to-know reporting, and toxic chemical release reporting. It is intended to encourage State and local planning and preparedness for releases of extremely hazardous substances (EHSs) and to provide the public, local governments, fire departments, and other emergency response officials with information concerning potential chemical hazards and risks present in their communities. The implementing regulations for emergency planning, emergency release notification, and the chemicals subject to these regulations are codified in 40 CFR part 355. The implementing regulations for community right-to-know reporting (or hazardous chemical reporting) are codified in 40 CFR part 370.

Under the emergency planning provisions of EPCRA section 302, codified in 40 CFR part 355, a facility is required to provide a one-time notification to the State Emergency Response Commission (SERC) and the local emergency planning committee (LEPC) if the facility has any EHSs present at the site in excess of its threshold planning quantity (TPQ). EHSs and their TPQs are listed in 40 CFR part 355, Appendix A and B. The emergency planning notification occurred approximately seven months after the law was passed for facilities that existed at that time. Any new facilities that became subject to the notification requirement after that date are required to comply as provided in 40 CFR part 355. Facilities that are currently covered by these regulations are required to report only changes occurring at the facility that may be relevant to emergency planning. LEPCs use this information obtained from facilities to develop emergency response plans, as required under EPCRA section 303. Section 303 also requires LEPCs to review these plans annually and to adjust them accordingly for changes that have occurred in their community.

On the other hand, the reporting requirements under the community right-to-know provisions of EPCRA sections 311 and 312 are on-going obligations. These requirements apply to owners and operators of facilities that are required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical defined under the Occupational Safety and Health Act (OSHA) Hazard Communication Standard (HCS). If the hazardous chemical is present at or above the reporting thresholds specified in 40 CFR part 370, the facility owner or operator is required to submit a MSDS or a list that contains the hazardous chemical under EPCRA section 311. Under EPCRA section 312, if a hazardous chemical is present at or above the reporting threshold specified in 40 CFR part 370, the facility owner or operator is required to submit an emergency and hazardous chemical inventory form (Tier I or Tier II) to the SERC, LEPC and the local fire department by March 1 annually.

As required by EPCRA section 312(g), EPA published two emergency and hazardous chemical inventory reporting forms, Tier I and Tier II. The Tier I inventory form requires facilities to report minimum information on the general types and locations of hazardous chemicals present at the facility. The Tier II inventory form requires facilities to report specific information on the amounts and locations of hazardous chemicals present at the facility. The information required under Tier I and Tier II inventory forms can be found in 40 CFR 370.41 and 370.42. Although the forms and their instructions were removed from the code of federal regulations on November 3, 2008 (73 FR 65452), these inventory forms have been and will continue to be available on the EPA Web site at *www.epa.gov/emergencies.*

EPCRA section 312(a)(2) states that the owner or operator of a facility shall submit the Tier I inventory form annually by March 1 to the SERC, LEPC and the local fire department with jurisdiction over the facility. However, section 312(e) states that, upon request by their SERC, LEPC or the fire department with jurisdiction over the facility, the owner or operator of a facility shall submit the Tier II inventory form. Currently, all states require facilities to submit the federal Tier II inventory form or the state equivalent to the Tier II inventory reporting form. The Tier I inventory form is no longer accepted by any State.

In addition to the information obtained under EPCRA section 302, LEPCs use the information provided on the facility's annual Tier II inventory form to update the emergency response plan for their community. States were always given the flexibility to implement EPCRA, as appropriate, for their community to meet the goals of EPCRA, which is to prepare for and respond to releases of EHSs and to provide the public with information on potential chemical risks in their communities. This flexibility includes adding more chemicals, setting lower reporting thresholds and creating a reporting form or format that includes more information than the federal reporting requirements. Some States developed their own inventory reporting form, including electronic reporting and certification. Other States use the federal Tier II form or Tier 2 Submit, the electronic reporting software developed by EPA.

Although EPCRA lacks an explicit reference to Indian tribes or to the implementation of EPCRA on Indian lands, EPA published a final rule on July 26, 1990 (55 FR 30632) to designate Indian Tribes as the implementing authority for Title III on all lands within ''Indian Country.'' Accordingly, the chief executive officer of the Tribe is

responsible for the functions of the State governor under EPCRA section 301, including the appointment of an emergency response commission for the Tribe. This tribal commission is responsible for carrying out the duties of the SERC, including designation of local emergency planning districts and the appointment of an emergency planning committee for each district. The district emergency planning committee will carry out the same functions as a LEPC in the local emergency planning districts designated by a SERC. Also, for facilities located within Indian country, the fire department run by the Tribe will be the fire department designated to receive section 311 and 312 reports. Any tribe may enter into a cooperative agreement with the state(s) within which its lands are located to allow the State to carry out EPCRA statutory requirements. Indian tribes may also enter into cooperative agreements with each other to achieve a workable EPCRA program.

D. Summary of Proposed Rule

As required under EPCRA section 312(g), EPA published the Tier I and Tier II inventory forms, which were revised in July 1990. EPA then published a proposed rule on June 8, 1998 (63 FR 31268) to streamline the EPCRA reporting requirements for facilities and to provide flexibility to state and local agencies to implement EPCRA as needed for their community. During the comment period of the 1998 rule, several state and local agencies suggested that EPA add some additional data elements to the Tier I and Tier II inventory forms which would improve emergency planning and response.

EPA also received suggestions from members of the National Association of SARA Title III Program Officials (NASTTPO) on improving the Tier II inventory form. NASTTPO members include SERCs, Tribal Emergency Response Commissions (TERCs), LEPCs and other emergency management and response officials. NASTTPO holds meetings twice a year at which EPA participates and provides regulatory and policy updates on EPCRA and other preparedness and prevention activities. During these meetings, these officials raised concern about the lack of certain information on the Tier II inventory form which hinders effective emergency planning and response. Some of the states already require some of this information on their state equivalent Tier II inventory form, but other states that use the federal Tier II inventory form requested that EPA include these data elements.

Based on these comments and requests, EPA proposed on August 8, 2011 (76 FR 48093) to add some new data elements to the facility identification and contact information sections of the Tier I and Tier II inventory forms, as well as to revise some existing data elements to the chemical reporting section of the Tier II inventory form. The comment period closed on October 7, 2011. EPA received 28 comments.[1]

II. Summary of This Action

This final rule revises the Tier I and Tier II inventory forms by adding some mandatory data elements and some optional data elements in the facility identification and contact information sections of both forms.[2] This final rule is also revising some existing data elements in the chemical reporting section of the Tier II inventory form. Specifically:

- EPA proposed to add the facility phone number, latitude and longitude, number of full-time employees, and the facility identification numbers assigned under the toxic release inventory (TRI) program and the risk management program. This final rule is requiring facilities to report the latitude and longitude and the identification numbers assigned under TRI and the risk management program. Also, the Tier I and II inventory forms will require facilities to indicate if the location where the hazardous chemicals are stored is manned or unmanned. In addition, instead of requiring facilities to report the number of full-time employees, EPA is requiring facilities to report the maximum number of occupants that may be present at the facility at any one time. Finally, EPA decided not to require the facility phone number on the Tier I and Tier II inventory forms, but will include it as an optional data element on the revised inventory forms.
- EPA proposed to add contact information for the facility's parent company, facility emergency coordinator and contact information for the contents of the Tier I and Tier II inventory forms. In addition, EPA proposed to add the email addresses for the owner or operator of the facility and the emergency contact(s). This final rule is requiring facilities to provide contact information for the facility emergency coordinator, Tier I and Tier II contact information, as well as the email addresses of the owner or operator and emergency contact(s). In addition, facilities are required to provide facility emergency coordinator contact information for facilities subject to EPCRA section 302. However, after reviewing the comments, EPA decided not to require the parent company contact information on the Tier I and Tier II forms, but will include it as an optional data element on the revised inventory forms.
- This final rule is adding data elements to indicate if the facility is subject to EPCRA section 302 and if the facility is subject to Clean Air Act (CAA) section 112(r), also known as the Risk Management Program. Page one of the revised Tier II inventory form would also include the table of range codes and amounts for reporting maximum amount and average daily amount.[3]
- This final rule is adding separate data fields for reporting pure chemical and mixtures in the chemical reporting section of the Tier II inventory form, as proposed. In addition, this final rule requires facilities to provide a description for the storage types and conditions rather than reporting codes, as proposed.
- Finally, as suggested by some commenters, this final rule revises the Tier II inventory form for facilities to report any additional State or local reporting requirements or to voluntarily report hazardous chemicals below the reporting thresholds.

III. Response to Comments on the Proposed Rule

EPA received comments from various organizations, including industry, NASTTPO, as well as other state and local agencies. This section provides a summary of major comments received and EPA's responses, as well as EPA's final decision on the data elements proposed. A detailed summary of the comments and EPA's responses are in the Response to Comments document, a copy of which is in the docket for this rulemaking.

A. General Comments Supporting the Proposed Rule

State and local agencies, members of NASTTPO, and a number of industry representatives supported most of the changes proposed to the Tier I and Tier II inventory forms. One commenter from industry stated that the proposed

[1] Although EPA proposed to add some new data elements to the Tier I inventory form, all comments submitted addressed the Tier II inventory form since none of the states currently accept the Tier I inventory form.

[2] Even though none of the states currently accept the Tier I inventory form, EPA is still making changes to this form since EPCRA section 312 requires EPA to publish both Tier I and Tier II inventory forms.

[3] Prior to the proposed rule, only the Tier I inventory form included this table for range codes and amounts.

changes are valuable to emergency responders, but not overly burdensome to the regulated community. This commenter also applauded EPA's effort to simplify and align the Tier I and Tier II inventory forms to stakeholder input. Some commenters from industry also provided suggestions for finalizing some of the data elements. Members of NASTTPO stated that they are in favor of the proposed changes since the new data elements will provide valuable information to communities, emergency planners, emergency responders and LEPCs. These officials also stated that the burden associated with these changes appears to be trivial, and, in fact, making these changes will reduce the burden on facilities and LEPCs in collecting information.

EPA's Response: EPA agrees with these comments.

B. Suggestions for Finalizing Changes to the Tier I and Tier II Inventory Forms

As stated earlier in this preamble, the comments and suggestions received were for the Tier II inventory form since the Tier I inventory form is no longer accepted by any State. EPA received a few suggestions for finalizing some of the data elements on the Tier II inventory form.

One commenter stated that the current form contains a check box for optional reporting. However, the proposed revision does not include this check box. The optional reporting check box allows a facility to inform emergency response agencies of chemicals which are on site, yet are below the applicable reporting threshold. The commenter further stated that their facility has utilized this check box on multiple submissions and that is their company's policy—that is, to mitigate exposing a first responder to an uninformed chemical risk. The commenter, therefore, requested that EPA keep the optional reporting check box to the Tier II inventory form.

Another commenter stated that if the Agency concludes to add new data elements to the Tier II inventory form, the Agency should allow a minimum of one full reporting cycle before requiring the new information to allow sufficient time for entities to make necessary changes to any internal databases and to gather the information required.

EPA's Response: The optional box located on the right hand side of the storage codes and locations column on the Tier II inventory form is for facilities to indicate if the information on a specific hazardous chemical is identical to that submitted last year. The form did not include an optional box to indicate if chemicals reported on-site are below the applicable reporting threshold as stated by the commenter. For facilities that wish to provide information voluntarily on hazardous chemicals below the reporting thresholds or to provide additional state or local requirements, the Agency is adding data fields in the chemical reporting section of the revised Tier II inventory form. However, facilities will not be required to fill in these data fields, but it is being provided if facilities voluntarily want to include this information. The revised Tier II inventory form also will continue to provide the optional box for facilities to indicate if the information is identical to the information submitted last year.

The Agency also agrees with the commenter that regulated facilities need sufficient time to comply with any new requirements to the Tier II inventory form. State and local agencies also requested sufficient time to modify the State reporting format. Therefore, the Agency has decided to require facilities to comply with the new requirements on the Tier II inventory form starting reporting year 2013, which is due by or on March 1, 2014 to the SERC, LEPC and the fire department with jurisdiction over the facility. Your State may have more stringent requirements for reporting and for submission of the Tier II inventory form or the State reporting form or format. EPA suggests facilities contact their State for reporting requirements for that State.

C. General Comments Opposing the Proposed Rule

One commenter stated that some aspects of the proposed rule would exceed EPA's statutory authority under EPCRA sections 311 and 312 and create unnecessary burden. Another commenter stated that the Agency's proposed rule impermissibly blurs the legal distinctions between EPCRA section 302, EPCRA sections 311 and 312, and CAA section 112(r).

EPA's Response: The Agency disagrees with these comments. That is, adding the two check boxes for a facility to indicate whether it is subject to EPCRA section 302 or CAA section 112(r) is reasonable, authorized under EPCRA sections 302 and 328, as well as CAA section 112(r), and consistent with the purpose of EPCRA. As mentioned earlier in this preamble, LEPCs use the information reported on the Tier II inventory form to develop or update their emergency plan. If LEPCs could obtain this information annually, they would be able to include these facilities in their emergency plan. A basic tenet of EPCRA is to provide emergency response officials with sufficient information to carry out their duties, and the Agency believes that these two additional data elements will help such officials maintain the most effective and up-to-date emergency plans. Congress clearly remarked on the need for reporting when it adopted EPCRA:

> ''First, Congress recognizes a compelling need for more information about the Nation's exposure to toxic chemicals. * * * The reporting requirements, and the toxic release forms in particular, are intended to provide this national information. As a result, the reporting provisions in this legislation should be construed expansively to require the collection of the most information permitted under the statutory language. Any discretion to limit the amount of information reported should be exercised only for compelling reasons. A second major principle of this program is to make information regarding toxic release exposure available to the public, particularly to communities most affected.'' [4]

In addition, as explained further below, we do not believe that adding these data elements to the Tier II inventory form would create an unnecessary burden since facilities would already know if they are subject to reporting under EPCRA section 302 or CAA section 112(r).

The emergency planning notification requirement under EPCRA section 302 for EHSs present on-site is a one-time notification which was required for facilities in existence in 1987. Any facilities that became subject to this requirement after that date have been required to provide notification to the SERC and LEPC within 60 days (section 302(c)). Some facilities may not have been aware of this requirement, and therefore, providing continued awareness of this requirement would help emergency response planners.

Because of the one-time notification under EPCRA section 302, LEPCs currently depend on the information reported on the Tier II inventory form to develop or update emergency response plans or better coordinate the response plans between the facility and the community. Although section 303(d)(3) gives LEPCs the authority to request any information necessary to develop or implement their emergency response plans, these entities may not have enough resources to contact every facility in their community annually to update their plan. The new data element requesting if a facility is subject to the emergency planning notification under section 302 would alert LEPCs of the need to include facilities that are not

[4] A Legislative History of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), Committee Print, 132 Cong. Rec. H 9561 (1986) (statement of House Representative Edgar), at Vol. 6, page 5313 (1990).

included in their existing emergency response plan. Otherwise, LEPCs would need to contact each facility in their community annually, to update their plan as stated in EPCRA section 303(a).

Since LEPCs have limited resources (and the burden on the regulated community in providing this information on the Tier II inventory form is minimal), EPA believes that the LEPCs resources would be better spent in developing or updating the emergency response plans, rather than to contact each facility to determine if these facilities should be included in the community emergency response plan. Therefore, EPA believes that this data element should be included on the Tier II inventory form.

EPA also believes that the data element requesting if a facility is subject to the chemical accident prevention provisions under CAA section 112(r), also known as the Risk Management Program, is necessary. Some of the facilities regulated under EPCRA sections 311 and 312 are also subject to the provisions under CAA section 112(r), codified in 40 CFR part 68. All facilities regulated under CAA section 112(r) are required to coordinate their emergency response actions with the local emergency planning and response organizations (40 CFR 68.12). Some of these facilities are required to develop and implement an emergency response program for their facilities, which includes developing a plan for their employees to respond to any emergency at their facilities. These facilities are also required to coordinate their emergency response plan with the community emergency response plan developed under EPCRA section 303. This requirement would assist in ensuring that the facility and community planning efforts are coordinated, which will improve both plans, thereby facilitating effective response actions when releases occur. It is important for LEPCs, who are responsible for developing and implementing the emergency response plan for their community, to know which facilities have their own response program to respond to their emergencies or if LEPCs have to take additional measures to respond to any accidental releases.

These two data elements would provide LEPCs with the information they need to effectively plan or respond to emergencies without using any additional resources to survey each facility in their community as to whether they are subject to CAA section 112(r) or EPCRA section 302. Rather, they would use the information reported on the Tier II inventory form to contact these facilities for any additional information necessary to develop or update their emergency response plan required under EPCRA section 303(d)(3).

D. Comments on Specific Data Elements Proposed for the Tier I and Tier II Inventory Forms

As already noted, EPA had proposed to add new data elements to the Tier I and Tier II inventory forms. That is, in addition to the information currently required on the Tier I and Tier II inventory forms under the facility identification section, EPA proposed to add a few additional data elements that would provide more complete information on the facilities to the public and to the State and local agencies responsible for emergency planning and response. Specifically, EPA proposed to add the following data elements to the facility identification section of the Tier I and Tier II inventory forms: Facility phone number, latitude and longitude, number of full-time employees, and facility ID numbers provided under the TRI and the Risk Management Program, as well as to indicate if the facility is subject to EPCRA section 302 or CAA section 112(r). In addition to proposing the number of full-time employees, EPA requested comments on whether the form should require the number of occupants instead of the number of full-time employees.

In the facility contact information section of the Tier I and Tier II inventory forms, EPA proposed to add contact information for the facility's parent company, facility emergency coordinator, and for the person responsible for completing the information on the Tier I and Tier II inventory forms. In addition, although the forms already require owner or operator and emergency contact information, EPA proposed to add email addresses of these individuals.

For the chemical reporting section of the Tier I and Tier II inventory forms, EPA proposed to revise the range codes and the ranges (in pounds) for reporting maximum amount and average daily amount.

EPA also proposed to revise some existing data elements on the Tier II inventory form to include separate data fields for reporting pure chemicals and mixtures. Instead of reporting a code for storage types and conditions, EPA also proposed to delete the codes from the instructions to the Tier II inventory form and instead require facilities to provide a description for various types of storage and conditions.

EPA received comments from industry, NASTTPO and State and local agencies. EPA received support for most of the data elements from various organizations. While some commenters from industry opposed some of the data elements, at the same time, they offered suggestions for finalizing them. With respect to comments from members of NASTTPO, they strongly supported the addition of these data elements since these agencies are responsible for emergency planning and response and they will be using the information reported on the Tier II inventory forms. These state and local officials stated that since the Tier II inventory forms have become the default emergency planning information collection device used by most communities and LEPCs, the additional changes proposed are excellent and will be very useful in emergency planning. Some commenters stated that the Tier2 Submit software is already collecting most of the information that EPA has proposed.[5]

The following is a discussion of comments on the specific data elements and EPA's responses and final decision.

1. Latitude and Longitude

Comment: EPA received one comment opposing the addition of latitude and longitude, but the same commenter made suggestions for finalizing these data elements. In particular, the commenter argued that EPA proposed to add these data elements to the Tier I and Tier II inventory forms without articulating a rationale for doing so. The commenter also stated that the Tier II inventory form has long been used without this information, so it is unclear why EPA is requiring such information in addition to a street address of the facility. However, the same commenter stated that it is reasonable to require this information from facilities that do not have a proper street address, for which latitude and longitude are necessary to locate the facility.

EPA's Response: Since promulgation of the final rule published on October 15, 1987 (52 FR 38344), the instructions to the Tier I and Tier II inventory forms suggested that facilities that do not have a street address to report other identifiers, such as the latitude and longitude to describe the physical location of the facility. State and local

[5] Many states use Tier2 Submit software as their electronic reporting tool. Every year, some of these states request EPA to add some State required data elements to the software. Therefore, it is possible that many states already require some or all of the data elements that EPA has proposed. However, there are other states that adopt the federal reporting requirements and these states also requested that EPA include these additional data elements.

agencies have informed EPA that they often get some Tier II inventory forms with P.O. Box address or the address of the corporate office instead of the actual location of the facility. These agencies also informed EPA that some of the locations where hazardous chemicals are stored are unmanned or in rural areas. During an emergency, accurate information about the location of the facility is important to emergency responders so that these officials can respond in a timely manner and exercise evacuation and/or shelter-in place procedures. Latitude and longitude are also important for developing emergency response plans.

As stated by the members of NASTTPO, Tier II inventory forms have become the default emergency planning information collection device used by most communities. Therefore, EPA believes that this information is important for emergency planning and response and is being added to the Tier I and Tier II inventory forms.

2. Number of Full-Time Employees

In the proposed rule, EPA proposed to require that facilities report the number of full-time employees, but also requested comment on whether to require the number of occupants (as opposed to the number of full-time employees) on the Tier I and Tier II inventory forms. EPA received several comments opposing the addition of number of full-time employees, but offered some suggestions for number of occupants.

Comment: Commenters from the retail industry stated that they have part-time and full-time employees, as well as employees that work on weekends, holidays etc. Commenters from the utility and telecommunication industry stated that their substations or cell towers may be unmanned. Thus, these commenters stated that the number of full-time employees does not accurately represent the number of people that may be occupied at a facility at any given time since some facilities may be manned or unmanned, and may include full-time and part-time employees. Many of the facilities may also have contractors or vendors present on-site. Other commenters argued that requiring the number of full-time employees on the Tier II inventory form is not authorized by EPCRA sections 311 and 312 and that EPA has not explained its basis for collecting this information on the Tier II inventory form.

EPA's Response: EPA recognizes the commenters concerns on the Agency's proposal to require the number of full-time employees to be reported on the Tier I and Tier II inventory forms. The Agency proposed this data element so that LEPCs and other emergency response officials would get an idea of how many persons may be present at a facility at any one time for planning and response. EPA now realizes that the number of full-time employees at a facility may not benefit local emergency response or planning officials since it does not represent the number of people on-site at any time during an emergency. Nevertheless, it is important for emergency responders to know how many people may be present at a facility at any one time in order to respond during an emergency situation.

Therefore, the Agency is requiring facilities to estimate the maximum number of people that may be present at the facility at any one time rather than reporting number of full-time employees. LEPCs would be able to use this information to plan for evacuation or shelter-in place as they develop or update their emergency plan. (See next section for further discussion of this issue.)

3. Number of Occupants

Comment: One commenter stated that requiring facilities to list the number of occupants at a facility would be extremely problematic as the number of occupants may change on a daily basis. This requirement would be overly burdensome and may actually hinder emergency response efforts since this information would provide an inaccurate picture of the number of occupants in the facility on any given day.

EPA's Response: The Agency disagrees that requiring facilities to list the number of occupants would be problematic or burdensome. To plan for proper evacuation or shelter-in place, it is important for LEPCs and other emergency responders to have this information. Facilities, such as convention centers, theaters, stadium or other large gathering places would already know the maximum number of occupants that may be present at any one time. If such facilities are required to comply with section 312, they would be able to provide this information on their Tier II inventory form without any added burden.

Other facilities subject to EPCRA section 312 would need to estimate the maximum number of people that may be present at any one time, including employees, contractors, vendors etc. Facilities should also include persons that may be present for training or other events that facilities may host so that LEPCs and emergency response officials may be better prepared. In addition, if facilities submit a site plan with their inventory form, it would be helpful for state and local agencies (but not required) if facilities identify the buildings or locations where large numbers of people may gather for training or other events.

Therefore, EPA is adding the data element requiring facilities to estimate the maximum number of occupants that may be present at a facility at any given time rather than requiring facilities to report the number of full-time employees at a facility.

Comment: Another commenter requested that EPA clarify that if a building or complex is occupied by more than one entity, the Agency should only require reporting with regard to that portion of the building or complex that the reporting party controls, since there are many instances where a business occupies only a portion of a building and does not have access to or control over other portions of a building to provide the total number of employees or occupants. The Tier II submitter would be able to respond only regarding its own employees or occupants not all those that might be working in the building.

EPA's Response: The requirements of EPCRA sections 311 and 312 and its implementing regulations (40 CFR part 370) apply to the owner or operator of a facility that must prepare or have available a MSDS for each ''hazardous chemical'' as required by the Occupational Safety and Health Act (OSHA) of 1970.

The term ''facility'' is defined in EPCRA section 329 as ''*all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).*''

Although a building may be occupied by more than one tenant, each tenant may only be required to have an MSDS for the hazardous chemicals that are in its site. Therefore, the tenant is only required to report information related to its site, including the number of occupants and other information required on the Tier II inventory form.

4. Facility Phone Number

In addition to the mailing address of the facility currently required on the Tier I and Tier II inventory forms, EPA proposed to require that the facility's phone number be provided on the Tier I and Tier II inventory forms. A number of commenters opposed adding this data element.

Comment: One commenter argued that facilities only subject to EPCRA sections 311 and 312 should not be required to provide a telephone number of the facility or the data field should be marked ''optional'' since certain locations, such as a cell tower with a hut at its base with back-up power equipment may not be staffed at all times or may not be equipped with a telephone. Another commenter stated that the Agency should clarify what is meant by the data element ''facility phone number'' since manned facilities may have many phone numbers.

EPA's Response: EPA recognizes that some locations, such as a cell tower where hazardous chemicals may be stored could be unstaffed and therefore may not have a telephone number for that site. In addition, the Tier I and Tier II inventory forms already require the phone numbers of the owner or operator of the facility and emergency contacts, which should be sufficient to LEPCs and other officials to get in touch with the appropriate person(s) at a facility. For these reasons, EPA agrees with the commenter and is adding this data element as an ''optional'' element. For facilities that may want to provide the facility phone number, EPA suggests facilities provide the phone number for the main switchboard operator or any other number that State and local agencies or the public may want to use to obtain general information about the facility.

5. Applicability of EPCRA Section 302 and Clean Air Act Section 112(r)

To assist LEPCs to better coordinate their emergency plan and response procedures, EPA proposed data elements to indicate if the facility is subject to emergency planning notification under EPCRA section 302 or the provisions under CAA section 112(r), also known as the Risk Management Program.

Comment: One commenter stated that EPCRA sections 311 and 312 do not authorize requiring a facility to report whether it is subject to EPCRA section 302 or CAA section 112(r). The same commenter argued that if the Agency has such legal authority, we would not object to this proposed new data element, so long as the form makes unavoidably clear on its face which data elements are required only from a facility subject to one of those provisions.

EPA's Response: The Agency understands that not all facilities subject to EPCRA section 312 would also be subject to EPCRA section 302 and CAA section 112(r). As stated by members of NASTTPO, Tier II inventory forms have become the default for information used by LEPCs for emergency planning. Since facilities subject to EPCRA section 302 and CAA section 112(r) are required to participate or coordinate emergency planning and response, as explained in section III.C of this action, it is important for LEPCs to know which facilities are subject to the requirements under these two programs so LEPCs can obtain the additional information necessary for developing or updating their emergency plan annually. Thus, consistent with the Agency's response in section III.C of this Final Rule above, the Agency is adding these data elements to the Tier I and Tier II inventory forms. Facilities may check the ''yes'' box to indicate the facility is subject to these provisions or ''no'' if the facility is not.

(a) Subject to Emergency Planning Notification Under EPCRA Section 302

Comment: Members of NASTTPO supported this data element stating that of all the proposed changes, this one addresses the most critical concern. Continued awareness of facilities' EPCRA section 302 reporting obligation is necessary to ensure better coordination and planning.

Two commenters opposed this proposed data element. One commenter stated that it is not necessary to expand the Tier II inventory form to include the two proposed additional questions regarding whether the facility is subject to EPCRA section 302 and CAA section 112(r). The other commenter stated that the regulated community is already aware of the requirements under EPCRA section 302.

EPA's Response: We disagree with those commenters who opposed including these data elements on the Tier II inventory form. EPCRA section 302 is a one-time notification requirement that occurred in 1987 for facilities that were in existence at that time. Any facilities that became subject to this requirement since that time should have provided notification to the SERC and LEPC within 60 days. While EPA understands the regulated community may be aware of this reporting requirement and that most facilities may have provided this notification, nevertheless, it was a one-time notification, and facilities may have overlooked their reporting obligation under EPCRA section 303(d)(2), which is to notify LEPCs of any changes that may have occurred after the initial notification, which may include, but not be limited to, changes in facility personnel designated as emergency coordinator, emergency contacts, as well as other changes at the facility. Some facilities may not even be aware of this requirement. Requesting this information on the Tier II inventory form annually would alert facilities of this reporting obligation. If LEPCs obtain this information annually from all facilities required to comply under sections 302 and 303, it would ensure that all facilities are included in the emergency plan, which LEPCs are required to update annually.

(b) Subject to Chemical Accident Prevention Provisions Under Section 112(r) of the Clean Air Act (40 CFR part 68, Risk Management Program)

Comment: Members of NASTTPO supported this requirement, but suggested that EPA inform facilities that submitting a Tier II inventory form does not itself constitute compliance with the requirement under CAA section 112(r) to coordinate emergency response with LEPCs and local response agencies.

EPA's Response: The Agency agrees that submitting a Tier II inventory form indicating that the facility is subject to the provisions under CAA section 112(r) does not itself replace the requirement for facilities to coordinate emergency response actions with LEPCs. Facilities covered by CAA section 112(r) requirements must coordinate their emergency response program with their LEPCs, as discussed below, and as required by 40 CFR 68.12. Just submitting a Tier II inventory form would not substitute the requirement under 40 CFR 68.12.

As stated in section III.C of this action, some of the facilities regulated under EPCRA sections 311 and 312 are also subject to the chemical accident prevention provisions under CAA section 112(r), also known as the Risk Management Program codified in 40 CFR part 68. All facilities regulated under CAA section 112(r) are required to coordinate their emergency response actions with the local emergency planning and response organizations (40 CFR 68.12). Some of these facilities are required to develop and implement an emergency response program for their facilities, which includes developing a plan for their employees to respond to any emergency at their facility. These facilities are also required to coordinate their emergency response plan with the community emergency response plan developed under EPCRA section 303. This requirement would ensure that the facility and community planning efforts are coordinated, which will improve both plans, thereby facilitating effective response actions when releases occur.

For the reasons stated, EPA is adding these two data elements to the Tier I and Tier II inventory forms.

6. Identification Numbers Under the Toxic Release Inventory and Risk Management Program

EPA requested comments as to whether facilities should provide the identification numbers assigned under the TRI and Risk Management Program.

Comment: One commenter stated that the addition of these data elements provide very little information to emergency responders, although it is not too much burden on facilities. The commenter also stated that the TRI report is a release inventory, not information on specific chemicals present on-site, so it would be difficult for an emergency responder to match specific chemicals reported under the TRI program with those reported on the Tier II inventory form. Another commenter stated that if EPA determines that it is necessary to add this data element, the regulated community would prefer to report the identification number assigned under the Risk Management Program.

Three commenters opposed adding these identification numbers to the Tier II inventory form stating that these data elements are already available to the public since they are already collected under these two programs.

EPA's Response: EPA receives reports submitted under CAA section 112(r) (also known as the Risk Management Program) and information submitted under the TRI program. However, the Agency does not receive the Tier II inventory form filed under EPCRA section 312. Therefore, the Agency would not be able to provide access to all three reports to State and local agencies so that these agencies can make them available to the public. State and local agencies that receive the Tier II inventory form requested that EPA require these two data elements so they can obtain additional information about these facilities or cross-reference information reported under these programs. These agencies informed us that some facilities are not consistent in their reports year-after-year. For example, a facility may report its name as ''Smith Inc.'' one year and then the following year, it may report ''Smith and Sons,'' or ''Smith Company.'' Providing the identification numbers assigned by EPA under these two programs on the Tier II inventory form would help these agencies better respond to public inquiries.

EPA also believes that State and local officials may find it helpful to compare information reported for chemicals that are listed under all three programs. For example, TRI and the Tier II inventory form require facilities to report the maximum amount of a chemical present on-site at any one time during a reporting year and the Risk Management Program requires the quantity of chemical in a process. There are some chemicals common to all three programs. Therefore, EPA is requiring facilities to provide their TRI facility identification number if the facility is subject to reporting under that program. With respect to the Risk Management Program under CAA section 112(r), some facilities regulated under EPCRA sections 311 and 312 are also subject to the provisions under CAA section 112(r), codified in 40 CFR part 68. All facilities regulated under CAA section 112(r) are required to coordinate their emergency response actions with local emergency planning and response organizations (40 CFR 68.12). Some of these facilities are required to develop and implement an emergency response program for their facilities, which includes developing a plan for their employees to respond to any emergency at their facility. These facilities are also required to coordinate their emergency response plan with the community emergency response plan developed under EPCRA section 303. This would ensure that the facility and community planning efforts are coordinated, which will improve both plans, thereby facilitating effective response actions when releases occur.

It is important for LEPCs who are responsible for developing and implementing emergency response plans for their community to know which facilities have their own response program to respond to their emergencies or if LEPCs have to take additional measures to respond to any accidental releases. The Risk Management Program identification number is vital to emergency planning and response since facilities covered under this program should be coordinating their response plan with the LEPCs. This number would better identify the facility and these agencies can then cross-reference the information reported on the Tier II inventory form and Risk Management Program. Thus, EPA is finalizing this data element as proposed.

7. Facility's Parent Company Contact Information

EPA proposed to add the facility's parent company contact information to the Tier I and Tier II inventory forms.[6]

Comment: Members of NASTTPO supported EPA's proposal to include parent company contact information to the Tier II inventory form. However, nine commenters opposed EPA's proposal to require parent company contact information on the Tier I and Tier II inventory forms. Two commenters stated that the parent company corporate headquarters or subsidiary company contact is often distant both geographically and organizationally from the facility's operations and as such will likely have no knowledge about the specifics of hazardous chemical usage at a unique company location. Other commenters who also disagreed with including this data element on the Tier I and Tier II inventory forms argued that providing information on other facility personnel, such as emergency contacts and the owner or operator will be sufficient for state and local officials to obtain the information needed about hazardous chemicals at the facility.

EPA's Response: EPA recognizes the concerns raised by commenters that the parent company of some facilities may not be aware of the day-to-day operations at a particular location. EPA also realizes that some parent companies may be located outside the U.S. and therefore, the parent company contact information would not be useful for emergency planning or response. Therefore, EPA is not requiring this information to be included on the Tier I or Tier II inventory forms. However, if facilities wish to provide this information, EPA is adding parent company contact information as an ''optional'' data element to both forms.

8. Parent Company Email Address

EPA proposed to add the facility's parent company email address to the Tier I and Tier II inventory forms.

Comment: One commenter stated that in a large corporation, the email address of company executives or upper level management is of little value in the event of an emergency as these individuals are not able to provide the level of detail needed to assist emergency responders. The commenter suggested that the addition of the email address of the facility emergency coordinator and the addition of the name, title, email address and phone number of the person knowledgeable of the information reported on the Tier II inventory form provides the best contact information in the event of an emergency.

[6] EPA also proposed to add the owner or operator contact information to the Tier I and Tier II inventory forms. However, EPA agrees with commenters that this information is already included on the Tier I and Tier II inventory forms, as well as the Tier2 Submit software. The owner or operator contact information will continue to be required on the Tier I and Tier II inventory forms.

EPA's Response: The Agency proposed this data element assuming that corporate headquarters or parent company executives should be informed of any activities involving planning or public meetings with the community via email since it is one of the modern ways of communication. However, based on the comments received regarding parent company contact information in section III. D. 7 of this final rule, EPA is not requiring this information be included, but is adding it as an ''optional'' data element on both forms.

9. Facility Emergency Coordinator

EPCRA section 303(d)(1) requires facilities subject to EPCRA section 302 emergency planning notification requirements to designate an individual to participate in the emergency planning process as the facility emergency coordinator. State and local agencies informed EPA that facilities often forget to notify them of personnel changes that occur at the facility. Therefore, EPA proposed this data element so LEPCs would obtain this information annually.

Comment: Members of NASTTPO supported this proposal stating that EPA has identified a critical gap and that the proposal is excellent. One commenter from industry stated that the facility emergency coordinator is already included on the Tier2 Submit software used in various states.

EPA's Response: EPA agrees with the commenter that the Tier2 Submit software used in various states may already include this data element since states are given the flexibility to implement the EPCRA program as needed for their community. This means that, many states have expanded their right-to-know regulations to include additional chemicals, lower reporting thresholds, and additional data elements beyond those required on the federal Tier II inventory form. Some of the states have their own electronic reporting format and others use Tier2 Submit. Every year, EPA receives requests from some states that use Tier2 Submit to add some state required data elements, which may include most or all of the data elements that were proposed. So it is possible that the states that use Tier2 Submit already require facilities to report facility emergency coordinator contact information. However, EPA proposed this data element for states that follow the federal reporting requirements. Because State and local agencies have identified the absence of this data on the Tier II inventory form as a critical gap, EPA is finalizing this provision and will require that emergency coordinator contact information be required on the Tier II inventory form.

Comment: Four commenters opposed EPA's proposal to require the contact information for the facility emergency coordinator be included on the Tier II inventory form. These commenters argued that the Tier II inventory form already requires facilities to report an emergency contact and a 24-hour emergency phone number so it is not clear why this data element is being added as another new requirement. Another commenter stated that adding the facility's emergency coordinator contact information to the Tier I and Tier II inventory forms is unnecessary since emergency planning agencies may already get in touch with the designated emergency contact. Furthermore, it was argued that EPA provides no reason as to why facilities should report the contact information for both facility emergency coordinator and an emergency contact. Again, this adds a new burden for facilities. Another commenter objects to requiring this information on the Tier II inventory form unless the form clearly shows that the information is required only for facilities subject to EPCRA section 302.

EPA's Response: EPA disagrees with these commenters. The Agency believes that it is important for LEPCs and SERCs to obtain updated information on the facility emergency coordinator annually. Under EPCRA section 303(d)(1), facilities are required to provide the name of an individual who will participate in the emergency planning process as a facility emergency coordinator. It is possible that personnel changes may occur at facilities and since this is not an annual requirement, facilities may overlook informing their LEPC of this change. In addition, providing the contact information for the facility emergency coordinator and for the emergency contact is necessary since it is possible that some facilities may designate two individuals to carry out these two functions, as opposed to designating the same person for these two positions. Thus, providing this information annually or updating the Tier II inventory form annually would ensure better coordination for emergency planning, and would not impose a significant burden on the facility given such information is readily available to the facility. EPA encourages facilities to provide facility emergency coordinator information of an individual closest to the location where hazardous chemicals are stored.

Finally, EPA realizes that only some facilities subject to the sections 311 and 312 reporting requirements may be subject to the section 302 emergency planning notification. Therefore, EPA is requiring facilities to provide the facility emergency coordinator contact information on the Tier II inventory form only if the facility is also subject to EPCRA section 302.

10. Tier I and Tier II Information Contacts

State and local agencies informed EPA that they often find it difficult to get in touch with the right individual for information contained on the Tier II inventory form. Therefore, EPA proposed that facilities provide contact information of the individual responsible for completing the Tier II inventory form.

Comment: One commenter stated that requiring this information would be reasonable and arguably within the implicit authority of EPCRA sections 311 and 312. Members of NASTTPO also supported this proposed data element stating that EPA has again identified a critical gap and addressed it with this proposal. However, one commenter opposed this proposed data element stating that the facility owner or operator is already required to sign the certification on the Tier II inventory form and would know how to handle LEPC inquiries.

EPA's Response: Although the owner or operator of the facility is responsible for signing the certification on the Tier II inventory form, the Agency believes the person responsible for completing the form is likely to have knowledge of the specific details on the hazardous chemicals reported on the Tier II inventory form. Tier II contact information is very important for emergency planning and response since the information reported on the Tier II inventory form is used by LEPCs for updating the emergency plan. Therefore, EPA is adding this data element, as proposed.

11. Email Addresses of Owner or Operator and of Emergency Contacts

In addition to the information already required for the owner or operator and the emergency contact(s), EPA proposed to require facilities to also provide email addresses for these two individuals.

Comment: One commenter agrees with EPA's proposal to require an email address of the Tier II information contact. However, this commenter disagreed with EPA that facilities should also provide the email addresses for emergency contacts. The commenter stated that email is not an appropriate form of communication during an emergency situation and that in non-emergency situations, the person selected as an emergency contact may

not be authorized to speak for the reporting entity.

EPA's Response: The Agency believes that any number of ways to communicate with facility personnel (i.e. phone, email, mailing address etc.) is necessary to ensure proper coordination of emergency planning and response procedures. Under EPCRA section 303, LEPCs are required to develop an emergency plan and update it annually. Among others, the plan is required to include methods and procedures to be followed by facility owners and operators, as well as local emergency and medical personnel to respond to any releases (section 303(c)(2)). Providing an email address for the owner or operator and of the emergency contact(s) would be beneficial to LEPCs to communicate via email on the methods and procedures to respond to releases. Also, LEPCs may want to inform via email the facility owners and operators in their community if the LEPCs are planning to conduct exercises or hold public meetings so facility owners and/or operators, emergency contacts and the facility emergency coordinator may participate in these activities. Sending this email to each person listed on the Tier II inventory form is appropriate since it is possible that one or two persons may not be available at the scheduled time. EPA also believes that these data elements do not pose significant regulatory burden since the burden to report may be incurred only the first year that the rule would be effective. In subsequent years, facilities may only need to update the information annually if any changes occur. Thus, EPA is adding these data elements to the Tier I and Tier II inventory forms.

12. Range Codes and Ranges for Reporting Maximum Amount and Average Daily Amount

The information requirements to the Tier I and Tier II inventory forms currently list range codes for reporting the maximum amount and average daily amount of hazardous chemicals present at the site in the preceding calendar year. Since sections 312 (d)(1) and (2) specifically state that an estimate in ranges for the maximum amount and average daily amount should be reported on the Tier I and II inventory forms, the regulations would still require facilities to report in ranges. However, the range codes currently listed in the regulations are very broad. Such information is not as useful as specific quantity information for effective emergency response planning. In order for the States, local agencies and emergency response officials to have information on the maximum amount and average daily amount that are closer to the actual amounts present at the facility, EPA proposed to narrow the ranges.

Comment: One commenter from industry and the members of NASTTPO supported the proposed ranges for reporting maximum amount and average daily amount. Members of NASTTPO stated that this will bring much needed clarity and eliminate a source of confusion in the completion and use of the forms. The commenter from industry stated that they do not object to narrowing the ranges for reporting maximum amount and average daily amount of hazardous chemicals since narrowing the ranges may give state and local emergency agencies a more detailed picture of the chemicals at a facility. In addition, the commenter stated that the proposed changes accomplishes the goal of the proposed rule, which is to provide useful information to emergency planning agencies with little or no added burden.

Two commenters, however, suggested that instead of revising the ranges or the range codes, EPA should require facilities to report the actual number of pounds for both maximum amount and average daily amount.

EPA's Response: As stated in the proposed rule, EPCRA section 312(d)(1) and (2) specifically states that the maximum amount and average daily amount should be reported in ranges. Since the statute requires these amounts to be reported as ranges, the Agency proposed to narrow the ranges so the amount reported would be closer to the amount present on-site. State and local agencies expressed concerns that the intervals between the current maximum and minimum values are too wide.

Comment: Three commenters opposed the proposed ranges for reporting maximum amount and average daily amount. One of the commenters stated that the Agency's reasoning for the existing range codes remains valid today and should not be changed unless new information in the record supports that the Agency's initial reasoning is now invalid. Two of the commenters also argued that consistency of chemical weight ranges among regulatory programs, TRI and the section 312 Tier II inventory form provides the regulated community, emergency responders and the public with a uniform standard of measurement. One of the commenters also argued that the existing ranges adequately balances the trade-off between the protection of confidential information and the provision of useful data.

EPA's Response: The actual amount of a hazardous chemical present at a facility is the most useful information that LEPCs could have for effective planning and for response. However, the statute specifically states that only ranges should be required on the Tier I and Tier II inventory forms. The Agency believes that the ranges proposed for reporting maximum amount and average daily amount are more useful for LEPCs than the existing ranges, which are too broad. The reporting threshold for EHSs is 500 pounds or the TPQ whichever is less. Some of the EHSs have TPQs set as low as 1, 10, 100, 500 and 1,000 pounds. Emergency planning for these chemicals are more crucial than those with higher TPQs (i.e. 10,000 pounds). EPA believes it is necessary to narrow the ranges so that LEPCs would obtain information on the amount of EHSs that have low TPQs in a range most likely closer to the actual amount present at the facility.

With respect to maintaining consistency with the TRI program, reporting under EPCRA section 313 serves a different purpose than hazardous chemical inventory reporting under EPCRA section 312, which is used for emergency planning and response. Only some of the information required under both programs is common and these would be useful to state and local agencies. However, the amount required on the TRI report is mainly for releases of toxic chemicals, whereas the amount reported on Tier II is storage of hazardous chemicals. Thus, it is not necessary or appropriate to have the same range values under both of these programs.

IV. Revisions Specific to the Tier II Inventory Form

Facilities are required to report specific information about hazardous chemicals on the Tier II inventory form. State and local agencies informed EPA that they often get Tier II inventory forms for mixtures not consistent with their section 311 MSDS or list reporting. Thus, in response to concerns raised by stakeholders, EPA proposed to revise some existing data elements under the chemical reporting section of the Tier II inventory form.

In particular, EPA proposed separate data fields for reporting pure chemicals and mixtures to make reporting easier for facilities and for State and local agencies to obtain consistent information on chemicals reported under EPCRA sections 311 and 312. In addition, EPA proposed to delete the codes for reporting storage types and conditions from the Tier II inventory form instructions, but instead require

facilities to provide an accurate description of the storage types and conditions for each hazardous chemical reported. The reason EPA proposed this change was to provide emergency responders with information readily available rather than to search for instructions to determine what each code represents.

One commenter from industry supported the proposed clarification on the reporting of mixtures. The commenter also stated that the listing of actual container types, rather than the use of codes, are positive changes that will move the program toward the ease of use for emergency responders.

A. Chemical Information—Pure Chemical and Mixtures

EPA received requests from certain sectors of the regulated community to provide clear instructions for reporting mixtures on the Tier II inventory form. In addition, State and local agencies informed EPA that they often get Tier II inventory forms that are not consistent with the facility's MSDS or list reporting under section 311 for mixtures. On November 3, 2008 (73 FR 65452), EPA provided clarification on how to determine if a reporting threshold has been met for mixtures that contain EHSs and non-EHSs as their components. In that rule, EPA also reiterated the flexibility provided in EPCRA section 312 that facilities may either report the component or the total mixture.

EPA proposed separate data fields for reporting pure chemicals and mixtures so that the regulated community would be consistent in reporting mixtures with their section 311 reporting. The Tier II inventory form requires facilities to report the maximum amount and average daily amount, as well as the storage types and conditions. However, the Tier II inventory form prior to the proposed rule did not specify if the maximum amount or the average daily amount present on-site is referring to the component or the mixture since facilities have the option to report the component or the mixture. In order to make reporting easier for facilities and make the Tier II inventory form more user friendly, EPA proposed separate data fields for reporting pure chemicals and mixtures. If facilities are reporting a mixture by its components or the total mixture itself, separate data fields were proposed to specify the maximum amount and average daily amount for EHSs, non-EHSs, as well as the mixture itself. EPA is now finalizing these changes as proposed.

Comment: Three commenters raised questions concerning EPA's adding separate data fields for pure chemicals and mixtures. One comment requested that EPA clarify if product name, trade or other chemical information should be provided for the mixture. Another comment was concerned that the proposed reporting section for mixtures shows a data field for reporting all non-EHSs in the mixtures, which facilities are not required to do, and could be confusing for those facilities that are reporting mixtures.

EPA's Response: EPA decided to propose separate data fields for mixtures and pure chemicals since certain sectors of the regulated community requested that EPA clarify the reporting of mixtures after publication of the final rule on November 3, 2008 (73 FR 65452) in which EPA sought to clarify the reporting of mixtures, as well as other reporting requirements. The instructions to the Tier II inventory form would specify facilities to report ''mixture name,'' ''product name'' or ''chemical name'' as it appears on the MSDS, whether the hazardous chemical reported is pure or a mixture.

As stated in 40 CFR 370.14, facilities have the flexibility for reporting non-EHSs in mixtures, and the inclusion of the data field for non-EHSs is for the convenience of the owner or operator of the facility. However, EPA is only requiring facilities to aggregate the amount of EHSs in mixtures and in pure form and then report the EHSs in mixtures.

Comment: Two commenters suggested that EPA develop a standard reporting format to address lead-acid batteries. The commenters stated that the reporting of batteries would be consistent if the facilities report the total battery weight with a percentage EHS.

EPA's Response: EPA is not developing a standard reporting format to address lead-acid batteries at this time. However, EPA wants to suggest how facilities could report batteries on the Tier II inventory form. Although separate data fields are provided for reporting pure chemicals and mixtures, it is best for emergency responders to obtain information on hazardous chemicals consistent with a facility's MSDS reporting under section 311. Thus, if the facility has an MSDS for batteries that require reporting on the Tier II form, EPA suggests the facility report batteries in the data field marked ''mixture or product name'' and then report the name and the amount of the EHS present.

B. Storage Types and Conditions

Prior to the proposed rule, the instructions to the Tier II inventory form specified codes for reporting storage types and conditions. State and local agencies requested that EPA remove the codes and require facilities to provide a description for the various types of storage and conditions so that in an emergency local agencies and responders won't have to search for instructions to the Tier II inventory form to find out what each code represents.

Comment: Four commenters supported, but also provided suggestions on this specific proposal. One of the commenters stated that this revised data element will ease the recordkeeping requirements for facilities, while still providing useful information for emergency planning agencies. Another commenter stated that instead of eliminating the use of storage codes, the option should be provided to use the codes and a description for the container types. The commenter stated that this would provide the reporting facility with the ability to use familiar storage codes with the option to provide more description if a code does not fully describe the container type. Another commenter requested that a pick list be provided for storage types and conditions.

EPA's Response: The Tier2 Submit software already includes a ''pick list'' for storage types and conditions and the option to provide a description not listed in the ''pick list.'' The Agency agrees with State and local agencies that at a time when an emergency is occurring, it is more appropriate for an accurate description of the various types of storage and conditions for each hazardous chemical present at a facility be described on the Tier II inventory form. The instructions to the Tier II inventory form would include some examples of common types of storage and conditions.

Comment: One commenter opposed the elimination of reporting codes for storage type and conditions. The commenter stated that the proposed elimination of codes opens these data elements for personal and possibly incorrect interpretation, whereas currently the data is standardized via the code system. Otherwise, a user must craft language naming storage types, temperature and pressure conditions that they may understand, but nonetheless may likely be differently described by another entity. The commenter also stated that the facility files over 550 annual EPCRA Tier II inventory forms and uses Tier2 Submit software as allowed by state reporting requirements. The facility is concerned that the elimination of reporting codes for storage type and temperature and pressure conditions would necessitate physical data entry for these three fields on each annual filing. Such a laborious

effort is both time consuming and subject to human data entry error. The current use of reporting codes eliminates the possibility of key stroke data entry errors.

EPA's Response: The elimination of codes for storage types, as well as temperature and pressure, was requested by state and local agencies. In an emergency situation, it would be easier for these agencies and other emergency responders to have the information readily available rather than to search for instructions to the Tier II inventory form to determine what each code represents. It is not possible to list a code for every storage type or condition that maybe available. Therefore, the Agency believes it would be more accurate if the facility describes the storage type(s) and conditions for the hazardous chemicals present on-site.

The commenter mentioned that the facility files over 550 Tier II inventory reports. The federal electronic reporting format, Tier2 Submit software, includes a pick list for some of the common storage types and conditions. The instructions to the Tier II inventory form will be revised to include some examples of common storage types and conditions. Nevertheless, facilities are encouraged to report the chemical information section of the Tier II inventory form as accurately as possible for each location of the facility rather than filing one form making multiple copies of the form to represent each location. Since storage locations, amounts, as well as storage types may vary from location to location, reporting accurate information for each location is important for emergency planning and response.

V. Additional Concerns and Suggestions

EPA received several comments with suggestions on including additional data fields on the Tier II inventory form. One commenter stated that there needs to be a space on the Tier II inventory form for reporting additional LEPC or State requirements. Many LEPCs have established a lower threshold for specific chemicals presenting unique risks to those communities so there should be a convenient spot on the Tier II inventory form for this information. The commenter also stated that the right hand edge of the current form is a spot for facilities to note that they are voluntarily submitting information that would not be otherwise reported and that this portion should remain unchanged. Additionally, a commenter suggested that the Agency not adopt these changes prior to the next reporting cycle unless the Tier2 Submit software will be revised to incorporate the changes made to the Tier II inventory form.

EPA's Response: For states that use Tier2 Submit, EPA currently modifies the system annually to incorporate state-specific fields that are required under the state regulations. The optional boxes provided on the bottom of the current federal Tier I and II inventory forms are for any optional attachments that facilities may be including with their inventory form, such as the facility site plan, list of site coordinate abbreviations, description of dikes, etc. These boxes appear on the first page of the proposed Tier II inventory form and remain unchanged on the Tier I and Tier II inventory forms.

Optional boxes provided on the right hand side of the storage code and location columns of the current Tier II inventory form are for facilities to indicate if all of the information on a specific hazardous chemical is identical to that submitted last year. Prior to the proposed rule, the federal Tier II inventory form did not have an optional box to indicate if chemicals reported on-site are below the applicable reporting threshold as stated by the commenter. However, as requested by the commenter, EPA is adding data fields for facilities that wish to provide information on a voluntary basis on hazardous chemicals not required, such as those below the reporting thresholds.

As stated in section III.B. of this action, the Agency has decided to require facilities to comply with the new requirements on the Tier II inventory form starting reporting year 2013, which is due by or on March 1, 2014. Tier2 Submit will be modified accordingly.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2436.02. This action may impose only minimal reporting burden on facilities since the data elements finalized on the Tier I and Tier II inventory forms are readily available to the facility. The data elements finalized in this action are general information regarding the location of the facility and contact information for certain personnel, such as emergency contact, person responsible for the information reported on the Tier I and Tier II inventory forms, etc. State and local agencies requested that EPA add the new data elements since the additional information would be useful to develop or modify their emergency response plans. New data elements, such as the facility emergency coordinator needs to be updated annually for LEPCs to coordinate emergency plans for the community. Although facilities are required to notify LEPCs of any changes under EPCRA section 303 (d)(2), such as personnel changes for facility emergency coordinator, emergency contacts, etc, LEPCs informed EPA that some facilities overlook this reporting requirement.

As suggested by few members of the regulated community, some of the data elements added to the Tier I and Tier II inventory forms are listed as optional data elements. The burden imposed for reporting the new data elements will only occur in the first year that the rule becomes effective. In subsequent years, only changes at the facility need to be updated.

EPA also revised some data elements in the chemical reporting section of the Tier II inventory form as requested by state and local officials, as well as a few small entities to make reporting easier for facilities and make the form more user-friendly for state and local officials.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in regulations at 40 CFR part 370, which includes information requirements for the Tier I and Tier II inventory forms, under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2050–0072. EPA ICR number 1352.11. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Burden is defined at 5 CFR 1320.3(b).

EPA estimates that there are 390,000 facilities that may be subject to reporting the new data elements finalized in this action. EPA estimates the same unit burden for small, medium

and large facilities since the time required to report the new data elements that EPA is finalizing will be the same for all facilities.

All states require facilities to submit the federal Tier II inventory form or the state developed reporting form or format equivalent to the Tier II inventory form instead of the Tier I inventory form. The new data elements that the Agency is finalizing are readily available to facilities. Thus, EPA estimates that it will take approximately 15 minutes (0.25 hours) for technical staff at each facility to record the new data elements on the Tier II inventory form. Total burden for manufacturers to report the new data elements on the Tier II inventory form is estimated to be 30,000 hours, while the total burden for non-manufacturers to report the new data elements on the Tier II inventory form is estimated to be 67,500 hours. The new data elements that EPA is finalizing may not change yearly for any facilities. Approximately 40 states require facilities to submit their inventory form electronically. For these facilities, any changes that may occur for any of the new data elements can be revised with little or no burden. Therefore, the burden associated with this ICR is not expected to incur after the initial reporting year. However, since the new data elements required on the Tier II inventory form are crucial for effective emergency planning and response, EPA assumes that facilities would take 15 minutes (0.25 hours) to review and update the information annually, if necessary.

EPA also estimates that facilities would take approximately 45 minutes (0.75 hours) to get familiar with the new reporting requirements on the Tier II inventory form. The total one-time burden for manufacturers to get familiar with the changes on the Tier II inventory form is estimated to be 90,000 hours and for non-manufacturers, the total one-time burden is estimated to be 202,500 hours. The Agency does not expect this burden to extend beyond the first effective date of the rule.

As of reporting year 2010, approximately 20 states have their own electronic reporting tool for submitting the hazardous chemical inventory. Based on the federal cost and hours to make changes to the Tier2 Submit, EPA estimates that each state would spend approximately 200 hours to add new data elements and revise the existing data elements to their existing software at a cost of $50,000. The costs include initial analysis, design, programming, alpha and beta testing, and field deployment. Data management burden for State and local agencies is not estimated in this ICR since the new data elements will be part of the inventory form that these entities currently receive annually.

The total one-time burden for facilities for rule familiarization is 292,500 hours at a cost of $15,456,375. The annual burden for facilities to report new data elements and for making revisions in subsequent years is estimated to be 97,500 hours at a cost of $5,152,125. The total burden for the 20 states that need to modify their reporting software is 4,000 hours at a cost of $1,000,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

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

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

The additional data elements on the Tier I and Tier II inventory forms that we are finalizing in this action have been requested by State and local agencies in an effort to develop or modify their community emergency response plans. Although some small entities may be affected by this final action, the new data elements required will be reported only in the first year that the rule becomes effective. In subsequent years, only changes would need to be updated. The data elements we are revising in the chemical reporting section of the Tier II inventory form would make the forms more user-friendly, and thus, will make reporting easier for facilities, especially small businesses and will also make the forms more user-friendly for state and local officials.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532–1538 for State, local, or tribal governments or the private sector. This action does not impose any new requirements on State, local or tribal governments. The data elements that we are finalizing in this action would be helpful, to State, local and tribal governments to develop or modify their community emergency response plans. In addition, the data elements revised in the chemical reporting section of the Tier II inventory form would make the form more user-friendly. State and local agencies requested EPA to add most of the data elements that EPA is finalizing in this action. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The data elements that we are finalizing in this action would be helpful to State, local and tribal governments to develop or modify their community emergency response plans. In addition, the data elements revised in the chemical reporting section of the Tier II inventory form would make the form more user-friendly. State and local agencies requested that EPA add most of the data elements that EPA is finalizing in this action.

This rule does not impose any requirements on state or local governments. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175, (65 FR 67249, November 9, 2000). The data elements that we are finalizing on the Tier I and Tier II inventory forms would be helpful for tribal governments to develop or modify their community emergency response plans. In addition, the data elements revised on the Tier II form would make the form more user-friendly. This action also does not impose any new requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866 and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The additional information that we are requiring on the Tier I and Tier II inventory forms will be useful to State and local officials to assist them in preparing the community in an emergency situation.

H. Executive Order 13211: Energy Effects

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or would otherwise be impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations of when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The additional information that we are requiring on the Tier I and Tier II inventory forms will be useful to State and local officials to assist them in preparing the community in an emergency situation.

K. Congressional Review Act

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

List of Subjects in 40 CFR Part 370

Emergency and hazardous chemical inventory forms, Emergency Planning and Community Right-to-Know Act (EPCRA), Hazardous chemicals, Hazardous substances, Intergovernmental relations, Reporting requirements, Superfund, Tier I and Tier II inventory forms.

Dated: July 3, 2012.

Lisa P. Jackson,

Administrator.

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

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 1. The authority citation for part 370 continues to read as follows:

Authority: 42 U.S.C. 11021 and 11022.

■ 2. Section 370.41 is revised to read as follows:

§ 370.41 What is Tier I inventory information?

Tier I information provides State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the previous calendar year. The Tier I information is the minimum information that you must provide to be in compliance with the inventory reporting requirements of this part. If you are reporting Tier I information, you must report aggregate information on hazardous chemicals by hazard categories. There are two health hazard categories and three physical hazard categories for purposes of reporting under this part. These five hazard categories are defined in 40 CFR 370.66. Tier I inventory form includes the following data elements:

(a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier I submission is true, accurate, and complete as follows: ''I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining

the information, I believe that the submitted information is true, accurate, and complete.'' This certification shall be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

Note to paragraph (a): Some states require electronic reporting (on-line or via diskettes) and electronic certification. Contact your state for the specific requirements in that state.

(b) The calendar year for the reporting period.

(c) An indication whether the information being reported on page one of the form is identical to that submitted last year.

(d) The complete name and address of the location of your facility (include the full street address or state road, city, county, State and zip code), latitude and longitude.

(e) An indication if the location of your facility is manned or unmanned.

(f) An estimate of the maximum number of occupants present at any one time. If the location of your facility is unmanned, check the box marked N/A, not applicable.

(g) The phone number of your facility (optional).

(h) The North American Industry Classification System (NAICS) code for your facility.

(i) The Dun & Bradstreet number of your facility.

(j) Facility identification numbers assigned under the Toxic Release Inventory (TRI) and Risk Management Program. If your facility has not been assigned an identification number under these programs or if your facility is not subject to reporting under these programs, check the box marked N/A, not applicable.

(k) An indication whether your facility is subject to the emergency planning notification requirement under EPCRA section 302, codified in 40 CFR part 355.

(l) An indication whether your facility is subject to the chemical accident prevention requirements under Section 112(r) of the Clean Air Act, codified in 40 CFR part 68, also known as the Risk Management Program.

(m) The name, mailing address, phone number and email address of the owner or operator of the facility.

(n) The name, mailing address, phone number, Dun & Bradstreet number and email address of the facility's parent company. These are optional data elements.

(o) The name, title, phone number, 24-hour phone number, and email address of the facility emergency coordinator, if applicable.

Note to paragraph (o): EPCRA Section 303(d)(1) requires facilities subject to the emergency planning notification requirement under EPCRA section 302 (including additional facilities designated by the Governor or the SERC under EPCRA section 302(b)(2)) to designate a facility representative who will participate in the local emergency planning process as a facility emergency coordinator. EPA encourages facilities not subject to the emergency planning notification requirement also to provide this information, if available, for effective emergency planning in your community.

(p) The name, title, phone number, and email address of the person to contact for the information contained in the Tier I form.

(q) The name, title, phone number and email address of at least one local individual that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must also provide an emergency phone number which will be available 24 hours a day, every day.

(r) An indication whether the information being reported on page two of the form is identical to that submitted last year.

(s) An estimate (in ranges) of the maximum amount of hazardous chemicals in each hazard category present at your facility at any time during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are provided in § 370.43.

(t) An estimate (in ranges) of the average daily amount of hazardous chemicals in each hazard category present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are provided in § 370.43.

(u) The maximum number of days that any single hazardous chemical within each hazard category was present at your facility during the reporting period.

(v) The general location of hazardous chemicals in each hazard category within your facility. General locations should include the names or identification of buildings, tank fields, lots, sheds or other such areas. You may also attach one or more of the following with your Tier I inventory form:

(1) A *site plan* with site indicated for buildings, lots, areas, etc. throughout your facility.

(2) A *list of site coordinate abbreviations* that correspond to buildings, lots, areas, etc., throughout your facility.

(3) A *description of dikes and other safeguard measures* for storage locations throughout your facility.

(w) An indication whether you are including any attachments (optional).

■ 3. Section 370.42 is revised to read as follows:

§ 370.42 What is Tier II inventory information?

Tier II information provides State and local officials and the public with specific information on the amounts and locations of hazardous chemicals present at your facility during the previous calendar year. Some states may require you to use a state reporting format including electronic reporting and certification for submitting your hazardous chemical inventory. Contact your state for the specific requirements in that state. Tier II inventory form includes the following data elements:

(a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier II submission is true, accurate, and complete as follows: ''I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.'' This certification must be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all Confidential and Non-Confidential Information Sheets and all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

Note to paragraph (a): Some states require electronic reporting (on-line or via diskettes) and electronic certification. Contact your state for the specific requirements in that state.

(b) The calendar year of the reporting period.

(c) An indication whether the information being reported on page one of the form is identical to that submitted last year.

(d) The complete name and address of the location of your facility (include the full street address or state road, city, county, State and zip code), latitude and longitude.

(e) An indication if the location of your facility is manned or unmanned.

(f) An estimate of the maximum number of occupants present at any one

time. If the location of your facility is unmanned, check the box marked N/A, not applicable.

(g) The phone number of your facility (optional).

(h) The North American Industry Classification System (NAICS) code for your facility.

(i) The Dun & Bradstreet number of your facility.

(j) Facility identification numbers assigned under the Toxic Release Inventory (TRI) and Risk Management Program. If your facility has not been assigned an identification number under these programs or if your facility is not subject to reporting under these programs, check the box marked N/A, not applicable.

(k) An indication if your facility is subject to the emergency planning notification requirement under section 302 of EPCRA, codified in 40 CFR part 355.

(l) An indication whether your facility is subject to the chemical accident prevention requirements under section 112(r) of the Clean Air Act (CAA), codified in 40 CFR part 68, Chemical Accident Prevention Provisions, also known as the Risk Management Program.

(m) The name, mailing address, phone number and email address of the owner or operator of the facility.

(n) The name, mailing address, phone number, Dun & Bradstreet number and email address of the facility's parent company. These are optional data elements.

(o) The name, title, phone number, 24-hour phone number and email address of the facility emergency coordinator, if applicable.

Note to paragraph (o): Section 303(d)(1) of EPCRA requires facilities subject to the emergency planning notification requirement (including additional facilities designated by the Governor or the SERC under EPCRA section 302(b)(2)) to designate a facility representative who will participate in the local emergency planning process as a facility emergency coordinator. EPA encourages facilities not subject to the emergency planning notification requirement also to provide *this information, if available, for effective emergency planning in your community.*

(p) The name, title, phone number and email address of the person to contact regarding information contained in the Tier II form.

(q) The name, title, phone number and email address of at least one local individual that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must also provide an emergency phone number which will be available 24 hours a day, every day.

(r) An indication whether the information being reported on page two of the form is identical to that submitted last year.

(s) For each hazardous chemical that you are required to report, you must:

(1) *Pure Chemical:* Provide the chemical name (or the common name of the chemical) as provided on the Material Safety Data Sheet (MSDS) and provide the Chemical Abstract Service (CAS) registry number of the chemical provided on the MSDS.

Note to paragraph (s)(1): If you are withholding the name in accordance with trade secret criteria, you must provide the generic class or category that is structurally descriptive of the chemical and indicate that the name is withheld because of trade secrecy. Trade secret criteria are addressed in § 370.64(a).

(2) Indicate whether the chemical is a solid, liquid, or gas; and whether the chemical is an EHS.

(3) *Mixture:* If you are reporting a mixture, enter the mixture name, product name or trade name as provided on the Material Safety Data Sheet (MSDS) and provide the Chemical Abstract Service (CAS) registry number of the mixture provided on the MSDS. If there is no CAS number provided or it is not known, check the box ''Not Available.''

(4) If the mixture you are reporting contains EHS(s), provide the name(s) of each EHS in the mixture. As provided in § 370.14(a), you also have an option to report the non-EHS hazardous components in the mixture.

(5) Pure Chemical or Mixture: Indicate which hazard categories apply to the chemical or the mixture. The five hazard categories are defined in § 370.66.

(6) Provide an estimate (in ranges) of the maximum amount of the hazardous chemical present at your facility on any single day during the preceding calendar year. If you are reporting a mixture, provide an estimate of the total amount of the mixture present at your facility on any single day during the preceding calendar year. If the mixture contains any EHS, provide the total amount of each EHS in that mixture. You must use the codes that correspond to different ranges. The amounts and associated range codes are in § 370.43.

(7) Provide an estimate (in ranges) of the average daily amount of the hazardous chemical present at your facility during the preceding calendar year. If you are reporting a mixture, provide an estimate of the average daily amount of the mixture. You must use the codes that correspond to different ranges. The amounts and associated range codes are in § 370.43.

(8) Provide the maximum number of days that the hazardous chemical or mixture was present at your facility during the preceding calendar year.

(9) Provide the type of storage for the hazardous chemical or the mixture containing the hazardous chemical at your facility. Examples for types of storage: Above-ground tank, plastic or non-metallic drum, steel drum, cylinder, rail car, etc.

(10) Provide the storage conditions for the hazardous chemical or the mixture containing the hazardous chemical at your facility. Examples for types of storage conditions: Ambient pressure, ambient temperature, less than ambient temperature/pressure, cryogenic conditions, etc.

Note to paragraphs (s)(9) and (10): Your SERC or LEPC may have specific instructions for reporting types of storage and/or storage conditions.

(11) Provide a brief description of the precise location(s) of the hazardous chemical(s) or the mixture(s) at your facility. You may also attach one of the following with your Tier II inventory form:

(i) A *site plan* with site coordinates indicated for buildings, lots, areas, etc. throughout your facility.

(ii) A *list of site coordinate abbreviations* that correspond to buildings, lots, areas, etc., throughout your facility.

(iii) A *description of dikes and other safeguard measures* for storage locations throughout your facility.

(12) Under EPCRA section 324, you may choose to withhold from disclosure to the public the location information for a specific chemical. If you choose to withhold the location information from disclosure to the public, you must clearly indicate that the information is ''confidential.'' You must provide the confidential location information on a separate sheet from the other Tier II information (which will be disclosed to the public), and attach the Confidential Location Information Sheet to the other Tier II information. Indicate any attachments you are including.

(13) You may provide additional reporting. For example, if your State or local agencies require you to provide inventory information on additional chemicals or if you wish to report any hazardous chemical below the reporting thresholds specified in § 370.10, check the appropriate box.

(t) An indication whether you are including any attachments (optional).

■ 4. Section 370.43 is revised to read as follows:

§ 370.43 What codes are used to report Tier I and Tier II inventory information?

(a) *Weight range codes.* Except as provided in paragraph (b) of this section, you must use the following codes to report the maximum amount and average daily amount when reporting Tier I or Tier II inventory information:

Range codes	Weight range in pounds	
	From	To
01	0	99
02	100	499
03	500	999
04	1,000	4,999
05	5,000	9,999
06	10,000	24,999
07	25,000	49,999
08	50,000	74,999
09	75,000	99,999
10	100,000	499,999
11	500,000	999,999
12	1,000,000	9,999,999
13	10,000,000	(*)

* Greater than 10 million

Note to paragraph (a): To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

(b) Your SERC or LEPC may provide other range codes for reporting maximum amount and average daily amount, or may require reporting of specific amounts. You may use your SERC's or LEPC's range codes (or specific amounts) provided the ranges are not broader than the ranges in paragraph (a) of this section.

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DEPARTMENT OF JUSTICE

41 CFR Part 128–1

[Docket No. FBI 151]

RIN 1110–AA32

Federal Bureau of Investigation Anti-Piracy Warning Seal Program

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Final rule.

SUMMARY: In this document, the Federal Bureau of Investigation (FBI) finalizes its proposed regulation regarding the FBI Anti-Piracy Warning Seal (APW Seal). The final rule provides a general authorization allowing all copyright holders to use the APW Seal, subject to specific conditions of use.

DATES: This rule is effective on August 13, 2012.

FOR FURTHER INFORMATION CONTACT: John C. Allender, FBI Office of the General Counsel, telephone number 202–324–8088.

SUPPLEMENTARY INFORMATION: In this document, the FBI finalizes a regulation proposed on September 7, 2011 (76 FR 55332), regarding the FBI APW Seal Program. In this regulation, the FBI extends access to the APW Seal to all United States copyright holders, subject to specific conditions of use.

A. Discussion

The FBI APW Seal is a modified image of the FBI's Official Seal with the words ''FBI Anti-Piracy Warning'' superimposed on it. The APW Seal was designed to graphically enhance the impact of language warning users of copyrighted media about the potential consequences of intellectual property crime, and the FBI's role in investigating such crime. It serves as a vivid and widely recognizable reminder of the FBI's authority and mission with respect to the protection of intellectual property rights.

Beginning in December 2003, the FBI implemented a pilot program in which the FBI entered into separate Memoranda of Understanding with each of five entertainment and software industry associations. Members of these associations were able to request approval to use the APW Seal from the association, and the association administered the process and record-keeping. Largely as a result of this program, the APW Seal and its anti-piracy message have reached a large segment of the public. Unfortunately, the pilot program also had the effect of excluding non-members of these five associations from being able to use the APW Seal on their works.

In order to enhance the availability, use, and effectiveness of the APW Seal on lawful, copyright-protected works, this rule establishes a regulation governing the use of the APW Seal. The image of the APW Seal will be made available on the FBI's Web site, and it may be downloaded for use on eligible works as specified in the text of the regulation below. There will be no fee associated with using the APW Seal. This regulation will be a significant improvement over the current program, which has tended to limit the use of the APW Seal and requires each user to enter into a written agreement governing the use. Once this regulation is effective, the FBI will work with the participating associations to terminate the pilot program.

B. Overview of Public Comments Received

All public comments were considered in preparing this final rule. Of the forty-five comments received, most expressed general agreement with the proposed rule. Twenty-four comments specifically noted the benefits of expanding the use of the APW Seal beyond the five associations participating in the pilot program. Many of these spoke favorably about eliminating the financial and administrative obstacles to use of the APW Seal under the pilot program. Four comments noted the benefits of speed and ease of access offered by the proposed on-line process for obtaining the APW Seal.

The comments received from self-identified copyright holders expressed strong support for the proposed rule. For example, two comments from organizations in the spectator sports and independent film industries highlighted the direct negative impact that copyright piracy has on each industry. These comments noted that the ''perishable nature'' of live sporting events and the need to justify income projections in order to secure financing for independent films leaves these industries vulnerable to the financial consequences of piracy. These comments support the FBI's belief that increased availability of the APW Seal will assist copyright holders in educating users and protecting their works from piracy.

Six comments expressed opposition to the proposed rule, noting various concerns either with the effectiveness of the APW Seal program in deterring piracy generally, or with the new direction outlined in the proposed rule. These included assertions that the APW Seal and accompanying warning do not effectively deter piracy of intellectual property and are a waste of FBI resources; that the lack of positive control over who downloads the APW Seal could lead to increased misuse of the APW Seal and undermine the effectiveness of the anti-piracy message and the FBI's reputation; and that the APW Seal program and other United States Government efforts to combat copyright piracy are merely the product of pressure from the entertainment industry.

The FBI responds to these comments with three points. First, the FBI believes that the APW Seal and accompanying warnings convey important messages to the public and are a significant component of its efforts to deter and to investigate federal crimes involving the piracy of intellectual property. Allowing use by copyright holders who are not members of industry associations will enhance those efforts. Second, although broader access may make unauthorized use more likely, this concern is overshadowed by the value of

increasing public awareness of these prohibitions and the FBI's role in investigating related criminal activity. Finally, although the FBI works closely with industry groups to combat piracy, it was the volume of requests to use the APW Seal from outside the entertainment industry associations participating in the pilot program, and the costs of negotiating agreements with individual copyright holders, that in large part spurred the revisions to the program reflected by this regulation.

One comment asserted that the Anti-Counterfeiting Trade Agreement (ACTA) is unconstitutional, while expressing support for the proposed rule. The assertion regarding ACTA is not relevant to the present rulemaking, which is being promulgated pursuant to the Department's statutory and regulatory authority concerning use of the official insignia of the FBI and the United States Department of Justice.

C. Comments on Specific Sections of the Proposed Rule

Several comments sought clarification or suggested changes to the proposed rule. One comment suggested that the language in paragraph (e)(1) that the ''APW Seal may only be used on works subject to protection as intellectual property,'' is a vague standard and may lead to confusion as to whether a work must be registered with the United States Copyright Office prior to the owner using the APW Seal. Two additional comments evidenced confusion as to whether the APW Seal is available for use on unregistered works, while another comment recommended that the APW Seal be limited to ''officially copyrighted'' works. The FBI assumes this comment referred to ''registered'' works. One additional comment suggested that the references to particular United States Code sections, such as are at paragraph (e)(1), are confusing and make it difficult to determine exactly who may use the APW Seal.

The FBI intends that the APW Seal be available for use on works protected under federal criminal statutes prohibiting piracy of copyrighted material. Registration is not necessary for such protection, as provided in Title 17, United States Code, Section 408(a). The FBI revised paragraph (e)(1) to clarify that the APW Seal is available for use only on copyrighted works, as opposed to other types of intellectual property.

One comment suggested that the phrase ''other applicable law'' should be clarified in paragraph (d)(2). As indicated in paragraph (c), use of the APW Seal, except as authorized by this regulation, would likely violate Title 18, United States Code, Section 701, which provides criminal sanctions for unauthorized uses of approved agency insignia. Additionally, Title 18, United States Code, Section 709 prohibits certain unauthorized uses of the name and initials of the FBI that suggest FBI endorsement, approval, or authorization. This prohibition could well be implicated in an unauthorized use of the APW Seal. Because the FBI cannot predict all of the other possible circumstances of misuse and the statutes that they might implicate, the FBI believes the current wording of paragraph (d)(2) is appropriate.

One comment expressed confusion as to the purpose of paragraph (e)(4), which encourages use of copy protection and anti-circumvention techniques. Paragraph (e)(3) requires users to obtain the Seal from the FBI's public Web site so that the FBI has an opportunity to provide additional notice of the conditions of use, and other pertinent information, before the image is downloaded. Use of copy protection and anti-circumvention techniques is encouraged to help prevent unauthorized copying and use of the APW Seal by individuals who may not be aware of the limitations in this regulation.

One comment indicated confusion as to the intent and effect of paragraph (f)(2)'s prohibition on use of the APW Seal on works that cannot lawfully be distributed by United States mail. The comment suggested that this paragraph would allow the APW Seal to be used on, for example, child pornography distributed through FedEx, UPS, or other non-United States Postal Service carriers. The language used in paragraph (f)(2) was intended to prohibit use of the APW Seal on types of works, such as child pornography, that cannot lawfully be distributed in or affecting interstate commerce under federal law. The prohibition does not depend on whether the work is actually distributed, or the actual means of distribution. To more closely track the language used in the federal statutes governing such works, such as Title 18, United Sates Code, Section 2252A, the FBI has revised paragraph (f)(2) to read: ''whose production, sale, public presentation, or distribution by mail or in or affecting interstate commerce would violate the laws of the United States.''

One comment suggested that paragraph (f)(4)(B) of the proposed rule is confusing, and offered alternative language. The comment stated that, as written, paragraph (f)(4)(B) ''falsely suggests that a lawful user of the [APW] Seal is not entitled to protection of the law.'' The FBI disagrees. This paragraph prohibits use of the APW Seal in a manner suggesting that the FBI has made a determination as to the work's eligibility for copyright protection. The APW Seal does not indicate that the FBI has made such a determination regarding the work and to indicate otherwise would be misleading. The language is sufficiently clear.

One comment recommended changing ''may'' to ''shall'' throughout the proposed rule for clarity. To reduce any ambiguity, the FBI has reviewed the regulatory language and changed ''may'' to ''shall'' and ''may not'' to ''shall not'' as appropriate. In addition, the FBI has rewritten paragraph (d)(1) as ''* * * subject to the terms and conditions set forth in this *section''* (emphasis added) to clarify that use of the APW Seal is governed by the terms and conditions in the entire section, 41 CFR 128–1.5009, rather than only what is contained in paragraph (d). Additionally, the reference to the United States Code in paragraph (e)(1) was reformatted for consistency with paragraphs (c) and (d)(2).

Two other comments questioned how the APW Seal would help detect violations of law, as stated in paragraph (a) of the proposed rule. The FBI believes that by increasing public awareness about criminal copyright violations and the FBI's investigative role, the APW Seal may not only help deter potential violators, but may increase the likelihood that individuals with information related to such violations will report that information so it can be investigated.

One comment recommended that the FBI keep the original authorized warning language used in the pilot program, which specified the applicable fines and potential prison sentences, in lieu of the authorized warning language in the proposed rule at paragraph (e)(2)(i). Although the FBI has not changed the authorized warning language from the proposed rule to the final rule, alternative authorized warning language specifying potential fines and prison sentences will be made available on the FBI's Web site pursuant to paragraph (e)(2). This will allow the FBI to more easily update the authorized warning language if the specific penalties are changed in the applicable statutes.

One comment expressed concern that statements in the Regulatory Certifications section of the proposed rule pertaining to the Unfunded Mandates Reform Act of 1995 (UMRA), the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), and Executive Order 12866,

section 3(f) asserting that the rule will have less than $100 million in economic impact were unsubstantiated by any data provided. In response, the FBI notes that, as was discussed in the notice of proposed rulemaking and above in this final rule, since December 2003 the FBI has conducted an APW Seal pilot program with five entertainment and software industry associations. Nothing that has come to the FBI's attention in the over eight years of the APW Seal pilot program suggests that this rule would have an economic impact of anywhere close to $100 million. Further, as also noted above, there will be no fee associated with using the APW Seal.

The comment also expressed concern that by designating this rule as not being a ''significant'' regulatory action the Department made a determination on a budgetary or economic issue in a manner that precluded evaluation by the Office of Management and Budget (OMB) under that Executive Order. The FBI responds that, pursuant to Executive Order 12866 section 6(a)(3)(A) and before publication it provided OMB with summaries both of the proposed and of the final rule on this subject. The summaries were reviewed by OMB and OMB concurred with the Department's assertion that this rule is not a ''significant'' regulatory action. It is the Department's experience that if OMB has any uncertainty regarding the correctness of an agency's assertion that a rulemaking is ''non-significant,'' OMB will either request an informal full text copy of the rule or will designate the rule as ''significant,'' thus initiating a formal review pursuant to Executive Order 12866. The phrasing of the Executive Order 12866/Executive Order 13563 certification in this rulemaking that ''accordingly this rule has not been reviewed by the Office of Management and Budget'' indicates that OMB has not conducted a formal review.

D. Comments Related to the FBI's APW Seal Program Generally

Thirteen comments expressed a general concern that greater accessibility will lead to, or at least facilitate, an increase in misuse of the APW Seal. These comments suggest that the proposed system of making the APW Seal available on the FBI's Web site will be more difficult to police than the pilot program. Ten comments expressed varying degrees of concern as to the possibility that widespread use of the APW Seal may ''dilute'' the value of the image and the FBI's message. While the FBI recognizes these potential effects of the new rule, they are outweighed by the expected benefits of increasing the presence of the anti-piracy message across the board to include copyrighted works that may have been ineligible under the pilot program. Additionally, the APW Seal will remain protected by criminal statutes, to include Title 18, United States Code, Sections 701 and 709.

Two comments noted that despite the text of the regulation, the public may perceive the APW Seal as the FBI's endorsement of a particular work or product, and believe that the work is entitled to protection. Paragraph (f)(4)(ii) specifically provides that the APW Seal shall not be used in any manner ''indicating that the FBI has determined that a particular work or portion thereof is entitled to protection of the law.'' The FBI does not review specific works to determine whether they are entitled to copyright protection. To further clarify this point, the FBI plans to include information on its public Web site (*http://www.fbi.gov*) to assist in educating individual users of the APW Seal, and the public at large.

Six comments recommended that the FBI establish a system to verify that users have a legitimate copyright interest in the work on which they seek to place the APW Seal. The FBI does not have the resources to establish such a system and does not consider such a system necessary to achieve the purposes of this regulation. Accordingly, the FBI declines to incorporate this recommendation into the final rule.

Three comments suggested that FBI and Interpol anti-piracy warnings should be ''skippable'' prior to movies or other material. Nothing in this regulation requires users of the APW Seal to prevent viewers from skipping past these warnings, nor is the industry prohibited from continuing the practice.

Two comments suggested that the FBI charge fees of some or all users of the APW Seal. Charging fees would deter use of the APW Seal. Another comment recommended making use of the APW Seal mandatory on copyright-protected works to assist in identification of counterfeits. The FBI does not have authority to mandate use of the APW Seal.

Two comments also suggested that rather than allow individual copyright owners to use the APW Seal, the FBI should continue to work through industry associations. One of these two comments also suggested that the APW Seal should indicate that the user is part of an association that works closely with the FBI to stop piracy. The APW Seal is not intended to indicate that the FBI works more closely with one group than another.

Two comments pointed out potential problems with applying the APW Seal to certain media, such as photographs or Web sites. One of these comments suggested that copyright owners who choose not to use the APW Seal will be disadvantaged compared to owners of works that more readily lend themselves to application of the APW Seal. Two comments suggested that widespread use of the APW Seal, as will be allowed under this regulation, may lead to a public belief that any work not bearing the APW Seal is not protected by copyright law. Use of the APW Seal in no way affects the protection that a work is entitled to under the law. The FBI believes that the value of the APW Seal outweighs the risk of possible confusion, but intends to clarify this matter on its public Web site.

Five comments also expressed a concern that the broader accessibility of the APW Seal may have a ''chilling effect'' on fair use, as some copyright holders may attempt to use the APW Seal to discourage uses of their copyrighted work that would otherwise be permissible under the fair use doctrine. The FBI fully recognizes that fair use, which is authorized under Title 17, United States Code, Section 107, does not constitute infringement, much less a federal crime. The warning language does not suggest otherwise. The FBI intends to address this matter on its public Web site.

Four comments noted generally that the APW Seal is a ''passive warning'' and not a sufficiently effective means to deter intellectual property piracy. Another comment suggested the FBI's warning should be modified to prevent ''ad burnout'' by using a graphic to show the negative impact of the piracy problem. The APW Seal program is part of a much larger government-wide effort to combat intellectual property piracy. Due to the nature of the program and the crime itself, it is difficult to measure the effectiveness of the APW Seal program at preventing piracy. Based on feedback from the pilot program and the volume of requests to use the APW Seal, however, the FBI believes that continuing the APW Seal program as expanded in this regulation is a worthwhile effort.

Four comments offered suggestions in regard to making, allowing, or preventing modifications to the appearance of the APW Seal related to size and color, banning other text on the same page or screen as the APW Seal, or a requirement for a border or other division to separate the image from any user-provided content. Two of these

comments suggested the FBI adopt a requirement for a border or minimum space around the APW Seal in order to more clearly separate it from other information on the same page or screen. The FBI agrees that this requirement would assist in limiting confusion as to the FBI's message. Accordingly, the FBI has modified paragraph (e)(2) to require a border any time the APW Seal is used on anything other than a blank screen or page, such as on media packaging. The FBI would not consider enlargement or reduction in size of the image downloaded to be a prohibited alteration of the image under this regulation. The FBI declines to adopt the recommendations on this topic related to other alterations as such flexibility could detract from the impact of the APW Seal in evoking the FBI's involvement in enforcement of anti-piracy laws.

Two comments recommended that the FBI implement some form of click-through informational pages or a pop-up notifying the user attempting to download the APW Seal of the conditions of use, and the possible penalties for unauthorized use. Another comment recommended that the APW Seal be more accessible on the FBI's Web site than the current APW Seal informational page, requiring fewer clicks to reach. The FBI will take these recommendations into account in designing the APW Seal program pages and download procedure.

One comment suggested that the FBI disallow use of the ''authorized warning language'' alone, which may be found at paragraph (e)(2)(i) of the rule, now that the APW Seal itself is available to all copyright holders. The FBI recognizes that some copyright-protected works may not lend themselves well to application of the APW Seal, and so will continue to allow use of the warning language alone for those users who find it more suitable to their needs.

One comment expressed an opinion that inclusion of the APW Seal on a copyrighted work should not establish per se the willful intent element of criminal copyright infringement (Reference Title 17, United States Code, Section 506(a)(1)). The evidentiary value of the use of the APW Seal or other warning in a particular case is not a matter to be determined via regulation by the FBI.

Several comments made recommendations regarding the role of the APW Seal in the FBI's overall law enforcement efforts relating to piracy of intellectual property. One comment suggested that the FBI should consider a comprehensive ''brand marketing strategy'' for the APW Seal, including guidance on how to use the APW Seal and how to report suspected piracy. Additionally, this comment suggested that the FBI work closely with industry associations and focus on enforcement. This comment, as well as one additional comment, suggested the FBI develop a system for reporting misuse of the APW Seal. Finally, one comment recommended that the FBI clarify that purchasing a counterfeit product is illegal and explain the ramifications of supporting the counterfeiting industry.

As noted previously, the APW Seal program is one aspect of a larger anti-piracy effort. The FBI, both independently and through its partnership with other federal agencies and the National Intellectual Property Rights Coordination Center (''IPR Center''), is currently working to increase public awareness of the issues related to copyright piracy and other intellectual property theft. The FBI works closely with industry associations to maximize the impact of enforcement efforts, and will continue to do so as long as it is beneficial to the FBI's mission with regard to intellectual property crime. More information about these efforts, the negative impacts of piracy and of supporting the counterfeiting industry, and how to report suspected piracy or IP theft is available on the FBI and IPR Center Web sites (*http://www.iprcenter.gov*).

Regulatory Certifications

Regulatory Flexibility Act

The Assistant Attorney General for Administration, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Subject to the terms and conditions set forth, this rule allows copyright holders to use the APW Seal on copyrighted works to help detect and deter criminal violations of United States intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review'' section 1(b), General Principles of Regulation.

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by OMB.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Executive Order 12988—Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132—Federalism

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, and tribal governments (in the aggregate) or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the United States economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. Subject to the terms and conditions set forth, this rule merely allows copyright holders to use the APW Seal on copyrighted works to help detect and deter criminal violations of United States intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

List of Subjects in 41 CFR Part 128–1

Government property, Seals and insignia, Copyright, Intellectual property.

Accordingly, for the reasons set forth in the preamble, part 128–1 of chapter 128 of Title 41 of the Code of Federal Regulations is amended as follows:

PART 128–1—[AMENDED]

■ 1. The authority citation for part 128–1 is revised to read as follows:

Authority: 5 U.S.C. 301, 40 U.S.C. 121(c), 41 CFR 101–1.108, and 28 CFR 0.75(j), unless otherwise noted.

■ 2. Add § 128–1.5009 to read as follows:

§ 128–1.5009 Authorization for Use of the Federal Bureau of Investigation Anti-Piracy Warning Seal.

(a) *Purpose.* The Federal Bureau of Investigation (FBI) Anti-Piracy Warning Seal (''APW Seal'') is an official insignia of the FBI and the United States Department of Justice. The purpose of the APW Seal is to help detect and deter criminal violations of United States intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

(b) The APW Seal is a modified image of the Official FBI Seal with the words ''FBI ANTI-PIRACY WARNING'' displayed horizontally across its center in an enclosed border, whether rendered in color, black and white, outline, or otherwise.

(c) The APW Seal has been approved by the Attorney General as an official insignia of the FBI within the meaning of Title 18, United States Code, Section 701, which provides criminal sanctions for unauthorized uses of such insignia.

(d)(1) The regulations in this section authorize use of the APW Seal by copyright holders on copyrighted works including, but not limited to films, audio recordings, electronic media, software, books, photographs, etc., subject to the terms and conditions set forth in this section.

(2) Use of the APW Seal or of the authorized warning language in a manner not authorized under this section may be punishable under Title 18, United States Code, Sections 701, 709, or other applicable law.

(e) *Conditions regarding use of the APW Seal.* (1) The APW Seal shall only be used on copyrighted works subject to protection under United States Criminal Code provisions such as those in Title 18, United States Code, Sections 2319, 2319A, and 2319B.

(2) The APW Seal shall only be used immediately adjacent to the authorized warning language. ''Authorized warning language'' refers to the language set forth in paragraph (e)(2)(i) of this section, or alternative language specifically authorized in writing for this purpose by the Director of the FBI or his or her designee and posted on the FBI's official public Internet Web site (*http://www.fbi.gov*). Except as authorized pursuant to paragraph (f)(1), the APW Seal and authorized warning language shall be enclosed by a plain box border at all times that other text or images appear on the same screen or page.

(i) ''The unauthorized reproduction or distribution of a copyrighted work is illegal. Criminal copyright infringement, including infringement without monetary gain, is investigated by the FBI and is punishable by fines and federal imprisonment.''

(ii) [Reserved]

(3) The APW Seal image must be obtained from the FBI's official public Internet Web site (*http://www.fbi.gov*). The APW Seal image shall not be animated or altered except that it may be rendered in outline, black and white, or grayscale.

(4) In programming or reproducing the APW Seal in or on a work, users are encouraged to employ industry-recognized copyright anti-circumvention or copy protection techniques to discourage copying of the FBI APW Seal, except that such techniques need not be used if no other content or advertising programmed into the same work on the same media utilizes such copyright anti-circumvention or copy protection techniques.

(f) *Prohibitions regarding use of the APW Seal.* (1) The APW Seal shall not be used in a manner indicating FBI approval, authorization, or endorsement of any communication other than the authorized warning language. No other text or image that appears on the same screen, page, package, etc., as the APW Seal or authorized warning language shall reference, contradict, or be displayed in a manner that appears to be associated with, the APW Seal or authorized warning language, except as authorized in writing by the Director of the FBI or his or her designee and posted on the FBI's official public Internet Web site (*http://www.fbi.gov*).

(2) The APW Seal shall not be used on any work whose production, sale, public presentation, or distribution by mail or in or affecting interstate commerce would violate the laws of the United States including, but not limited to, those protecting intellectual property and those prohibiting child pornography and obscenity.

(3) The APW Seal shall not be forwarded or copied except as necessary to display it on an eligible work.

(4) The APW Seal shall not be used in any manner:

(i) Indicating that the FBI has approved, authorized, or endorsed any work, product, production, or private entity, including the work on which it appears;

(ii) Indicating that the FBI has determined that a particular work or portion thereof is entitled to protection of the law; or,

(iii) Indicating that any item or communication, except as provided herein, originated from, on behalf of, or in coordination with the FBI, whether for enforcement purposes, education, or otherwise.

Dated: June 28, 2012.

Lee J. Lofthus,

Assistant Attorney General for Administration.

[FR Doc. 2012–16506 Filed 7–12–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8237]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the

program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Massachusetts:				
Abington, Town of, Plymouth County	250259	March 6, 1974, Emerg; September 30, 1977, Reg; July 17, 2012, Susp.	July 17, 2012	July 17, 2012.
Bellingham, Town of, Norfolk County	250232	July 25, 1975, Emerg; December 15, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Braintree, Town of, Norfolk County	250233	November 10, 1972, Emerg; June 1, 1978, Reg; July 17, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Bridgewater, Town of, Plymouth County	250260	November 28, 1975, Emerg; May 17, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Brockton, Town of, Plymouth County	250261	January 21, 1974, Emerg; March 1, 1979, Reg; July 17, 2012, Susp.	.....do	Do.
Brookline, Town of, Norfolk County	250234	March 24, 1972, Emerg; May 2, 1977, Reg; July 17, 2012, Susp.	.....do	Do.
Carver, Town of, Plymouth County	250262	July 29, 1975, Emerg; July 19, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Dedham, Town of, Norfolk County	250237	September 6, 1974, Emerg; December 1, 1978, Reg; July 17, 2012, Susp.	.....do	Do.
Duxbury, Town of, Plymouth County	250263	September 29, 1972, Emerg; May 2, 1977, Reg; July 17, 2012, Susp.	.....do	Do.
East Bridgewater, Town of, Plymouth County.	250264	July 23, 1975, Emerg; July 2, 1981, Reg; July 17, 2012, Susp.	.....do	Do.
Foxborough, Town of, Norfolk County ..	250239	June 20, 1975, Emerg; December 4, 1979, Reg; July 17, 2012, Susp.	.....do	Do.
Franklin, Town of, Norfolk County	250240	June 13, 1975, Emerg; February 17, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Hanover, Town of, Plymouth County	250266	July 9, 1975, Emerg; December 15, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Hanson, Town of, Plymouth County	250267	April 3, 1975, Emerg; January 20, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Hull, Town of, Plymouth County	250269	December 29, 1972, Emerg; May 2, 1983, Reg; July 17, 2012, Susp.	.....do	Do.
Lakeville, Town of, Plymouth County	250271	April 15, 1975, Emerg; June 4, 1980, Reg; July 17, 2012, Susp.	.....do	Do.
Marion, Town of, Plymouth County	255213	October 8, 1971, Emerg; April 6, 1973, Reg; July 17, 2012, Susp.	.....do	Do.
Medfield, Town of, Norfolk County	250242	September 6, 1974, Emerg; July 16, 1979, Reg; July 17, 2012, Susp.	.....do	Do.
Medway, Town of, Norfolk County	250243	August 11, 1975, Emerg; June 18, 1980, Reg; July 17, 2012, Susp.	.....do	Do.
Middleborough, Town of, Plymouth County.	250275	May 28, 1975, Emerg; September 16, 1981, Reg; July 17, 2012, Susp.	.....do	Do.
Needham, Town of, Norfolk County	255215	June 25, 1971, Emerg; April 13, 1973, Reg; July 17, 2012, Susp.	.....do	Do.
Norfolk, Town of, Norfolk County	255217	July 10, 1970, Emerg; August 20, 1971, Reg; July 17, 2012, Susp.	.....do	Do.
Norwell, Town of, Plymouth County	250276	July 9, 1975, Emerg; July 19, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Norwood, Town of, Norfolk County	250248	July 2, 1975, Emerg; February 1, 1980, Reg; July 17, 2012, Susp.	.....do	Do.
Plainville, Town of, Norfolk County	250249	October 29, 1974, Emerg; July 2, 1981, Reg; July 17, 2012, Susp.	.....do	Do.
Quincy, City of, Norfolk County	255219	June 19, 1970, Emerg; September 21, 1973, Reg; July 17, 2012, Susp.	.....do	Do.
Randolph, Town of, Norfolk County	250251	October 15, 1971, Emerg; May 1, 1978, Reg; July 17, 2012, Susp.	.....do	Do.
Rockland, Town of, Plymouth County ...	250281	July 24, 1975, Emerg; July 19, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Stoughton, Town of, Norfolk County	250253	March 4, 1975, Emerg; June 1, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Wellesley, Town of, Norfolk County	250255	December 22, 1972, Emerg; September 5, 1979, Reg; July 17, 2012, Susp.	.....do	Do.
West Bridgewater, Town of, Plymouth County.	250284	July 24, 1975, Emerg; June 15, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Westwood, Town of, Norfolk County	255225	January 14, 1972, Emerg; November 2, 1973, Reg; July 17, 2012, Susp.	.....do	Do.
Weymouth, Town of, Norfolk County	250257	December 15, 1972, Emerg; September 30, 1980, Reg; July 17, 2012, Susp.	.....do	Do.
Whitman, Town of, Plymouth County	250285	March 12, 1975, Emerg; July 2, 1981, Reg; July 17, 2012, Susp.	.....do	Do.
Wrentham, Town of, Norfolk County	250258	December 10, 1974, Emerg; July 5, 1982, Reg; July 17, 2012, Susp.	.....do	Do.
Region IV				
Alabama:				
Clarke County, Unincorporated Areas ..	010316	October 30, 2006, Emerg; October 16, 2008, Reg; July 17, 2012, Susp.	.....do	Do.
Coffeeville, Town of, Clarke County	010484	N/A, Emerg; May 20, 2010, Reg; July 17, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Fulton, Town of, Clarke County	010038	August 14, 2000, Emerg; October 16, 2008, Reg; July 17, 2012, Susp.	.....do	Do.
Jackson, City of, Clarke County	010040	August 11, 1975, Emerg; December 17, 1987, Reg; July 17, 2012, Susp.	.....do	Do.
Thomasville, City of, Clarke County	010041	April 19, 1976, Emerg; September 18, 1985, Reg; July 17, 2012, Susp.	.....do	Do.
Kentucky: Tompkinsville, City of, Monroe County.	210420	September 26, 2011, Emerg; N/A, Reg; July 17, 2012, Susp.	.....do	Do.
Region VI				
Arkansas:				
Carthage, City of, Dallas County	050062	February 4, 1976, Emerg; August 22, 1978, Reg; July 17, 2012, Susp.	.....do	Do.
Dallas County, Unincorporated Areas	050061	July 12, 1988, Emerg; December 1, 1989, Reg; July 17, 2012, Susp.	.....do	Do.
Fordyce, City of, Dallas County	050063	March 12, 1975, Emerg; May 15, 1980, Reg; July 17, 2012, Susp.	.....do	Do.
Sparkman, City of, Dallas County	050064	May 5, 1975, Emerg; March 1, 1988, Reg; July 17, 2012, Susp.	.....do	Do.
Oklahoma:				
Ada, City of, Pontotoc County	400173	May 22, 1974, Emerg; July 16, 1980, Reg; July 17, 2012, Susp.	.....do	Do.
Byng, Town of, Pontotoc County	400175	N/A, Emerg; April 1, 2011, Reg; July 17, 2012, Susp.	.....do	Do.
Pontotoc County, Unincorporated Areas	400495	February 9, 2006, Emerg; N/A, Reg; July 17, 2012, Susp.	.....do	Do.
Roff, Town of, Pontotoc County	400176	December 8, 1977, Emerg; November 27, 1979, Reg; July 17, 2012, Susp.	.....do	Do.
Texas: Zapata County, Unincorporated Areas.	480687	December 7, 2006, Emerg; N/A, Reg; July 17, 2012, Susp.	.....do	Do.
Region VIII				
Colorado:				
Clear Creek County, Unincorporated Areas.	080034	November 27, 1973, Emerg; March 11, 1980, Reg; July 17, 2012, Susp.	.....do	Do.
Georgetown, Town of, Clear Creek County.	080035	April 9, 1974, Emerg; June 5, 1989, Reg; July 17, 2012, Susp.	.....do	Do.
Idaho Springs, City of, Clear Creek County.	080036	December 4, 1973, Emerg; November 15, 1978, Reg; July 17, 2012, Susp.	.....do	Do.

*.....do and Do. = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: July 3, 2012.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–17060 Filed 7–12–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Clear Creek County, Colorado, and Incorporated Areas Docket No.: FEMA–B–1202			
Bear Creek	Approximately 0.42 mile downstream of Golden Willow Road.	+7409	Unincorporated Areas of Clear Creek County.
	At the downstream side of the Corral Creek confluence	+7549	
Clear Creek	At the upstream side of the Georgetown Lake footbridge	+8452	Town of Georgetown, Unincorporated Areas of Clear Creek County.
	Approximately 1,980 feet upstream of 6th Street	+8636	
South Clear Creek	Approximately 80 feet upstream of Rose Street	+8498	Town of Georgetown, Unincorporated Areas of Clear Creek County.
	Approximately 1,670 feet upstream of Main Street	+8697	
South Clear Creek—Weir 1248 Overflow.	Approximately 100 feet upstream of the South Clear Creek confluence.	+8498	Town of Georgetown.
	At the downstream side of the South Clear Creek divergence.	+8517	
South Clear Creek—Weir 835 Overflow.	Approximately 170 feet upstream of the Clear Creek confluence.	+8487	Town of Georgetown.
	At the downstream side of the South Clear Creek divergence.	+8507	
Virginia Canyon	At the upstream side of Riverside Drive	+7521	City of Idaho Springs, Unincorporated Areas of Clear Creek County.
	Approximately 800 feet upstream of Virginia Street	+7655	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Idaho Springs

Maps are available for inspection at City Hall, 1711 Miner Street, Idaho Springs, CO 80452.

Town of Georgetown

Maps are available for inspection at the Town Hall, 404 6th Street, Georgetown, CO 80444.

Unincorporated Areas of Clear Creek County

Maps are available for inspection at the Clear Creek County Courthouse, 405 Argentine Street, Georgetown, CO 80444.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Kane County, Illinois, and Incorporated Areas **Docket No.: FEMA–B–1197**			
Big Rock Creek	Approximately 1.68 miles downstream of Jericho Road (at the Kendall County boundary).	+648	Unincorporated Areas of Kane County, Village of Big Rock.
	Approximately 1.0 mile upstream of Price Road (at the West Branch Big Rock Creek and East Branch Big Rock Creek confluence).	+689	
Duffin Drain	At the Sugar Grove Branch confluence	+678	Unincorporated Areas of Kane County, Village of Big Rock, Village of Sugar Grove.
	At the downstream side of Wheeler Road	+702	
East Branch Big Rock Creek	At the Big Rock Creek confluence	+689	Unincorporated Areas of Kane County, Village of Big Rock.
	At the Malgren Drain confluence	+709	
East Branch Big Rock Creek	At the upstream side of Owens Road	+779	Unincorporated Areas of Kane County.
	At the East Branch Big Rock Creek Tributary 2 confluence.	+810	
East Branch Big Rock Creek Tributary 2.	At the East Branch Big Rock Creek confluence	+810	Unincorporated Areas of Kane County.
	Approximately 0.47 mile upstream of Keslinger Road	+846	
Malgren Drain	At the East Branch Big Rock Creek confluence	+709	Unincorporated Areas of Kane County, Village of Big Rock.
	At the downstream side of Swan Road	+741	
Sugar Grove Branch	At the Welch Creek confluence	+677	Unincorporated Areas of Kane County.
	Approximately 1,150 feet downstream of Fay's Lane	+680	
Welch Creek	At the Big Rock Creek confluence	+665	Unincorporated Areas of Kane County, Village of Big Rock, Village of Sugar Grove.
	At the downstream side of Keslinger Road	+813	
West Branch Big Rock Creek	At the Big Rock Creek confluence	+689	Unincorporated Areas of Kane County.
	At the downstream side of U.S. Route 30	+720	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Kane County

Maps are available for inspection at the Kane County Government Center, Building A, 719 Batavia Avenue, Geneva, IL 60134.

Village of Big Rock

Maps are available for inspection at the Village Hall, 408 Rhodes Street, Big Rock, IL 60511.

Village of Sugar Grove

Maps are available for inspection at the Village Hall, 10 Municipal Drive, Sugar Grove, IL 60554.

Monroe County, Kentucky, and Incorporated Areas **Docket No.: FEMA–B–1038**			
Cumberland River	Approximately 5,200 feet downstream of the confluence with McFarland Creek.	+518	Unincorporated Areas of Monroe County.
	At the confluence with Glasscock Creek	+536	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
ADDRESSES **Unincorporated Areas of Monroe County** Maps are available for inspection at 200 North Main Street, Tompkinsville, KY 42167.			
Norfolk County, Massachusetts (All Jurisdictions) **Docket Nos.: FEMA–B–1066 and B–1139**			
Atlantic Ocean	Along the shoreline, approximately 100 feet south of the intersection of Stockbridge Street and Margin Street.	+21	Town of Cohasset.
	Along the shoreline, approximately 330 feet northeast of the end of Whitehead Road.	+21	
Beaver Brook	Approximately 0.83 mile downstream of Plymouth Street	+161	Town of Weymouth.
	Approximately 0.6 mile downstream of Plymouth Street	+161	
Bubbling Brook	Approximately 1,000 feet upstream of Brook Street	+144	Town of Walpole.
	Approximately 800 feet upstream of North Street	+228	
Backwater from the Farm River	From the Farm River to approximately 1,600 feet upstream of West Street and immediately south of I–93.	+120	City of Quincy.
Germany Brook	Approximately 1,500 feet downstream of Winter Street	+169	Town of Norwood.
	At Winter Street	+175	
Great Pond Tributary	Just upstream of Randolph Street	+161	Town of Weymouth.
	Approximately 400 feet upstream of Randolph Street	+161	
Lake Mirimichi	Entire shoreline	+161	Town of Foxborough.
Neponset River	Approximately 1.07 miles downstream of Milton Street	+44	Town of Dedham.
	Approximately 0.75 mile downstream of Milton Street	+44	
Neponset River	Approximately 400 feet downstream of I–95	+48	Town of Sharon.
	Just downstream of I–95	+48	
New Pond (Backwater effects from Charles River).	Entire shoreline	+74	Town of Needham.
Rabbit Hill Pond	At the Rabbit Hill Pond Dam	+177	Town of Plainville.
	Approximately 750 feet upstream of the Rabbit Hill Pond Dam.	+178	
School Meadow Brook	Approximately 2,000 feet downstream of U.S. Route 1	+187	Town of Sharon.
	Approximately 350 feet upstream of U.S. Route 1	+188	
Stall Brook	Approximately 750 feet west of the intersection of Alder Street and Trotter Drive.	+246	Town of Medway.
	Approximately 350 feet east of the intersection of Route 109 and Green Street.	+246	
Walnut Hill Stream	Approximately 400 feet downstream of South Main Street	+10	Town of Cohasset.
	Approximately 80 feet downstream of South Main Street	+10	
Weymouth Fore River Bay	Along the shoreline, approximately 275 feet east of the intersection of Pleasant View Avenue and Venus Road.	+12	Town of Braintree, Town of Weymouth.
	Along the shoreline, approximately 1,000 feet west of the intersection of Monatiquot Street and Bluff Road.	+15	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Quincy
Maps are available for inspection at City Hall, 1305 Hancock Street, Quincy, MA 02169.

Town of Braintree
Maps are available for inspection at the Town Hall, 1 John F. Kennedy Memorial Drive, Braintree, MA 02184.

Town of Cohasset
Maps are available for inspection at the Town Hall, 41 Highland Avenue, Cohasset, MA 02025.

Town of Dedham
Maps are available for inspection at the Town Administration Building, 26 Bryant Street, Dedham, MA 02026.

Town of Foxborough
Maps are available for inspection at the Town Hall, 40 South Street, Foxborough, MA 02035.

Town of Medway
Maps are available for inspection at the Town Hall, 155 Village Street, Medway, MA 02053.

Town of Needham
Maps are available for inspection at the Town Hall, 1471 Highland Avenue, Needham, MA 02492.

Town of Norwood
Maps are available for inspection at the Town Hall, 566 Washington Street, 2nd Floor, Norwood, MA 02062.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Town of Plainville
Maps are available for inspection at the Town Hall, 142 South Street, Plainville, MA 02762.

Town of Sharon
Maps are available for inspection at the Town Office Building, 90 South Main Street, Sharon, MA 02067.

Town of Walpole
Maps are available for inspection at the Town Hall, 135 School Street, Walpole, MA 02081.

Town of Weymouth
Maps are available for inspection at the Town Hall, 75 Middle Street, Weymouth, MA 02189.

Plymouth County, Massachusetts (All Jurisdictions)
Docket No.: FEMA–B–7786

Aassawompsett Pond	Entire shoreline within community	+55	Town of Middleborough.
Accord Brook	Approximately 3,300 feet upstream of State Route 228	+115	Town of Norwell.
Atlantic Ocean	Approximately 150 feet south of the intersection of Brant Beach Avenue and Ocean View Avenue.	+19	Town of Hingham, Town of Hull, Town of Marion, Town of Mattapoisett, Town of Wareham.
	Approximately 210 feet southeast of the intersection of Highland Avenue and Mount Pleasant Way.	+22	
Bear Swamp	The area around State Route 105	+14	Town of Rochester.
Doggett Brook	The area around State Route 105	+14	Town of Rochester.
Fall Brook	The low land area between Azel Road and Howland Road	+82	Town of Lakeville.
French Stream	Approximately 1,200 feet upstream of the Golf Cart Bridge	+104	Town of Abington.
	Approximately 900 feet downstream of Spruce Street	+123	
Great Quittacas Pond	Entire shoreline within community	+55	Town of Middleborough, Town of Rochester.
Hathaway Pond	The area around State Route 105	+14	Town of Rochester.
Hockomock River	At the Town River confluence	+63	Town of Bridgewater.
	Approximately 1,000 feet downstream of the Maple Street Bridge.	+63	
Matfield River	At the Bridge Street bridge	+33	Town of East Bridgewater.
	Approximately 260 feet upstream of the Bridge Street bridge.	+33	
Meadow Brook	Approximately 300 feet downstream of State Route 18	+75	Town of Whitman.
Oldham Pond	Entire shoreline within community	+59	Town of Hanson.
Rocky Meadow Brook	At the Weweantic River confluence	+77	Town of Middleborough.
	Approximately 0.75 mile upstream of France Street	+84	
Salisbury Plain River	Approximately 1 mile downstream of the Sergents Way Bridge.	+67	Town of West Bridgewater.
	Approximately 3,200 feet downstream of the Sergents Way Bridge.	+70	
Satucket River	Just upstream of the Pond Street Bridge	+42	Town of Halifax.
Shumatuscacant River	Approximately 1,000 feet upstream of the Essex Street Bridge.	+78	Town of Whitman.
	Approximately 3,000 feet upstream of the Essex Street Bridge.	+80	
Stream River	At the Shumatuscacant River confluence	+80	Town of Whitman.
	Approximately 400 feet upstream of the Shumatuscacant River confluence.	+80	
Third Herring Brook	From downstream of the River Street Bridge to the North River confluence.	+8	Town of Hanover.
Town River	Approximately 1,200 feet upstream of the High Street Bridge.	+47	Town of Bridgewater.
	Approximately 1,500 feet upstream of the High Street Bridge.	+48	
	Approximately 1,100 feet upstream of the Forest Road Bridge.	+62	
	At the Hockomock River confluence	+63	
Tributary A	Just upstream of the Summer Street Bridge	+71	Town of Hanover.
Tributary to Meadow Brook	Approximately 1,300 feet upstream of the Meadow Brook confluence.	+75	Town of Whitman.
	Approximately 1,600 feet upstream of the Meadow Brook confluence.	+75	
Weweantic River	Approximately 1 mile downstream of State Route 58	+63	Town of Middleborough, Town of Wareham.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	At the Rocky Meadow Brook confluence	+77	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Abington
Maps are available for inspection at the Town Hall, 500 Gliniewicz Way, Abington, MA 02351.

Town of Bridgewater
Maps are available for inspection at the Town Hall, 66 Central Square, Bridgewater, MA 02324.

Town of East Bridgewater
Maps are available for inspection at the Town Hall, 175 Central Street, East Bridgewater, MA 02333.

Town of Halifax
Maps are available for inspection at the Town Hall, 499 Plymouth Street, Halifax, MA 02338.

Town of Hanover
Maps are available for inspection at the Town Hall, 550 Hanover Street, Suite 29, Hanover, MA 02339.

Town of Hanson
Maps are available for inspection at the Town Hall, 542 Liberty Street, Hanson, MA 02341.

Town of Hingham
Maps are available for inspection at the Town Hall, 210 Central Street, Hingham, MA 02043.

Town of Hull
Maps are available for inspection at the Town Hall, 253 Atlantic Avenue, Hull, MA 02045.

Town of Lakeville
Maps are available for inspection at the Town Hall, 346 Bedford Street, Lakeville, MA 02347.

Town of Marion
Maps are available for inspection at the Town Hall, 2 Spring Street, Marion, MA 02738.

Town of Mattapoisett
Maps are available for inspection at the Town Hall, 16 Main Street, Mattapoisett, MA 02739.

Town of Middleborough
Maps are available for inspection at the Town Hall, 10 Nickerson Avenue, Middleborough, MA 02346.

Town of Norwell
Maps are available for inspection at the Town Hall, 345 Main Street, Norwell, MA 02061.

Town of Rochester
Maps are available for inspection at the Town Hall, One Constitution Way, Rochester, MA 02770.

Town of Wareham
Maps are available for inspection at the Memorial Town Hall, Administration Department, 54 Marion Road, Wareham, MA 02571.

Town of West Bridgewater
Maps are available for inspection at the Town Hall, 65 North Main Street, West Bridgewater, MA 02379.

Town of Whitman
Maps are available for inspection at the Town Hall, 54 South Avenue, Whitman, MA 02382.

Pontotoc County, Oklahoma, and Incorporated Areas
Docket Nos.: FEMA–B–1071 and B–1214

Clear Boggy Creek	Approximately 990 feet downstream of State Highway 377	+817	City of Ada, Unincorporated Areas of Pontotoc County.
	Approximately 400 feet downstream of Stonecipher Boulevard.	+819	
Clear Boggy Creek	At the downstream side of Cradduck Road	+865	Unincorporated Areas of Pontotoc County.
	Approximately 0.4 mile upstream of Cradduck Road	+876	
Little Sandy Creek	Approximately 900 feet downstream of North 3570 Road	+916	City of Ada, Unincorporated Areas of Pontotoc County.
	Approximately 528 feet upstream of Constant Avenue	+984	
Town Branch	Approximately 1,500 feet downstream of North 3700 Road	+822	Town of Allen, Unincorporated Areas of Pontotoc County.
	Approximately 1,600 feet upstream of South Saint Memphis Road.	+856	
Tributary 1	At the downstream side of U.S. Route 3	+824	Unincorporated Areas of Pontotoc County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Tributary 2	Approximately 1,975 feet upstream of County Road East 1570.	+845	Unincorporated Areas of Pontotoc County.
	Approximately 600 feet upstream of the Tributary 1 confluence.	+831	
	Approximately 1,175 feet upstream of County Road East 1570.	+853	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Ada
Maps are available for inspection at 231 South Townsend Street, Ada, OK 78420.

Town of Allen
Maps are available for inspection at 109 North Memphis Street, Allen, OK 78425.

Unincorporated Areas of Pontotoc County
Maps are available for inspection at 120 West 13th Street, Ada, OK 74821.

Yakima County, Washington, and Incorporated Areas
Docket No.: FEMA–B–1188

Cottonwood Creek	Approximately 970 feet downstream of Dazet Road	+1244	Unincorporated Areas of Yakima County.
	Approximately 2.08 miles upstream of Hubbard Road	+1831	
Cottonwood Creek Left Bank Overflow Downstream.	At the Cottonwood Creek confluence	+1293	Unincorporated Areas of Yakima County.
	At the Cottonwood Creek divergence	+1323	
Cottonwood Creek Left Bank Overflow Upstream.	Approximately 0.26 mile downstream of Canyon Road	+1406	Unincorporated Areas of Yakima County.
	Approximately 0.64 mile upstream of Canyon Road	+1475	
Cottonwood Creek Tributary 1	At the Cottonwood Creek confluence	+1613	Unincorporated Areas of Yakima County.
	Approximately 0.53 mile upstream of Cottonwood Canyon Road.	+1668	
Secondary Tributary to Wide Hollow Tributary 2.	At the Tributary to Wide Hollow Creek Tributary 2 confluence.	+1519	Unincorporated Areas of Yakima County.
	Approximately 0.36 mile upstream to the Tributary to Wide Hollow Creek Tributary 2 confluence.	+1569	
Shaw Creek	At the Wide Hollow Creek confluence	+1179	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 160 feet upstream of Summitview Road	+1438	
Shaw Creek-Wide Hollow Creek Overflow.	At the Wide Hollow Creek confluence	+1152	City of Yakima.
	Approximately 0.27 mile upstream of Westbrook Loop	+1182	
Shaw Creek-Wide Hollow Creek Walmart Overflow 1.	At the Wide Hollow Creek confluence	+1151	City of Yakima.
	Approximately 1,307 feet upstream of South 64th Avenue	+1158	
Shaw Creek-Wide Hollow Creek Walmart Overflow 2.	At the Wide Hollow Creek confluence	+1149	City of Yakima.
	Approximately 1,236 feet upstream of South 64th Avenue	+1160	
Shaw Creek Ditch 1	At the Shaw Creek confluence	+1431	Unincorporated Areas of Yakima County.
	Approximately 170 feet downstream of North 112th Avenue.	+1435	
Shaw Creek Left Bank Overflow	At the Shaw Creek confluence	+1252	Unincorporated Areas of Yakima County.
	At the Shaw Creek divergence	+1270	
Shaw Creek North Pear Overflow.	At the Shaw Creek confluence	+1235	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 560 feet upstream of Orchard Avenue	+1284	
Shaw Creek Overflow	At the Shaw Creek confluence	+1187	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 0.3 mile upstream of South 91st Avenue	+1222	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Shaw Creek Overflow South	At the Shaw Creek confluence	+1182	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 0.32 mile upstream of South 88th Avenue	+1215	
Shaw Creek Tributary	At the Shaw Creek confluence	+1230	Unincorporated Areas of Yakima County.
	Approximately 160 feet downstream of South Mize Road	+1407	
Tributary to Wide Hollow Creek Tributary 2.	At the Wide Hollow Creek Tributary 2 confluence	+1470	Unincorporated Areas of Yakima County.
	Approximately 0.42 mile upstream of Lynch Road	+1566	
Wide Hollow Creek	At the Yakima River confluence	+958	City of Union Gap, City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 1.08 miles upstream of Stone Road	+1733	
Wide Hollow Creek Mill Weir Overflow.	At the Wide Hollow Creek confluence	+958	City of Union Gap.
	At the Wide Hollow Creek divergence	+964	
Wide Hollow Creek Right Bank Overflow 1.	At the Wide Hollow Creek confluence	+1413	Unincorporated Areas of Yakima County.
	Approximately 0.32 mile upstream of Wide Hollow Road	+1450	
Wide Hollow Creek Tributary 1	At the Wide Hollow Creek confluence	+1482	Unincorporated Areas of Yakima County.
	Approximately 1.08 miles upstream of Cook Road	+1712	
Wide Hollow Creek Tributary 1 Midflow Split.	At the Wide Hollow Creek Tributary 1 confluence	+1647	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek Tributary 1 divergence	+1660	
Wide Hollow Creek Tributary 1 Left Bank Overflow.	Approximately 300 feet downstream of Stone Road	+1470	Unincorporated Areas of Yakima County.
	Approximately 0.7 mile upstream of Hollow Creek Lane	+1545	
Wide Hollow Creek Tributary 2	At the Wide Hollow Creek confluence	+1450	Unincorporated Areas of Yakima County.
	Approximately 0.45 mile upstream of Tieton Drive	+1594	
Wide Hollow Structure 116 Bypass.	At the Wide Hollow Creek confluence	+1370	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	+1378	
Wide Hollow Structure 125 Bypass.	At the Wide Hollow Creek confluence	+1430	Unincorporated Areas of Yakima County.
	At the upstream side of Wide Hollow Road	+1438	
Wide Hollow Structure 21 Bypass.	At the Ahtanum Creek confluence	+953	City of Union Gap, Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	+975	
Wide Hollow Structure 36 Bypass.	At the Wide Hollow Creek confluence	+1012	City of Union Gap.
	At the Wide Hollow Creek divergence	+1016	
Wide Hollow Structure 47 Bypass.	At the Wide Hollow Creek confluence	+1045	City of Union Gap.
	At the Wide Hollow Creek divergence	+1050	
Wide Hollow Structure 86 Bypass.	At the Wide Hollow Creek confluence	+1203	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	+1217	
Wide Hollow Structure 99 Bypass.	At the Wide Hollow Creek confluence	+1264	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	+1280	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Union Gap

Maps are available for inspection at 102 West Ahtanum Road, Union Gap, WA 98903.

City of Yakima

Maps are available for inspection at 129 North 2nd Street, Yakima, WA 98901.

Unincorporated Areas of Yakima County

Maps are available for inspection at 128 North 2nd Street, Yakima, WA 98901.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–17191 Filed 7–12–12; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 10

[PS Docket No. 07–287; FCC 08–164]

Commercial Mobile Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements associated with the Commission's *Commercial Mobile Alert System* (CMS), Second Report and Order (''CMAS Second Report and Order''). This document is consistent with the CMAS Second Report and Order, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 10.350(a)(7) and (b) published at 73 FR 47550, August 14, 2008, are effective July 13, 2012.

FOR FURTHER INFORMATION CONTACT: Leslie Haney, *Leslie.Haney@fcc.gov,* (202) 418–1002.

SUPPLEMENTARY INFORMATION: This document announces that, on July 22, 2009, OMB approved, for a period of three years, the information collection requirements relating to the Commercial Mobile Alert System rules contained in the Commission's Second Report and Order, FCC 08–164, published at 73 FR 47550, August 14, 2008. The OMB Control Number is 3060–1126. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Judith Boley Herman, Federal Communications Commission, Room 1–B441, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1126, 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 final OMB approval on July 22, 2009, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 10.

Under 5 CFR part 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 Number is 3060–1126.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 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: 3060–1126.

OMB Approval Date: July 22, 2009.

Expiration Date: July 31, 2012.

Title: Section 10.350, Testing Requirements for the Commercial Mobile Alert System (CMAS).

Form No.: Not applicable.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents and Responses: 146 respondents; 1,752 responses.

Estimated Time per Response: 2.5 seconds.

Frequency of Response: Monthly and on occasion reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d).

Total Annual Burden: 2 hours.

Total Annual Cost: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission requested OMB approval of a new information collection in order to obtain the full three-year clearance from them. The approval was received from OMB on July 22, 2009. The Commission's estimates for public burden are described above.

As required by the Warning, Alert, and Response Network (WARN) Act, Public Law 109–347, the Federal Communications Commission adopted final rules to establish a Commercial Mobile Alert System (CMAS), under which the Commercial Mobile Service (CMS) providers may elect to transmit emergency alerts to the public, see *Second Report and Order and Further Notice of Proposed Rulemaking,* FCC 08–164, 23 FCC Rcd. In order to ensure that the CMAS operates efficiently and effectively, the Commission requires participating CMS providers to receive required monthly test messages initiated by the Federal Alert Gateway Administrator, to test their infrastructure and internal CMAS delivery systems by distributing the monthly message to their CMAS coverage area, and to log the results of the tests. The Commission also requires periodic testing of the interface between the Federal Alert Gateway and each CMS Provider Gateway to ensure the availability and viability of both gateway functions. The CMS Provider Gateways must send an acknowledgement to the Federal Alert Gateway upon receipt of these interface test messages.

The Commission, the Federal Alert Gateway and participating CMS providers will use this information to ensure the continued functioning of the CMAS, thus complying with the WARN Act and the Commission's obligation to promote the safety of life and property through the use of wire and radio communications.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–17125 Filed 7–12–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC109

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2012 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 10, 2012, through 2400 hrs, A.l.t., December 31, 2012.

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

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

The 2012 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 2,102 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

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

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 9, 2012.

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

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

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

Dated: July 10, 2012.

James P. Burgess,

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

[FR Doc. 2012–17162 Filed 7–10–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101207737–2141–02]

RIN 0648–XC110

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder, Flathead Sole, Rex Sole, Deep-Water Flatfish, and Shallow-Water Flatfish in the Gulf of Alaska Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for arrowtooth flounder, flathead sole, rex sole, deep-water flatfish, and shallow-water flatfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to limit incidental catch of Pacific ocean perch by vessels fishing for arrowtooth flounder, flathead sole, rex sole, deep-water flatfish, and shallow-water flatfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 10, 2012, through 2400 hrs, A.l.t., December 31, 2012.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens 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 Magnuson-Stevens Act requires that conservation and management measures prevent overfishing. The 2012 Pacific ocean perch overfishing level in the Western Regulatory Area of the GOA is 2,423 metric tons (mt) and the acceptable biological catch (ABC) is 2,102 mt as established by the final 2012 and 2013 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012). NMFS closed directed fishing for Pacific ocean perch on July 2, 2012 (77 FR 39649, July 5, 2012) and prohibited retention of Pacific ocean perch on July 10, 2012 (publication in FR pending).

As of July 9, 2012, approximately 2,428 mt of Pacific ocean perch has been harvested in the Western Regulatory Area of the GOA. Vessels targeting various rockfish species have had significant incidental catch of Pacific ocean perch and have taken the majority of Pacific ocean perch in the Western Regulatory Area of the GOA in 2012. Directed fishing for all rockfish species categories is closed in the Western Regulatory Area of the GOA. However, substantial fishing effort is being directed at fisheries currently open to directed fishing in the Western Regulatory Area of the GOA, including arrowtooth flounder, flathead sole, rex sole, deep-water flatfish, and shallow-water flatfish. If vessels are allowed to continue directed fishing for arrowtooth flounder, flathead sole, rex sole, deep-water flatfish, or shallow-water flatfish in the Western Regulatory Area of the GOA, further incidental catch of Pacific ocean perch would occur. ''Deep-water flatfish means'' Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole. ''Shallow-water flatfish'' means flatfish not including ''deep-

water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

The Regional Administrator has determined, in accordance with § 679.20(d)(3), that prohibiting directed fishing for arrowtooth flounder, flathead sole, rex sole, deep-water flatfish, and shallow-water flatfish in the Western Regulatory Area of the GOA is necessary to prevent further incidental catch of Pacific ocean perch.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, would delay prohibiting directed fishing for arrowtooth flounder, flathead sole, rex sole, deep-water flatfish, and shallow-water flatfish in the Western Regulatory Area of the GOA and allow further incidental catch of Pacific ocean perch to occur in these fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 9, 2012.

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

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

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

Dated: July 10, 2012.

James P. Burgess,

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

[FR Doc. 2012–17163 Filed 7–10–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 135
Friday, July 13, 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 THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

RIN 1506–AB15

Request for Comments: Customer Due Diligence Requirements for Financial Institutions; Public Hearing

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of public hearing; request for comment.

SUMMARY: FinCEN is announcing the first in an intended series of public hearings to continue gathering information on its Advance Notice of Proposed Rulemaking (ANPRM) on Customer Due Diligence (CDD) Requirements for Financial Institutions, published in the **Federal Register** on March 5, 2012.[1] In particular, FinCEN seeks further clarification on the issues described in this Notice. FinCEN invites various components of the law enforcement and regulatory communities to participate. In addition, FinCEN invites other interested parties, including industry representatives, to attend and/or provide comments at this first public hearing, to be held on July 31, 2012 at the U.S. Department of the Treasury building in Washington, DC FinCEN will also provide information in this Notice about how to submit comments and/or attend the hearing and what procedures to follow to submit information to the Treasury Department to obtain entry to the hearing site.

DATES: This public hearing will be held on July 31, 2012, beginning at 9:30 a.m., Eastern Time, and ending at 5 p.m., in Washington, DC Requests to attend the hearing and/or provide oral comments, written outlines of the oral comments, and the personal identification information required of those individuals who wish to enter the Treasury Department building, must be received on or before July 24, 2012. More information on the intended subsequent hearings will be provided at a later date.

ADDRESSES: Requests to attend and/or provide comments: Requests to attend and/or provide comments at the Public Hearing must be submitted by email to the FinCEN BSA Resource Center at *BSA_Resource_Center@FinCEN.Gov,* or by mail to FinCEN, P.O. Box 39, Vienna, VA 22183. Include ''CDD Public Hearing'' in the body of the text or the ''subject'' line of the email.

Meeting site: This public hearing will be held at the United States Department of the Treasury, located at 1500 Pennsylvania Avenue Northwest, Washington, DC 20220.

Inspection of comments and outlines: Written comments and outlines may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call). In general, FinCEN will make all written comments, including outlines, publicly available by posting them on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: FinCEN: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732 and select option 6.

SUPPLEMENTARY INFORMATION:

Information About Attending and/or Providing Comments at the Hearing

Individuals requesting to attend and/or provide oral comments should provide the following information in their request, which must be submitted to FinCEN at the address appearing in this Notice under the heading **ADDRESSES**: *Request to attend and/or provide oral comments:* (1) The name of the person wishing to attend and/or provide comments; (2) the person's contact information (telephone number and email address); (3) the organization(s) the person represents, if any; and, if wishing to provide comments, (4) a separate written, one to two-page outline of the proposed comments. FinCEN is requesting a written outline of comments in advance of the hearing for scheduling purposes. Given space and time limitations, not all requests to attend and/or provide oral comments may be honored. However, any outlines received will be made part of the public record for the hearing.

Based upon the requests received, FinCEN will develop an agenda for witness oral comments, will notify those commenters scheduled as part of the agenda, and will post the agenda on FinCEN's Web site (address: *www.fincen.gov*). Each comment, as well as a general summary of the hearing's discussion will be made available for public inspection after the public hearing; as such, information that a respondent does not desire to be made public, such as a phone number, should not be included in the outline of the comment discussed above. Information about the webcast will be posted on FinCEN's Web site prior to the public hearing, and the public hearing will be made available via webcast.

Due to security requirements and to facilitate entry to the meeting site, anyone wishing to attend must contact *BSA_Resource_Center@FinCEN.Gov,* or (202) 354–6400 no later than July 24, 2012, in order to provide the following required clearance information: *For U.S. citizens:* Full name, business affiliation, date of birth, and Social Security number; *For foreign nationals:* Full name, business affiliation, date of birth, passport number, and the country where the passport was issued. When arriving for the meeting, attendees must present a government-issued photo or passport identification and should arrive at least one-half hour prior to the start time of the meeting. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation, are asked to indicate this to *BSA_Resource_Center@FinCEN.Gov.*

For those unable to attend in person, written comments to the detailed questions may also be submitted for the record by email or mail to the respective address above by July 31, 2012. FinCEN will make such written comments publicly available by posting them on *http://www.regulations.gov*.

Request for Hearing Comments

On March 5, 2012, FinCEN published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a wide range of questions pertaining to the development of a

[1] Financial Crimes Enforcement Network, ''Customer Due Diligence Requirements for Financial Institutions,'' 77 FR 13046 (March 5, 2012), *available at http://www.regulations.gov/#!docketDetail;D=FINCEN-2012-0001;dct=FR%252BPR%252BN%252BO%252BSR.*

Customer Due Diligence (CDD) regulation that would codify, clarify, consolidate, and strengthen existing CDD regulatory requirements and supervisory expectations, and establish a categorical requirement for financial institutions to identify the beneficial owner(s) of their customers, subject to risk-based verification. The comment period for the CDD ANPRM ended on June 11, 2012, and all comments are currently under review. During this ongoing comment review process, FinCEN identified comment letters submitted by multiple law enforcement agencies stating a requirement for financial institutions to identify beneficial ownership of their customers, as discussed in the ANPRM, would significantly enhance law enforcement's ability to conduct financial investigations of all manners of financial crimes. FinCEN has also identified several issues raised by commenters, on which it is soliciting further clarification through oral comment and dialogue during the July 31, 2012 public hearing. Such clarification would assist FinCEN in adequately considering the issues as it moves forward in the rulemaking process. In addition to any other topics or concerns a respondent wishes to address at this public hearing, FinCEN specifically seeks clarification, including examples where appropriate, on the following issues:

1. Multiple comment letters indicated that some financial institutions already identify beneficial ownership of their customers in certain circumstances. FinCEN seeks detailed information as to how and when those financial institutions currently obtain beneficial ownership information, including, but not limited to: (i) The circumstances in which financial institutions obtain beneficial ownership information other than in connection with the regulations implementing Section 312 of the USA PATRIOT ACT,[2] (ii) the basis for determining that such circumstances warrant the collection of beneficial ownership information, (iii) the specific procedures financial institutions currently use to obtain beneficial ownership information in such circumstances, including the definition of ''beneficial owner'' used, and (iv) how those circumstances and procedures vary across different lines of business, product type, customer profile and geographic location.

2. FinCEN seeks detailed information as to whether and how financial institutions currently verify beneficial ownership information obtained from their customers. The information sought includes, but is not limited to, whether and how financial institutions verify: (i) The identity of the individual identified by the customer as the beneficial owner of the customer, and (ii) that the individual identified by the customer as the beneficial owner, is indeed the beneficial owner of the customer (i.e., the status of the identified individual).

3. FinCEN seeks detailed information as to the costs associated with obtaining beneficial ownership information under current practices, and the expected costs associated with obtaining beneficial ownership information as discussed in the ANPRM.

4. FinCEN seeks detailed information as to the costs associated with verifying beneficial ownership information to the extent this is done under current practices, and the expected costs associated with verifying beneficial ownership information as discussed in the ANPRM.

5. Multiple comment letters expressed concern regarding the definition of ''beneficial owner'' in connection with a categorical requirement for financial institutions to identify beneficial ownership of their customers, as discussed in the ANPRM. FinCEN seeks detailed information about potential alternative definitions, and why such alternatives would be preferable from a financial institution's perspective.

6. As reflected in multiple comment letters, certain financial institutions already identify beneficial ownership of their customers in certain circumstances in order to manage risk more effectively. FinCEN seeks detailed information about how identifying beneficial owners enhances a financial institution's ability to manage risk. FinCEN also seeks detailed information as to the circumstances and account relationships in which beneficial ownership information may not be relevant for financial institutions in managing risk.

7. Many commenters have suggested FinCEN consider requiring financial institutions to obtain beneficial ownership information of their customers on a risk basis. FinCEN seeks detailed information as to (i) how financial institutions would expect to assess risk in determining whether to obtain beneficial ownership information (e.g., what specific factors would a financial institution consider); (ii) specific examples of any customer or account relationships or red flags that would be considered of higher risk for purposes of obtaining and verifying beneficial ownership information, and similarly any such relationships that would be considered of lower risk for purposes of obtaining and verifying beneficial ownership information; and (iii) how financial institutions would obtain and verify beneficial ownership information on a risk basis. For those financial institutions that already obtain beneficial ownership information on a risk basis, FinCEN seeks detailed information as to when they obtain it—during the onboarding process, or after a review of the account activity? If the latter, would the review of the account activity be a part of a periodic/routine review conducted by the financial institution or based upon the identification of red flags? Do financial institutions reassess risk presented periodically or based upon red flags identified? What steps do financial institutions take when new risks have been identified?

8. FinCEN seeks additional detailed information as to the abilities and limitations of a financial institution in mitigating risk associated with its customer's underlying clients in the context of intermediated accounts. The information sought includes, but is not limited to: (i) The factors a financial institution considers when conducting diligence on its customer (i.e., the intermediary) to assess the risk of the account (e.g., whether the customer is (1) a domestic or foreign entity, (2) regulated or unregulated for anti-money laundering purposes, etc.), (ii) whether, and if so, in what circumstances and what type of information does a financial institution obtain from its customer (i.e., the intermediary) about the customer's underlying clients, and (iii) any monitoring or other procedures applied to the customer's account to identify suspicious activity and mitigate risks that may be associated with the customer's underlying clients.

9. FinCEN seeks detailed information as to how financial institutions currently conduct due diligence on trust accounts. The information sought includes, but is not limited to: (i) How financial institutions assess risk with respect to trust accounts, as opposed to accounts held by natural persons or legal entities, and (ii) what information a financial institution obtains about the trust, including identifying information about the trustee.

10. FinCEN seeks detailed information as to the differences, if any, in obtaining beneficial ownership information from foreign legal entity customers compared to domestic legal entity customers.

11. Lack of transparency in the formation and operation of ''shell

[2] 31 CFR 1010.610(b)(1)(iii)(A) and 1010.620(b)(1).

companies'' [3] may be a desired characteristic for certain legitimate business activity, but it is also a vulnerability that allows these companies to disguise their ownership and purpose. FinCEN seeks detailed information as to whether and how financial institutions identify whether legal entity customers are ''shell companies.''

Conclusion

With this public hearing, FinCEN is seeking clarification on the issues raised by commenters regarding the CDD ANPRM set forth above.

Dated: July 9, 2012.

Nicholas Colucci,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–17065 Filed 7–12–12; 8:45 am]

BILLING CODE 4810–02–P

[3] The term ''shell company,'' as used herein, refers to non-publicly traded corporations and limited liability companies that typically have no physical presence (other than a mailing address) and generate little to no independent economic value. *See* FinCEN Guidance, FIN–2006–G014, ''Potential Money Laundering Risks Related to Shell Companies'' (November 9, 2006).

POSTAL SERVICE

39 CFR Part 501

Authorization to Manufacture and Distribute Postage Evidencing Systems; Discontinued Indicia

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend the rules concerning the manufacture and distribution of postage evidencing systems to clarify that effective January 1, 2016, all postage evidencing systems (postage meters and PC Postage® products) will be required to produce Information-Based Indicia (IBI) or Intelligent Mail® Indicia (IMI) for evidence of pre-paid postage, and that indicia from noncompliant systems will not be recognized as valid postage.

DATES: Submit all comments on or before September 11, 2012.

ADDRESSES: Mail or deliver written comments to the Manager, Payment Technology, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3660, Washington, DC 20260–4200. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Payment Technology office.

FOR FURTHER INFORMATION CONTACT: Marlo Ivey, Business Programs Specialist, Payment Technology, U.S. Postal Service, (202) 268–7613.

SUPPLEMENTARY INFORMATION: In 1999, the Postal Service introduced the Information Based Indicia Program (IBIP). Under IBIP, postage evidencing systems submitted for Postal Service test and evaluation were required to produce IBI—digital indicia that use a two-dimensional (2–D) barcode. In 2012, the next generation of postage evidencing was introduced through the publication of the IMI performance criteria. Both IBI and IMI contain a 2–D barcode that includes revenue security–related data elements and product and service information.

Effective January 1, 2016, all postage evidencing systems (postage meters and PC Postage products) will be required to produce IBI or IMI for evidence of pre-paid postage. Indicia from postage evidencing systems that are not IBI-compliant or IMI-compliant will not be recognized as valid after December 31, 2015. The following proposed amendment to 39 CFR part 501 is intended to clarify that noncompliant indicia will be decertified, and will not be recognized as valid after that date.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), the Postal Service invites public comment on the following proposed revisions to the *Code of Federal Regulations*.

List of Subjects in 39 CFR Part 501

Postal Service.

Accordingly, the Postal Service proposes to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

2. Add section 501.20 to read as follows:

§ 501.20 Discontinued Postage Evidencing Indicia.

(a) *Decertified indicia* (evidence of pre-paid postage) are indicia that have been withdrawn by the Postal Service as valid forms of postage evidence through publication by the Postal Service in the **Federal Register**, or by voluntary withdrawal undertaken by the provider.

(b) Effective January 1, 2016, all Postage Evidencing Systems (postage meters and PC Postage products) will be required to produce Information-Based Indicia (IBI) or Intelligent Mail Indicia (IMI) for evidence of pre-paid postage. Non-IBI and non-IMI indicia will be decertified effective January 1, 2016, and may not be used as a valid form of postage evidence. These decertified indicia will not be recognized as valid postage after December 31, 2015.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–17067 Filed 7–12–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2012–5; Order No. 1388]

Analytical Methods Used in Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of filing.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to initiate an informal rulemaking proceeding to consider changes in analytical methods used in periodic reporting. This notice addresses procedural steps associated with the filing.

DATES: Comments are due July 31, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION: On June 26, 2012, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes in the analytical methods approved for use in periodic reporting.[1]

Proposal One. Elimination of Separate Delivery Costs for Carrier Route Letters, Flats, and Parcels. The Postal Service proposes to eliminate the separate, shape-based reporting of unit costs within Standard Mail Carrier Route. The Postal Service states that ''Carrier Route flats represent over 99

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals One through Five), June 26, 2012 (Petition).

percent of Carrier Route volume,'' and that Carrier Route letter costs are unreliable. Petition at 2–3. The Commission discussed the reliability issue in the 2011 Annual Compliance Determination Report. FY2011 ACD at 120–121. In the ACD, the Commission recognized the possibility of merging unit cost data for Carrier Route letters and flats, but did not discuss unit costs of Carrier Route parcels. *Id.* at 121.

Proposal Two. Calculation of City Carrier Scanning Costs for All Non-Accountable Delivery Scans. Last year, the Postal Service introduced the USPS Tracking Barcode to better track parcels. However, the Postal Service states that the costs of USPS Tracking Barcode delivery scans performed by city carriers during street activities are not calculated. The Postal Service proposes to extend the established methodology for calculating the city carrier street scanning costs to all non-accountable delivery scans performed by city carriers during street activities (Cost Segment 7). The methodology would also apply to other non-accountable delivery scans that the Postal Service may introduce in the future. Petition at 4. According to the Postal Service, Proposal Two would increase the attributable costs of domestic market dominant parcels by between 1.7 and 3.2 percent, increase the attributable costs of domestic competitive products by 1.9 percent, reduce the attributable costs of domestic market dominant ancillary services by between 0.3 and 0.6 percent, and reduce the attributable costs of International Mail by 0.2 percent. *Id.* at 5–6.

Proposal Three. Changes in IOCS Encirclement Rules. Currently, all Registered mail, both domestic and International, is encircled in all operations.[2] According to the Postal Service, this is consistent with operations for domestic Registered and outbound International Registered, because such pieces receive hand-to-hand transfers. However, in 2009, the Postal Service says that it changed the operating procedures for inbound Registered mail such that those pieces now travel in the regular letters and flats mailstreams rather than in the Registered mailstream. The Postal Service proposes to update the encirclement rules for inbound Registered mail and for certain other Extra Services to reflect changes in operations and to correct inconsistencies. For the C.O.D., Certified, Insured, and Signature Confirmation Extra Services, encirclement would be added for certain mail processing and window operations. Petition at 7–8.

Proposal Three would affect attributable costs in Cost Segment 3. Inbound Registered mail attributable costs would decline by 38.3 percent. Attributable costs of competitive products would decline by 0.1 percent. Attributable costs of First-Class mail would decline by 0.7 percent. Attributable costs of Parcel Post would decline by 0.4 percent. Attributable costs of Inbound LC/AO would increase by between 6.5 and 13.8 percent. Attributable costs of certain Extra Services would increase by between 1.7 and 64.8 percent. *Id.* at 9.

Proposal Four. Changes in IOCS Reporting Codes. The Postal Service proposes to make changes to In-Office Cost System activity codes and operation codes. These changes are:

1. Streamline activity codes by eliminating codes that are no longer used for costing;
2. Combine the operation codes for Outgoing Primary Distribution and Outgoing Secondary Distribution into one code;
3. Add a code for Managed Mail Distribution; and
4. Add or change codes to account for the recent transfers of Parcel Select Lightweight and First-Class Package Service to the competitive product list. *Id.* at 10–12. The Postal Service asserts that Proposal Four will have no impact on product costs. *Id.* at 13.

Proposal Five. Changes to Methodology of Distributing Costs Incurred by Vehicle Service Drivers. The Postal Service proposes a new distribution key for allocating the attributable costs of Vehicle Service Drivers (Cost Segment 8). The new distribution key is derived from a new subsystem of the Transportation Cost System (TRACS) called TRACS–VSD. The current distribution key relies on the costs of intra-sectional center facility purchased highway transportation in Cost Segment 14. The Postal Service believes that it has developed a sampling frame that enables the development of a statistical system similar to the four TRACS subsystems representing purchased highway transportation. *Id.* at 14–15.

For most classes of mail, the Postal Service shows a change in unit attributable cost in mills (tenths of a cent). However, the unit attributable cost of Media and Library Mail declines by 4.5 cents and the unit attributable cost of International Mail rises by 1.7 cents. *Id.* at 16.

The Petition, and an accompanying Appendix, are available for review on the Commission's Web site, *http://www.prc.gov.*

Pursuant to 39 U.S.C. 505, James Callow is designated as Public Representative to represent the interests of the general public in this proceeding. Comments are due no later than July 31, 2012.

It is ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding To Consider Proposed Changes in Analytical Principles (Proposals One through Five), filed June 26, 2012, is granted.
2. The Commission establishes Docket No. RM2012–5 to consider the matters raised by the Postal Service's Petition.
3. Interested persons may submit comments on Proposals One through Five no later than July 31, 2012. Reply comments are due no later than August 10, 2012.
4. James Callow is appointed to serve as the Public Representative to represent the interests of the general public in this proceeding.
5. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–16570 Filed 7–12–12; 8:45 am]

BILLING CODE 7710–FW–P

[2] Encirclement is the process of allocating the cost of handling a mailpiece with an Extra Service to the Extra Service rather than to the host mailpiece. Encirclement is appropriate when an Extra Service is the main reason that an employee handles a mailpiece. *Id.* at 7.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0847; FRL–9697–8]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control Technique Guidelines for Plastic Parts, Metal Furniture, Large Appliances, and Miscellaneous Metal Parts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Delaware State Implementation Plan (SIP) submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on April 1, 2010 and March 9, 2012. These SIP revisions consist of amendments to Delaware's regulation for the Control of Volatile Organic Compounds (VOC) and meet the

requirement to adopt reasonably available control technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for the following categories: Plastic Parts, Metal Furniture, Large Appliances, and Miscellaneous Metal Parts. These amendments will reduce emissions of VOC from these source categories and help Delaware attain and maintain the national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0847 by one of the following methods:

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

B. *Email: mastro.donna@epa.gov*.

C. *Mail:* EPA–R03–OAR–2010–0847, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0847. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

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

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What action is EPA taking?
II. What is the background for this action?
III. Description of the SIP Revisions Submitted by the State of Delaware
IV. What is EPA's evaluation of the State submittal?
V. Proposed Action
VI. Statutory and Executive Order Review

I. What action is EPA taking?

EPA is proposing to approve revisions to the Delaware SIP submitted by DNREC on April 1, 2010 and March 9, 2012, adopting the requirements of EPA's CTGs for the coating of plastic parts, metal furniture, large appliances, and miscellaneous metal parts, as RACT for these source categories. Specifically, DNREC is amending its Regulation No. 1124, Control of Volatile Organic Compounds, to incorporate the requirements of EPA's CTGs for the above mentioned source categories. CTGs are documents issued by EPA that provide guidance to States concerning what types of controls could constitute RACT for VOC from various sources, including plastic parts, metal furniture, large appliances, and miscellaneous metal parts. EPA requires all ozone nonattainment areas to update regulations for emission sources covered in an EPA CTG and to submit the regulations to EPA for approval as SIP revisions. The revisions to Delaware's Regulation 1124 include amendments to sections 2.0, ''Definitions,'' 12.0, ''Surface Coating of Plastic Parts,'' 19.0, ''Coating of Metal Furniture,'' 20.0, ''Coating of Large Appliances,'' and 22.0, ''Coating of Miscellaneous Metal Parts.'' These amendments will reduce the VOC content of currently regulated coatings, regulate additional coating categories, require the use of coating application equipment that provides for high transfer efficiency, and require that clean-up solvent emissions be included in regulatory applicability determinations.

II. What is the background for this action?

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT for sources of emissions. Section 182(b)(2)(A) of the CAA provides that for certain nonattainment areas, states must revise their SIPs to include RACT for VOC sources covered by any CTG document issued after November 15, 1990 and prior to the area's date of attainment. Section 183(e) of the CAA provides that states may issue a CTG in lieu of a national regulation for a product category where EPA determines that a CTG will be substantially as effective as regulations in reducing emissions of VOC in ozone nonattainment areas. In developing these CTGs, EPA, among other things, evaluates the sources of VOC emissions from these categories, and the available control approaches for addressing these emissions, including the cost of such approaches. Based on available information and data, EPA provides recommendations for RACT for VOC from these categories. States can follow the CTGs and adopt State regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process. EPA will evaluate the rules and determine, through notice and comment rulemaking in the SIP approval process, whether the submitted rules meet the RACT requirements of the CAA and EPA's regulations.

In September 2007, EPA published new CTGs for Metal Furniture Coatings (EPA–453/R–07–005) and Large Appliance Coatings (EPA 453/R–07–

004). In September 2008, EPA published a new CTG for Miscellaneous Metal and Plastic Parts Coatings (EPA–453/R–08–003). These CTGs discuss the nature of VOC emissions from these industries, the available control technologies for addressing such emissions, the costs of available control options, and other information. EPA developed the new CTGs for these industries after reviewing existing state and local VOC emission reduction approaches, new source performance standards (NSPS), previously issued CTGs, and national emission standards for hazardous air pollutants (NESHAP) for these source categories.

A. Metal Furniture Coatings

Metal furniture coatings include the coatings that are applied to the surfaces of metal furniture. A metal furniture substrate is the furniture or components of furniture constructed either entirely or partially from metal. Metal furniture includes, but is not limited to, the following types of products: Household, office, institutional, laboratory, hospital, public building, restaurant, barber and beauty shop, and dental furniture, as well as components of these products. Metal furniture also includes office and store fixtures, partitions, shelving, lockers, lamps and lighting fixtures, and wastebaskets. Metal furniture coatings include paints and adhesives and are typically applied without a primer. Higher solids and powder coatings are used extensively in the metal furniture surface coating industry. Metal furniture coatings provide a covering, finish, or functional or protective layer, and can also provide a decorative finish to metal furniture.

B. Large Appliance Coatings

Large appliance coatings include, but are not limited to, materials referred to as paint, topcoats, basecoats, primers, enamels, and adhesives used in the manufacture of large appliance parts or products. A large appliance part is defined as any organic surface-coated metal lid, door, casing, panel, or other interior or exterior metal part or accessory that is assembled to form a large appliance product. A large appliance product is also defined as any organic surface-coated metal range, oven, microwave oven, refrigerator, freezer, washer, dryer, dishwasher, water heater, or trash compactor manufactured for household, commercial, or recreational use.

C. Miscellaneous Metal and Plastic Parts Coatings

Miscellaneous metal product and plastic parts surface coating categories include the coatings that are applied to the surfaces of a varied range of metal and plastic parts and products. These parts or products are constructed either entirely or partially from metal or plastic. They include, but are not limited to, metal and plastic components of the following types of products as well as the products themselves: Fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment, automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods, toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavier vehicles,[1] lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums, metal pipes, and numerous other industrial and household products (hereinafter collectively referred to as ''miscellaneous metal and plastic parts.'') The CTG applies to manufacturers of miscellaneous metal and plastic parts that surface-coat the parts they produce. Miscellaneous metal products and plastic parts coatings do not include coatings that are a part of other product categories listed under section 183(e) of the CAA for which CTGs have been published or coatings addressed by other CTGs.

III. Description of the SIP Revisions Submitted by the State of Delaware

On April 1, 2010 and March 9, 2012 DNREC submitted SIP revisions adopting the recommendations contained in EPA's new CTGs for the control of VOC from the coating of plastic parts, metal furniture, large appliances, and miscellaneous metal parts, as RACT for these source categories. The March 9, 2012 SIP revision amended the submission of April 1, 2010 to include EPA as well as DNREC approval for any alternative coating method not explicitly specified in the regulation. The revision also corrected minor typographical errors which were non-substantive in nature. As a result of these SIP revisions, the following sections of 7 DE Administrative Code 1124, Control of Volatile Organic Compounds, are being revised to reflect Delaware's adoption of the new CTGs: section 2.0, ''Definitions,'' section 12.0, ''Surface Coating of Plastic Parts,'' section 19.0, ''Coating of Metal Furniture,'' section 20.0, ''Coating of Large Appliances,'' and section 22.0, ''Coating of Miscellaneous Metal Parts.''

A. Regulation 1124, Section 2.0—Definitions

The revisions to section 2.0, ''Definitions,'' add the following definitions: Adhesion primer, aerosol coating product, air-dried coating, baked coating, dip coating, electric-insulating and thermal-conducting coating, electrostatic spray, extreme high-gloss coating, extreme performance coating, flow coating, hand application, heat resistant coating, high-volume, low pressure (HVLP) spray equipment, metallic coating, mold-seal coating, one-component coating, pretreatment coating, repair coating, safety-indicating coating, solar-absorbent coating, solid-film lubricant, stencil coating, touch-up coating, two-component paint, and vacuum-metalizing coating.

B. Regulation 1124, Section 12.0—Surface Coating of Plastic Parts

The revisions to section 12.0, ''Surface Coating of Plastic Parts,'' establish (1) Applicability for every owner or operator of any plastic parts or products coating units; (2) add, revise, and delete definitions; (3) specify standards for owners or operators of any plastic parts or products coating units; (4) specify exemptions; and (5) specify control devices, test methods, compliance certification, recordkeeping, and reporting requirements. More detailed information on these provisions can be found in the docket prepared for this rulemaking action.

Section 12.0 requires that the VOC contents of a plastic part or products coating unit subject to the provisions of this section, be less than or equal to the limits listed in Table 1 below.

[1] Heavier vehicles includes all vehicles that meet the definition of the term ''other motor vehicles,'' as defined in the National Emission Standards for Surface Coating of Automobile and Light-Duty Trucks at 40 CFR 63.3176.

TABLE 1—PLASTIC PARTS COATING VOC CONTENT LIMITS—VOC CONTENT LIMITS ARE EXPRESSED AS MASS (kg OR lb) PER VOLUME (LITER (l) OR GALLON (GAL)) OF COATING LESS WATER AND EXEMPT COMPOUNDS, AS APPLIED

Coating category	kg VOC/l coating	lb VOC/gal coating
General*		
One component coating	0.28	2.3.
Multi-component coating	0.42	3.5.
Electric dissipating coatings and shock-free coatings	0.36	3.0.
Extreme performance	0.42 (2 pack)	3.5 (2 pack).
Metallic	0.42	3.5.
Military specification	0.34 (1 pack)	2.8 (1 pack)
	0.42 (2 pack)	3.5 (2 pack).
Mold-seal	0.76	6.3.
Multicolored coatings	0.68	5.7.
Optical coatings	0.80	6.7.
Vacuum-metalizing	0.80	6.7.
Business Machine Parts		
Primers	0.14	1.2.
Topcoat	0.28	2.3.
Texture coat	0.28	2.3.
Fog coat	0.26	2.2.
Touchup and repair	0.28	2.3.
Clearcoats	0.28	2.3.
EMI/RFI coatings	0.48	4.0.
Soft coatings	0.52	4.3.
Plating resist coatings	0.71	5.9.
Plating sensitizer coatings	0.85	7.1.
Automotive/Transportation Parts		
High bake coatings		
Flexible primer	0.46	3.8.
Non-flexible primer	0.42	3.5.
Base coats	0.52	4.3.
Clear coat	0.48	4.0.
Non-basecoat/clear coat	0.52	4.3.
Interior colorcoat	0.49	4.1.
Exterior colorcoat	0.55	4.6.
Low bake/air dried coatings-exterior		
Primers	0.58	4.8.
Basecoat	0.60	5.0.
Clearcoats	0.54	4.5.
Non-basecoat/clearcoat	0.60	5.0.
Red and black colorcoats	0.67	5.6.
All other colorcoats	0.61	5.1.
Low bake/air dried coatings		
Interior primers	0.42	3.5.
Colorcoats	0.38	3.2.
Touchup and repair coatings	0.62	5.2.
Auto Specialty		
Vacuum metalizing basecoats	0.66	5.5.
Texture coatings	0.66	5.5.
Reflective argent coatings	0.71	5.9.
Soft specialty coatings	0.71	5.9.
Air bag cover coatings	0.71	5.9.
Gloss flatteners	0.77	6.4.
Vacuum metalizing topcoats	0.77	6.4.
Texture topcoats	0.77	6.4.
Stencil coatings	0.81	6.8.
Adhesion primers	0.81	6.8.
Ink pad printing coatings	0.81	6.8.
Electrostatic prep coats	0.81	6.8.
Resist coatings	0.81	6.8.
Headlamp lens coatings	0.89	7.4.

* General refers to those parts or products which are not Business Machine Parts or Automotive/Transportation Parts.

C. Regulation 1124, Section 19.0—Coating of Metal Furniture

The revisions to section 19.0, ''Coating of Metal Furniture,'' establish (1) Applicability to every owner or operator of any metal furniture coating unit; (2) revise a definition; (3) specify standards for owners or operators of any metal furniture coating unit; (4) specify exemptions; and (5) specify control devices, test methods, compliance certification, recordkeeping, and reporting requirements. More detailed information on these provisions can be found in the docket prepared for this rulemaking.

Section 19.0 of this regulation requires that the VOC content of a metal furniture coating unit subject to the provisions of this section, be less than or equal to the limits listed in Table 2 below.

TABLE 2—METAL FURNITURE COATING VOC CONTENT LIMITS—VOC CONTENT LIMITS ARE EXPRESSED AS MASS (kg OR lb) PER VOLUME (L OR GAL) OF COATING LESS WATER AND EXEMPT COMPOUNDS, AS APPLIED

Coating category	Baked		Air dried	
	kg VOC/l coating	lb VOC/gal coating	kg VOC/l coating	lb VOC/gal coating
General, one-component	0.275	2.3	0.275	2.3
General, multi-component	0.275	2.3	0.340	2.8
Extreme high-gloss	0.360	3.0	0.340	2.8
Extreme performance	0.360	3.0	0.420	3.5
Heat-resistant	0.360	3.0	0.420	3.5
Metallic	0.420	3.5	0.420	3.5
Pretreatment	0.420	3.5	0.420	3.5
Solar-absorbent	0.360	3.0	0.420	3.5

D. Regulation 1124, Section 20.0—Coating of Large Appliances

The revisions to section 20.0, ''Coating of Large Appliances,'' establish (1) Applicability to every owner or operator of any large appliance coating unit; (2) revise a definition; (3) specify standards for owners or operators of any large appliance coating unit; (4) specify exemptions; and (5) specify control devices, test methods, compliance certification, recordkeeping, and reporting requirements. More detailed information on these provisions can be found in the docket prepared for this rulemaking action.

Section 20.0 of this regulation requires that the VOC content of a large appliance coating unit subject to the provisions of this section, be less than or equal to the limits listed in Table 3 below.

TABLE 3—LARGE APPLIANCE COATING VOC CONTENT LIMITS—VOC COATING CONTENT LIMITS ARE EXPRESSED AS MASS (kg OR lb) PER VOLUME (L OR GAL) OF COATING LESS WATER AND EXEMPT COMPOUNDS, AS APPLIED

Coating category	Baked		Air dried	
	kg VOC/l coating	lb VOC/gal coating	kg VOC/l coating	lb VOC/gal coating
General, one-component	0.275	2.3	0.275	2.3
General, multi-component	0.275	2.3	0.340	2.8
Extreme high-gloss	0.360	3.0	0.340	2.8
Extreme performance	0.360	3.0	0.420	3.5
Heat-resistant	0.360	3.0	0.420	3.5
Metallic	0.420	3.5	0.420	3.5
Pretreatment	0.420	3.5	0.420	3.5
Solar-absorbent	0.360	3.0	0.420	3.5

E. Regulation 1124, Section 22.0—Coating of Miscellaneous Metal Parts

The revisions to section 22.0, ''Coating of Miscellaneous Metal Parts,'' establish (1) Applicability to every owner or operator of any miscellaneous metal parts and products coating unit; (2) add, revise, and delete definitions; (3) specify standards for owners or operators of any miscellaneous metal parts and products coating unit; (4) specify exemptions; and (5) specify control devices, test methods, compliance certification, recordkeeping, and reporting requirements. More detailed information on these provisions can be found in the docket prepared for this rulemaking action.

Section 22.0 of this regulation requires that the VOC content of a miscellaneous metal parts and products coating unit subject to the provisions of this section, be less than or equal to the limits listed in Table 4 below.

TABLE 4—METAL PARTS AND PRODUCTS COATING VOC CONTENT LIMITS—VOC COATING CONTENT LIMITS ARE EXPRESSED AS MASS (kg OR lb) PER VOLUME (l OR gal) OF COATING LESS WATER AND EXEMPT COMPOUNDS, AS APPLIED

Coating category	Air dried		Baked	
	kg VOC/l coating	lb VOC/gal coating	kg VOC/l coating	lb VOC/gal coating
General, one-component	0.34	2.8	0.28	2.3
General, multi-component	0.34	2.8	0.28	2.3
Camouflage	0.42	3.5	0.36	3.0
Electric insulating varnish	0.42	3.5	0.36	3.0
Electric insulating and thermal conducting coatings	0.42	3.5	0.36	3.0
Etching filler	0.42	3.5	0.36	3.0
Extreme high gloss	0.42	3.5	0.36	3.0
Extreme performance	0.42	3.5	0.36	3.0
Heat resistant	0.42	3.5	0.36	3.0
High performance architectural	0.42	3.5	0.36	3.0
High temperature	0.42	3.5	0.36	3.0
Magnetic data storage disc coatings	0.42	3.5	0.36	3.0
Metallic	0.42	3.5	0.36	3.0
Military specification	0.34	2.8	0.28	2.3
Mold seal	0.42	3.5	0.36	3.0
Pan Backing	0.42	3.5	0.36	3.0
Prefabricated architectural multi-component	0.42	3.5	0.28	2.3
Prefabricated architectural one component	0.42	3.5	0.28	2.3
Pretreatment coatings	0.42	3.5	0.36	3.0
Repair and touch up	0.42	3.5	0.36	3.0
Safety indicating coatings	0.42	3.5	0.36	3.0
Silicone release	0.42	3.5	0.42	3.5
Solar absorbent	0.42	3.5	0.36	3.0
Solid-film lubricant	0.42	3.5	0.36	3.0
Stencil coatings	0.42	3.5	0.36	3.0
Vacuum metalizing	0.42	3.5	0.42	3.5
Drum coating, new, exterior	0.34	2.8	0.34	2.8
Drum coating, new, interior	0.42	3.5	0.42	3.5
Drum coating, reconditioned, exterior	0.42	3.5	0.36	3.0
Drum coating, reconditioned, interior	0.50	4.2	0.50	4.2

V. Proposed Action

EPA is proposing to approve the State of Delaware's SIP revisions submitted on April 1, 2010 and March 9, 2012, adopting the requirements of EPA's CTGs for the coating of plastic parts, metal furniture, large appliances, and miscellaneous metal parts, as RACT for these source categories. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, pertaining to Delaware's adoption of EPA's CTGs for the coating of plastic parts, metal furniture, large appliances, and miscellaneous metal parts, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

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

Dated: June 26, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–16950 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0299, FRL–9700–2]

Approval and Promulgation of Implementation Plans; North Dakota: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule; $PM_{2.5}$ NSR Implementation Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the North Dakota State Implementation Plan (SIP) relating to regulation of Greenhouse Gases (GHGs) and fine particulate matter ($PM_{2.5}$) under North Dakota's Prevention of Significant Deterioration (PSD) program. This revision was submitted by the North Dakota Department of Health Division of Air Quality (ND DOH DAQ) to EPA on April 18, 2011. It is intended to align North Dakota's regulations with the ''PSD and Title V Greenhouse Gas Tailoring Final Rule'' and the final rule for ''Implementation of the New Source Review (NSR) Program for $PM_{2.5}$.'' EPA is proposing to approve the revision because the Agency has made the preliminary determination that the SIP revision, already adopted by North Dakota as a final effective rule, is in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding PSD permitting for GHGs and $PM_{2.5}$.

DATES: Comments must be received on or before August 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0299, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: ostendorf.jody@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0299. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–7814, *ostendorf.jody@epa.gov.*

SUPPLEMENTARY INFORMATION: Information is organized as follows:

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I. What action is EPA proposing in today's notice?

On April 18, 2011, ND DOH submitted a request to EPA to approve revisions to the State's SIP and Title V program to incorporate recent rule amendments adopted by the ND DOH DAQ. These adopted rules became effective in the North Dakota Administrative Code on that date. Among other things, the amendments establish thresholds for GHG emissions in North Dakota's PSD and Title V regulations at the same emissions thresholds and in the same time-frames as those specified by EPA in the ''PSD and Title V Greenhouse Gas Tailoring Final Rule'' (75 FR 31514, June 3, 2010), hereinafter referred to as the ''Tailoring Rule,'' ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The requested revisions to the SIP will clarify the applicable thresholds in the North Dakota SIP and incorporate state rule changes adopted at the state level into the federally-approved SIP.

The revisions to the SIP also address requirements for PSD programs with regard to emissions of $PM_{2.5}$. These requirements were specified by EPA in

the rule, ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers $PM_{2.5}$ ($PM_{2.5}$)'' (73 FR 28321, May 16, 2008), hereinafter referred to as the ''$PM_{2.5}$ NSR Implementation Rule.'' In today's notice, pursuant to section 110 of the CAA, EPA is proposing to approve these revisions into the North Dakota SIP. Approval of Title V program revisions is handled separately because the Title V program is not part of the SIP.

North Dakota also submitted revisions to the General Provisions (Section 33–15–01–04), Ambient Air Quality Standards (Sections 33–15–02–04.1 and 33–15–02–07, and Tables 1 and 2), and Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (Sections 33–15–14–01.9, 10, 12 and 15, 33–15–14–02.1, 33–15–14–02.13 and 33–15–14–03.1.c). In today's proposed rulemaking, EPA is not proposing to take action on those submittals. EPA will consider those provisions and any proposed or final actions in a rulemaking separate from today's proposed rulemaking.

II. What is the background for the PSD SIP approval proposed by EPA in today's notice?

This section briefly summarizes EPA's recent GHG and $PM_{2.5}$-related actions that provide the background for today's proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, for GHGs the background is contained in the PSD SIP Narrowing Rule,[1] and in the preambles to the actions cited therein.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's proposed action on the North Dakota SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[2] the ''Johnson Memo Reconsideration,''[3] the ''Light-Duty Vehicle Rule,''[4] and the ''Tailoring Rule.'' Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system. In December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP Call and, for some of these states, a Federal Implementation Plan (FIP).[5] Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6).

B. $PM_{2.5}$-Related Actions

On May 16, 2008, EPA issued final rules governing the implementation of the New Source Review (NSR) program for particulate matter less than 2.5 micrometers in diameter ($PM_{2.5}$), also known as fine particles. The $PM_{2.5}$ NSR Implementation Rule finalized several NSR program requirements for sources that emit $PM_{2.5}$ and other pollutants that contribute to $PM_{2.5}$, including; pollutants that contribute to $PM_{2.5}$ that are subject to NSR regulations, major source thresholds, significant emissions rates, interpollutant offset trading, revised SIP submittal deadlines and timing of implementation of the rule. The rule requires PSD permits to address directly emitted $PM_{2.5}$ as well as pollutants responsible for secondary formation of $PM_{2.5}$ as follows:

- Sulfur dioxide (SO_2)—regulated as a $PM_{2.5}$ precursor
- Nitrogen oxides (NO_X)—regulated as a $PM_{2.5}$ precursor unless a state demonstrates that NO_X emissions are not a significant contributor to the formation of $PM_{2.5}$ for an area in the state
- Volatile organic compounds (VOC)—not regulated as a $PM_{2.5}$ precursor unless a state demonstrates that VOC emissions are a significant contributor to the formation of $PM_{2.5}$ for an area in the state

C. North Dakota's Actions

On June 21, 2010, North Dakota provided a letter to EPA, in accordance with a request to all states from EPA in the Tailoring Rule, with confirmation that the State of North Dakota has the authority to regulate GHGs in its existing SIP-approved PSD program at the Tailoring Rule thresholds. The letter also confirmed North Dakota's intent to amend its air quality rules for the PSD program for GHGs to explicitly match the thresholds set in the Tailoring Rule. See the docket for this proposed rulemaking for a copy of North Dakota's letter.

The rulemaking docket includes a Dec. 14, 2010 memo from EPA Region 8 that documents communications between EPA and the State of North Dakota, with regard to the question of whether the state believed that it needed the PSD SIP Narrowing Rule. The state's 60-day response letter to EPA, dated June 21, 2010, stated, in part, ''The Department believes it has existing authority to issue both PSD and Title V permits for sources of greenhouse gases based on the applicability thresholds specified in the tailoring rule.''

[1] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

[2] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[3] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (Apr. 2, 2010).

[4] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[5] Specifically, by action dated December 13, 2010, EPA finalized a ''SIP Call'' that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (December 13, 2010). EPA made findings of failure to submit in some states which were unable to submit the required SIP revision by their deadlines, and finalized FIPs for such states. *See, e.g.* ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,'' 75 FR 81874 (December 29, 2010); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,'' 75 FR 82246 (December 30, 2010). Because North Dakota's SIP already authorized North Dakota to regulate GHGs at the Tailoring Rule thresholds once GHGs became subject to PSD requirements on January 2, 2011, North Dakota is not subject to the SIP Call or FIP.

Therefore, the state believed the narrowing rule was unnecessary for North Dakota. As a result, North Dakota was not subject to the PSD SIP Narrowing Rule.

III. What is EPA's analysis of North Dakota's proposed SIP revision?

On April 18, 2011, ND DOH DAQ submitted a revision of its regulations to EPA for processing and approval into the SIP. This SIP revision explicitly adopts the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule. EPA's approval of North Dakota's SIP revision will incorporate the revisions of the North Dakota regulations into the Federally-approved SIP. Doing so will clarify the applicable thresholds in the North Dakota SIP.

The proposed SIP revision establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under North Dakota's PSD program. Specifically, North Dakota's proposed SIP revision includes changes—which are already state effective—to North Dakota's Administrative Code, revising chapter 33–15–15 ''Prevention of Significant Deterioration of Air Quality,'' subsection 33–15–15–01.2 ''Scope.''

In subsection 33–15–15–01.2, North Dakota implements the PSD program by, for the most part, incorporating by reference the federal PSD program at 40 CFR 52.21. Under the current SIP, the federal PSD program is incorporated as it existed on August 1, 2007. Under the proposed SIP revision, the federal PSD program as it existed on July 2, 2010 is incorporated by reference. This includes revisions to the federal PSD program that were published as a final rule in the **Federal Register** by this date but had not yet been published in the Code of Federal Regulations (CFR). The Tailoring Rule, including the necessary revisions to the federal PSD program, was published as a final rule in the **Federal Register** on June 3, 2010, and on July 1, 2010, the Tailoring Rule revisions to 40 CFR 52.21 were noted in the published version of the CFR. The proposed SIP revision therefore incorporates the PSD requirements of the Tailoring Rule.

Similarly, the revision incorporates, for the most part, the PSD requirements of the $PM_{2.5}$ NSR Implementation Rule (promulgated May 16, 2011) as reflected in 40 CFR 52.21, with one exception. North Dakota has modified the language in the definition of ''regulated NSR pollutant'' at 40 CFR 52.21(b)(5) regarding $PM_{2.5}$ precursor presumptions. The modification explicitly establishes that nitrogen oxides are a precursor to $PM_{2.5}$ and that volatile organic compounds are not a precursor to $PM_{2.5}$. In other words, the State has not attempted to demonstrate that nitrogen oxides are not a significant contributor to ambient $PM_{2.5}$ concentrations or that volatile organic compounds are a significant contributor to ambient $PM_{2.5}$ concentrations. This approach is consistent with the $PM_{2.5}$ NSR Implementation Rule. Finally, as a result of the updated incorporation by reference, North Dakota has also adopted the clarified definition of ''reasonable possibility'' promulgated by EPA on December 21, 2007 (72 FR 72607).

North Dakota removed language that had previously been added to 40 CFR 52.21(o)(1) for two reasons: to make this requirement entirely consistent with federal rules and to provide flexibility to use current methodologies recommended by Federal Land Managers. Chapter 33–15–19 is still applicable to major sources or major modifications under PSD; however, the revised PSD rules in Chapter 33–15–15 do not bind North Dakota to Chapter 33–15–19 for the visibility analysis.

North Dakota is currently a SIP-approved state for the PSD program, and has previously incorporated EPA's 2002 NSR reform revisions for PSD into its SIP. *See* 72 FR 39564 (July 19, 2007). The changes to North Dakota's PSD program regulations are substantively the same as the federal provisions amended in EPA's Tailoring Rule and $PM_{2.5}$ NSR Implementation Rule. As part of its review of North Dakota's submittal, EPA performed a line-by-line review of North Dakota's proposed revision and has preliminarily determined that it is consistent with the Tailoring Rule and $PM_{2.5}$ NSR Implementation Rule.

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve North Dakota's April 18, 2011 revisions to the North Dakota SIP, relating to PSD requirements for GHG- and $PM_{2.5}$-emitting sources. Specifically, North Dakota's proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. The proposed SIP revision also satisfies PSD requirements for treatment of $PM_{2.5}$ in accordance with EPA's $PM_{2.5}$ NSR Implementation Rule. As a result, EPA has made the preliminary determination that this SIP revision is approvable.

V. Statutory and Executive Order Reviews

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

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

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

costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: July 3, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–17141 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0524; FRL–9353–9]

Trinexapac-ethyl; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the existing trinexapac-ethyl tolerance levels for wheat, forage and wheat, middlings as well as change the commodity definition for hog, kidney. Additionally the EPA proposes to establish tolerances for residues of trinexapac-ethyl in or on barley, bran; sugarcane, molasses; and wheat, bran under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments must be received on or before September 11, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0524 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

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

FOR FURTHER INFORMATION CONTACT: Bethany Benbow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8072; email address: *benbow.bethany@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. This Proposal

EPA on its own initiative, under FFDCA section 408(e), 21 U.S.C. 346a(e), is proposing to amend the existing trinexapac-ethyl tolerances for wheat, forage from 1.5 to 1.0 parts per million (ppm) and wheat, middlings from 6.5 to 10.5 ppm, as well as change the existing commodity definition for ''hog, kidney'' to ''hog, meat by-products'' as these changes are needed to correct inadvertent typographical errors listed in the final rule tolerance table for trinexapac-ethyl that was published in the **Federal Register** on March 2, 2012 (77 FR 12740) (FRL–9337–9).

Additionally, the Agency is proposing to establish tolerances for residues of trinexapac-ethyl in or on barley, bran at 2.5 ppm; sugarcane, molasses at 2.5 ppm; and wheat, bran at 6.0 ppm based on the following:

The final rule for trinexapac-ethyl that was published in the **Federal Register** of March 2, 2012, established tolerances for trinexapac-ethyl residues on the raw agricultural commodities of barley, sugarcane and wheat; however, tolerances for certain processed commodities (barley, bran; sugarcane, molasses; and wheat, bran) were not established in that final rule. Though these processed commodity tolerances were not proposed in the petition submitted to the Agency by the registrant, Syngenta Crop Protection, Inc., EPA determined they were needed in conjunction with establishing the raw agricultural commodity tolerances on

barley, sugarcane, and wheat. The data submitted by Syngenta do support these tolerances and the tolerances were included in the Agency's last dietary and aggregate risk assessments. EPA intended to establish these processed tolerances as part of the March 2, 2012, rulemaking but they were inadvertently left out. Accordingly, EPA is now proposing these tolerances on its own initiative.

III. Aggregate Risk Assessment and Determination of Safety

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of FFDCA section 408 and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2), for these proposed tolerances for residues of trinexapac-ethyl. EPA's assessment of exposures and risks associated with establishing these tolerances is as follows.

In connection with the March 2, 2012 final rule for trinexapac-ethyl that established tolerances for trinexapac-ethyl residues on the raw agricultural commodities of barley, sugarcane and wheat, EPA assessed not only tolerances for these raw commodities but tolerances for the following associated processed commodities: Trinexapac-ethyl on barley, bran at 2.5 ppm; sugarcane, molasses at 2.5 ppm; and wheat, bran at 6.0 ppm in the dietary risk assessment. ''Trinexapac-ethyl: Acute and Chronic Dietary Exposure and Risk Assessment for the Proposed Uses on Cereal Grains, Sugarcane and Grasses Grown for Seed'' (September 13, 2011), this and other supporting documents for this proposal can be accessed at *www.regulations.gov* under docket ID number EPA–HQ–OPP–2010–0524. In addition, EPA assessed the risk of trinexapac-ethyl tolerances for wheat, forage and wheat, middlings at the levels of 1.0 ppm and 10.5 ppm, respectively, rather than at 1.5 ppm and 6.5 ppm as reported in the March 2, 2012 final rule. Despite how the risk assessment was conducted, EPA inadvertently left the barley bran, sugarcane molasses, and wheat bran out of the final rule and, by mistake, established the wheat forage and wheat middlings tolerances at the incorrect level. EPA also inadvertently established a tolerance for ''hog, kidney'' instead of using the standard Agency commodity term of ''hog, meat by-products.'' EPA is proposing to correct these errors.

In March 2, 2012 rule and the risk assessment underlying the rule, EPA concluded that all risk estimates were below EPA's level of concern. The acute dietary exposure estimate for females 13 to 49 years old will only utilize 2% of the acute population adjusted dose (aPAD), which is well below the Agency's level of concern (100% of the aPAD). Chronic exposure to trinexapac-ethyl from food and water will utilize 6% of the chronic population adjusted dose (cPAD) for children 1 to 2 years old, the population group receiving the greatest exposure. Further, trinexapac-ethyl is currently registered for uses that could result in short- and intermediate-term residential exposures for adults, and the Agency has determined the combined food, water, and adult post-application dermal exposures result in aggregate MOEs of 761 for liquid products and 601 for granular products. These MOEs are above the EPA's level of concern for trinexapac-ethyl, a MOE of 100 or below. Finally, based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, trinexapac-ethyl is not expected to pose a cancer risk to humans.

Therefore, since aggregate risk and exposure estimates do not change as a result of these tolerance proposals, EPA concludes that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to trinexapac-ethyl residues. Refer to the March 2, 2012 **Federal Register** document, available at *http://www.regulations.gov* for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Method GRM020.01A, which utilizes high performance liquid chromatography with triple-quadruple mass spectrometry) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established MRLs for trinexapac-ethyl in or on commodities associated with this action.

V. Conclusion

Tolerances are proposed for residues of trinexapac-ethyl in or on barley, bran at 2.5 ppm; sugarcane, molasses at 2.5 ppm; and wheat, bran at 6.0 ppm. The EPA is also proposing to amend the existing trinexapac-ethyl tolerances for wheat, forage from 1.5 to 1.0 ppm and wheat, middlings from 6.5 to 10.5 ppm, as well as change the existing commodity definition for ''hog, kidney'' to ''hog, meat by-products''.

VI. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that these proposed tolerances will not have significant negative economic impact on a substantial number of small entities. Establishing an a pesticide tolerance or an exemption from the requirement of a pesticide tolerance is, in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: July 5, 2012.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.662 the table in paragraph (a) is amended by:

i. Revising the entry for ''Hog, Kidney'' to read ''Hog, meat-byproducts'',

ii. Revising the tolerance levels for ''Wheat, forage'' and ''Wheat, middlings'', and

iii. Alphabetically adding ''Barley, bran''; ''Sugarcane, molasses''; and ''Wheat, bran process''.

The amendments read as follows:

§ 180.662 Trinexapac-ethyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
Barley, bran	2.5
* * * * *	
Hog, meat by-products	0.03
* * * * *	
Sugarcane, molasses	2.5
Wheat, bran process	6.0
Wheat, forage	1.0
* * * * *	
Wheat, middlings	10.5
* * * * *	

* * * * *

[FR Doc. 2012–17143 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–RCRA–2012–0411; FRL–9694–6]

Louisiana: Final Authorization of State-Initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: During a review of Louisiana's regulations, EPA identified a variety of State-initiated changes to Louisiana's hazardous waste program

under the Resource Conservation and Recovery Act, as amended (RCRA), for which the State had not previously sought authorization. EPA proposes to authorize the State for the program changes. In addition, EPA proposes to codify in the regulations entitled ''Approved State Hazardous Waste Management Programs'', Louisiana's authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that EPA will enforce under RCRA.

DATES: Send written comments by August 13, 2012.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator (6PD–O), Multimedia Planning and Permitting Division at the address shown below. You can examine copies of the materials that form the basis for this authorization and incorporation by reference during normal business hours at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–6533 or (214) 665–8178. You may also submit comments electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson or Julia Banks at (214) 665–8533 or (214) 665–8178.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is authorizing the changes to the Louisiana program, and codifying and incorporating by reference the State's hazardous waste program as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this authorization and incorporation by reference in the preamble to the direct final rule. Unless we get written comments which oppose this authorization and incorporation by reference during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time. For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: June 15, 2012.

Samuel Coleman,

Acting Regional Administrator, EPA Region 6.

[FR Doc. 2012–16827 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 135

Friday, July 13, 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

Submission for OMB Review; Comment Request

July 9, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: National School Lunch Program and School Breakfast Program Access, Participation, Eligibility, and Certification Study II.

OMB Control Number: 0584–0530.

Summary of Collection: The National School Lunch Program (NSLP) and the School Breakfast Program (SBP) provide federal financial assistance and commodities to schools serving lunches and breakfasts that meet required nutritional standards. The Improper Payments Information Act of 2002 (Pub. L. 107–300) requires USDA to identify and reduce erroneous payments in various programs, including the NSLP and SBP. To comply with the Improper Payments Information Act and Executive Order 13520, USDA must report on the prevalence of erroneous payments in the NSLP and SBP on an annual basis and if erroneous payments are significant, take actions to reduce improper payments and report on the efficacy of those actions. The APEC Study II will produce national estimates of erroneous payments for SY 2012–13 based on new collection of primary data.

Need and Use of the Information: In School Year 2012–2013, on-site data collection activities will be conducted in a nationally representative sample of school districts and schools across the 48 contiguous States and the District of Columbia. Data to be collected will include school administrative records, household income from parents/guardians, direct observation of school meal transactions and other information that will inform the study.

Description of Respondents: Individuals or households, State, Local, or Tribal Government.

Number of Respondents: 8,075.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,837.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–17066 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0095]

Monsanto Co.; Determination of Nonregulated Status of Soybean Genetically Engineered To Produce Stearidonic Acid

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a soybean line developed by the Monsanto Co., designated as event MON 87769, which has been genetically engineered to produce stearidonic acid, an omega-3 fatty acid not found in conventional soybean, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company in its petition for a determination of nonregulated status, our analysis of available scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

DATES: *Effective Date:* July 13, 2012.

ADDRESSES: You may read the documents referenced in this notice and the comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming. Those documents are also available on the Internet at *http://www.aphis.usda.gov/biotechnology/not_reg.html* and are posted with the previous notice and the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0095.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition (APHIS Petition Number 09–183–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status of soybean (*Glycine max*) designated as event MON 87769, which has been genetically engineered to produce stearidonic acid, an omega-3 fatty acid not found in conventional soybean. The petition stated that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice [1] published in the **Federal Register** on December 27, 2011 (76 FR 80871–80872, Docket No. APHIS–2011–0095), APHIS announced the availability of the Monsanto petition, a Plant Pest Risk Assessment (PPRA), and a draft Environmental Assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject soybean are likely to pose a plant pest risk, the draft EA, and the PPRA for 60 days ending on February 27, 2012.

APHIS received 226 comments during the comment period, with 21 commenters expressing support of a determination of nonregulated status and the remaining 205 commenters expressing opposition. Issues raised during the comment period include socioeconomic impacts, changes in nutrition caused by the product, environmental impacts, changes in soybean properties, and product safety. APHIS has addressed the issues raised during the comment period and has provided responses to these comments as an attachment to the finding of no significant impact.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with a determination of nonregulated status of Monsanto's soybean event MON 87769, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA, the response to public comments, and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA.

Determination

Based on APHIS' analysis of field and laboratory data submitted by Monsanto, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the PPRA, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Monsanto's soybean event MON 87769 is unlikely to pose a plant pest risk and therefore is no longer subject to our regulations governing the introduction of certain genetically engineered organisms.

Copies of the signed determination document, as well as copies of the petition, PPRA, EA, finding of no significant impact, and response to comments are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17168 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, petition, draft EA, the PPRA, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0095.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0034]

Bayer CropScience LP; Availability of a Finding of No Significant Impact and a Preliminary Decision for an Extension of a Determination of Nonregulated Status of Cotton Genetically Engineered for Herbicide Tolerance and Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a finding of no significant impact and a preliminary decision regarding a request from Bayer CropScience LP to extend to cotton event T303–3, which has been genetically engineered to be tolerant to the herbicide glufosinate and resistant to several lepidopteran pests, our determination of nonregulated status of TwinLink™ cotton (event T304–40). We are making available for public comment our finding of no significant impact for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before August 13, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0034-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0034, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

The Bayer CropScience LP extension request, our finding of no significant impact (FONSI), our preliminary determination, and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0034* or in our reading room, which is located in

room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming. Supporting documents regarding our determination of nonregulated status of TwinLink™ cotton, the antecedent organism, including Bayer's petition, our environmental assessment, FONSI, plant pest risk assessment, and determination, and any comments we received regarding our determination of nonregulated status of TwinLink™ cotton, can be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0102* or in our reading room.

The extension request, finding of no significant impact, and preliminary determination for this docket, as well as Bayer's petition and our combined environmental assessment, FONSI, plant pest risk assessment, and determination for TwinLink™ cotton, the antecedent organism, are also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/12_03301p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/12_03301p_fonsi.pdf, http://www.aphis.usda.gov/brs/aphisdocs/12_03301p_pdet.pdf, http://www.aphis.usda.gov/brs/aphisdocs/08_34001p.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/08_34001p_com.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the supporting documents, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

In a notice [1] published in the **Federal Register** on October 12, 2011 (76 FR 63278–63279, Docket No. APHIS–2010–0102), APHIS announced our determination of nonregulated status of TwinLink™ cotton (events T304–40 and GHB119). APHIS has received a request for an extension of a determination of nonregulated status (APHIS Number 12–033–01p) of TwinLink™ cotton event T304–40 from Bayer CropScience LP (BCS) of Research Triangle Park, NC, seeking a determination of nonregulated status of cotton (*Gossypium* spp.) designated as event T303–3, which has been genetically engineered to be tolerant to the herbicide glufosinate and resistant to several lepidopteran pests. In its request, BCS stated that this cotton is similar to TwinLink™ cotton (event T304–40) and, based on the similarity to the antecedent organism, is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the extension request, cotton event T303–3 has been genetically engineered by *Agrobacterium*-mediated transformation utilizing vector pTDL004 containing a *cry1Ab* gene construct, encoding insect resistance, and the *bar* gene as a selectable marker conferring tolerance to glufosinate ammonium herbicides. The antecedent organism, cotton event T304–40, was also generated through *Agrobacterium*-mediated transformation utilizing a slightly different vector (pTDL008). Both cotton events produce the same insecticidal crystal protein (ICP) Cry1Ab (expression product of the *cry1Ab* gene) and PAT protein (expression product of the *bar* gene). Cotton event T303–3 is currently regulated under 7 CFR part 340. Interstate movements and field tests of cotton event T303–3 have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

APHIS completed an environmental assessment (EA) and finding of no significant impact (FONSI) for TwinLink™ cotton (see footnote 1). The EA and FONSI were prepared, in accordance with the National Environmental Policy Act (NEPA), to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status of TwinLink™ cotton. APHIS has carefully examined the NEPA documentation completed for TwinLink™ cotton and has concluded that the BCS extension request for a determination of nonregulated status of cotton event T303–3 encompasses the same scope of environmental analysis as TwinLink™ cotton. Therefore, the existing NEPA documentation completed for TwinLink™ cotton is being used to evaluate and determine if there are any potentially significant impacts to the human environment from APHIS' response to the BCS extension request for a determination of nonregulated status of cotton event T303–3.

Based on APHIS' analyses of data submitted by Bayer, a review of other scientific data, and field tests conducted under APHIS oversight, the TwinLink™ cotton EA presented two alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of TwinLink™ cotton and it would continue to be a regulated article, or (2) make a determination of nonregulated status of TwinLink™ cotton. Based on the similarity of cotton event T303–4 to the antecedent organism TwinLink™ cotton event T304–40, APHIS has concluded that the alternatives considered for TwinLink™ cotton are relevant to APHIS' regulatory actions associated with cotton event T303–3 and are therefore being used in their entirety.

The EA was prepared in accordance with (1) the NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural

[1] To view the notice, determination, supporting documents, and the comments we received go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0102.*

provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our previous NEPA review completed for TwinLink™ cotton and our conclusion that the BCS extension request for a determination of nonregulated status of cotton event T303–3 encompasses the same scope of environmental analysis as TwinLink™ cotton, APHIS has reached a FONSI with regard to a determination of nonregulated status of cotton event T303–3.

Based on APHIS' analysis of field and laboratory data submitted by BCS, references provided in the extension request, peer-reviewed publications, information analyzed in the TwinLink™ cotton EA, and the similarity of cotton event T303–3 to the antecedent organism, cotton event T304–40, APHIS has determined that cotton event T303–3 is unlikely to pose a plant pest risk. We have therefore reached a preliminary decision to approve the request to extend the determination of nonregulated status of cotton event T304–40 to cotton event T303–3, whereby cotton event T303–3 would no longer be subject to our regulations governing the introduction of certain genetically engineered organisms.

Paragraph (e) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** announcing all preliminary decisions to extend determinations of nonregulated status for 30 days before the decisions become final and effective. In accordance with § 340.6(e) of the regulations, we are publishing this notice to inform the public of our preliminary decision to extend the determination of nonregulated status of cotton event T304–40 to cotton event T303–3.

APHIS will accept written comments on the FONSI regarding a determination of nonregulated status of event T303–3 for a period of 30 days from the date of this notice. The extension request, FONSI, and preliminary determination for event T303–3, as well as the supporting documents, are available for public review as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the FONSI will be available for public review. After reviewing and evaluating the comments on the FONSI, if APHIS determines that no substantive information has been received that would warrant APHIS altering its preliminary regulatory determination or FONSI, our preliminary regulatory determination will become final and effective upon notification of the public through an announcement on our Web site at *http://www.aphis.usda.gov/biotechnology/pet_proc_imp.shtml.* APHIS will also furnish a response to the petitioner regarding our final regulatory determination. No further **Federal Register** notice will be published announcing the final regulatory determination regarding cotton event T303–3.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17133 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0046]

GENECTIVE SA; Availability of Petition for Determination of Nonregulated Status of Maize Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from GENECTIVE SA seeking a determination of nonregulated status of maize designated as VCO-Ø1981–5, which has been genetically engineered for tolerance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the GENECTIVE SA petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0046-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0046, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0046* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/11_34201p.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such Genetically Engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status

must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 11–342–01p) from GENECTIVE SA of Chappes, France, seeking a determination of nonregulated status of maize (*Zea mays* L.) designated as event VCO-Ø1981–5, which has been genetically engineered for tolerance to the herbicide glyphosate, stating that this maize is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, maize event VCO-Ø1981–5 has been genetically engineered to contain the stably integrated *epsps grg23ace5* gene expressing the EPSPS ACE5 protein, an improved EPSPS enzyme which confers tolerance to the herbicide glyphosate. The EPSPS ACE5 protein was derived from the bacteria *Arthrobacter globiformis*. Maize event VCO-Ø1981–5 is currently regulated under 7 CFR part 340. Interstate movements and field tests of maize event VCO-Ø1981–5 have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Field tests were also conducted in Europe and Canada. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as maize growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17130 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0020]

Monsanto Co.; Availability of Petition for Determination of Nonregulated Status of Soybean Genetically Engineered for Increased Yield

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from the Monsanto Company (Monsanto) seeking a determination of nonregulated status of soybean designated as MON 87712, which has been genetically engineered for increased yield. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Monsanto petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0020-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0020* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday

through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/11_20201p.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such Genetically Engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 11–202–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status of soybean (*Glycine max*) designated as event MON 87712, which has been genetically engineered for increased yield, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, soybean event MON 87712 has been genetically engineered to increase yield through the insertion of the *BBX32* gene from the plant *Arabidopsis thaliana.* This gene produces a protein that interacts with transcription factors to regulate the plant's day/night processes, and increases availability of assimilates (products of plant metabolism from processes such as carbon and nitrogen fixation). Soybean event MON 87712 is currently regulated under 7 CFR part 340. Interstate movements and field tests of soybean event MON 87712 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as soybean growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR parts 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17164 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0047]

Monsanto Co.; Availability of Petition for Determination of Nonregulated Status of Soybean Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from the Monsanto Company (Monsanto) seeking a determination of nonregulated status of soybean designated as MON 87708, which has been genetically engineered for tolerance to the herbicide dicamba. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Monsanto petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0047-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0047, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0047* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/10_18801p.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 10–188–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status of soybean (*Glycine max*) designated as event MON 87708, which has been genetically engineered for tolerance to the herbicide dicamba, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, soybean event MON 87708 has been genetically engineered to contain a gene from the bacteria *Stenotrophomonas maltophilia* that expresses a monooxygenase enzyme that rapidly demethylates dicamba rendering it inactive, thereby conferring tolerance to the herbicide dicamba. Soybean event MON 87708 is currently regulated under 7 CFR part 340. Interstate movements and field tests of soybean event MON 87708 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as soybean growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate Environmental Documentation—either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17129 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0035]

Monsanto Co.; Availability of Petition for Determination of Nonregulated Status of Canola Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from the Monsanto Company (Monsanto) seeking a determination of nonregulated status of canola designated as MON 88302, which has been genetically engineered for tolerance to the herbicide glyphosate with more flexibility in the timing of herbicide application. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Monsanto petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0035-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0035, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0035* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/11_18801p.pdf*.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov*. To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 11–188–01p) from the Monsanto Company of St. Louis, MO, seeking a determination of nonregulated status of canola (*Brassica napus*) designated as event MON 88302, which has been genetically engineered for tolerance to the herbicide glyphosate with more flexibility in the timing of herbicide application, stating that this canola is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, canola event MON 88302 has been genetically engineered for tolerance to the herbicide glyphosate via the incorporation of a *cp4 epsps* coding sequence, producing the same 5-enolpyruvylshikimate-3-phosphate synthase (CP4 EPSPS) protein that is produced in commercial Roundup Ready® crop products. MON 88302 utilizes an improved promoter sequence to enhance CP4 EPSPS expression in male reproductive tissues (i.e., pollen). Enhanced CP4 EPSPS expression in the male reproductive tissues of MON 88302 allows the greater flexibility of glyphosate herbicide applications as MON 88302 plants can be sprayed with higher rates of glyphosate and at later stages of development with no detectable impact to male fertility. Canola event MON 88302 is currently regulated under 7 CFR part 340. Interstate movements and field tests of canola event MON 88302 have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the

applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as canola growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17132 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0029]

Bayer CropScience LP; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status of Soybean Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Bayer CropScience LP seeking a determination of nonregulated status of soybean designated as event FG72, which has been genetically engineered for resistance to the herbicides glyphosate and isoxaflutole. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered soybean is likely to pose a plant pest risk. We are making available for public comment the Bayer petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0029-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0029, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0029* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition, draft environmental assessment, and plant pest risk assessment are also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/09_32801p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/09_32801p_dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/09_32801p_dpra.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering

Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 09–328–01p) from Bayer CropScience LP (Bayer), seeking a determination of nonregulated status of soybean designated as event FG72, which has been genetically engineered to tolerate the herbicides glyphosate and isoxaflutole. The petition states that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, soybean event FG72 contains the stably integrated *2mepsps* gene, which confers tolerance to the herbicide glyphosate, and the *hppdPfW336* gene, which confers tolerance to HPPD inhibitors such as the herbicide isoxaflutole.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if soybean event FG72 is unlikely to pose a plant pest risk.

APHIS has also prepared a draft Environmental Assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Bayer, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of soybean event FG72 and it would continue to be a regulated article, or (2) make a determination of nonregulated status for soybean event FG72.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for soybean event FG72. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our updated process for soliciting public comment when considering such petitions. As described in the notice, all petitions received by APHIS on or after March 6, 2012, will be handled using the updated process, whereby APHIS will publish two separate notices in the **Federal Register** for petitions for which APHIS prepares an environmental assessment. For petitions received before this date, however, we indicated that petitions may follow our previous process, i.e., the petition, draft EA, and PPRA will be made available in a single **Federal Register** notice for a 60-day comment period. For this petition, APHIS will follow our previous process.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the plant pest risk assessment and the draft EA prepared to examine any potential environmental impacts of the proposed determination of nonregulated status of the subject soybean line. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of soybean event FG72 and the availability of APHIS' written environmental decision and regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17136 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0027]

Monsanto Co.; Availability of Petition for Determination of Nonregulated Status of Maize Genetically Engineered With Tissue-Selective Glyphosate Tolerance Facilitating the Production of Hybrid Maize Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from the Monsanto Company seeking a determination of nonregulated status of maize designated as MON 87427, which has been genetically

engineered with tissue-selective tolerance to glyphosate in order to facilitate the production of hybrid maize seed. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Monsanto petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0027-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0027, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0027* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/10_28101p.pdf*.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov*. To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 10–281–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status of maize (*Zea mays* L.) designated as event MON 87427, which has been genetically engineered for tissue-selective tolerance to glyphosate in order to facilitate the production of hybrid maize seed, stating that this maize is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, maize event MON 87427 has been genetically engineered to facilitate the production of hybrid maize seed through the incorporation of a *cp4 epsps* coding sequence. The CP4 EPSPS protein confers tolerance to the herbicide glyphosate, and tissue-selective expression of this protein in MON 87427 enables an extension of the use of glyphosate-tolerant maize as a tool in hybrid maize seed production. Maize event MON 87427 is currently regulated under 7 CFR part 340. Interstate movements and field tests of maize event MON 87427 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as maize growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an Environmental Assessment (EA) or an

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129*.

Environmental Impact Statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17142 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0032]

Dow AgroSciences LLC; Availability of Petition for Determination of Nonregulated Status of Soybean Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Dow AgroSciences LLC (DAS) seeking a determination of nonregulated status of soybean designated as DAS–44406–6, which has been genetically engineered for tolerance to broadleaf herbicides in the phenoxy auxin group (such as the herbicide 2,4-D) and the herbicides glyphosate and glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the DAS petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0032-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0032, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0032* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/11_23401p.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 11–234–01p) from Dow AgroSciences LLC of Indianapolis, IN, seeking a determination of nonregulated status of soybean (*Glycine max*) designated as event DAS–44406–6, which has been genetically engineered for tolerance to broadleaf herbicides in the phenoxy auxin group (such as the herbicide 2,4-D) and the herbicides glyphosate and glufosinate, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, soybean event DAS–44406–6 has been genetically engineered to express the aryloxyalkanoate dioxygenase-12 (AAD–12), the double mutant 5-enolpyruvylshikimate-3-phosphate synthase (2mEPSPS), and phosphinothricin acetyltransferase (PAT) proteins. Soybean event DAS–44406–6 is currently regulated under 7 CFR part 340. Interstate movements and field tests of soybean event DAS–44406–6 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as soybean growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an environmental impact statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17134 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0025]

Okanagan Specialty Fruits, Inc.; Availability of Petition for Determination of Nonregulated Status of Apples Genetically Engineered To Resist Browning

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Okanagan Specialty Fruits, Inc., seeking a determination of nonregulated status of apple events designated as events GD743 and GS784, which have been genetically engineered to resist browning. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Okanagan Specialty Fruits, Inc., petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0025-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0025, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0025* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

The petition is also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/10_16101p.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 10–161–01p) from Okanagan Specialty Fruits, Inc., of British Columbia, Canada, seeking a determination of nonregulated status of apples (*Malus x domestica*) designated as events GD743 and GS784, which have been genetically engineered to

resist browning, stating that these apples are unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, apple events GD743 and GS784 have been genetically engineered to resist enzymatic browning through the insertion of a polyphenol oxidase suppression sequence derived from apple. Apple events GD743 and GS784 are currently regulated under 7 CFR part 340. Interstate movements and field tests of apple events GD743 and GS784 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as apple growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an environmental impact statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17144 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0028]

BASF Plant Science, LP; Availability of Petition for Determination of Nonregulated Status of Soybean Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from BASF Plant Science LP (BASF) seeking a determination of nonregulated status of soybean designated as event BPS–CV127–9, which has been genetically engineered for tolerance to herbicides in the imidazolinone family. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the BASF petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2012–0028–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0028, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0028* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS Web site at *http://*

www.aphis.usda.gov/brs/aphisdocs/09_01501p.pdf.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such Genetically Engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 09–015–01p) from BASF Plant Science LP of Research Triangle Park, NC, seeking a determination of nonregulated status of soybean (*Glycine max*) designated as event BPS–CV127–9, which has been genetically engineered for tolerance to herbicides in the imidazolinone family, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, soybean event BPS–CV127–9 has been genetically engineered for tolerance to herbicides in the imidazolinone family through the introduction of the imidazolinone-tolerant acetohydroxyacid synthase large subunit (*ahas*) gene *csr1–2* with its native promoter from the plant *Arabidopsis thaliana.* Soybean event BPS–CV127–9 is currently regulated under 7 CFR part 340. Interstate movements and field tests of soybean event BPS–CV127–9 have been conducted under notifications acknowledged by APHIS.

For this petition, most field tests were conducted by BASF in Brazil, which allowed for evaluation in a natural agricultural setting. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as soybean growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pestrisk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17139 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0031]

Pioneer Hi-Bred International, Inc.; Availability of Petition for Determination of Nonregulated Status of Canola Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Pioneer Hi-Bred

International, Inc., (Pioneer) seeking a determination of nonregulated status of canola designated as DP–073496–4, which has been genetically engineered for tolerance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Pioneer petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0031-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0031, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0031* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/11_06301p.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 11–063–01p) from Pioneer Hi-Bred International, Inc., of Johnston, IA, seeking a determination of nonregulated status of canola (*Brassica napus*) designated as event DP–073496–4, which has been genetically engineered for tolerance to the herbicide glyphosate, stating that this canola is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, canola event DP–073496–4 has been genetically engineered to express the glyphosate acetyltransferase (GAT4621) protein, which gives the plant tolerance to the herbicide glyphosate. The *gat4621* gene is a variant of three *gat* genes from the common soil bacterium *Bacillus licheniformis.* The GAT4621 protein is encoded by the *gat4621* gene, which confers tolerance to glyphosate-containing herbicides by acetylating glyphosate and thereby rendering it nonphytotoxic. Canola event DP–073496–4 is currently regulated under 7 CFR part 340. Interstate movements and field tests of canola event DP–073496–4 have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as canola growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information; any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

environmental impact statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17135 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0024]

Syngenta Biotechnology, Inc.; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status of Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Syngenta Biotechnology, Inc., seeking a determination of nonregulated status of corn designated as SYN–05307–1, which has been genetically engineered for resistance to corn rootworm, an insect pest of corn. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered corn is likely to pose a plant pest risk. We are making available for public comment the Syngenta Biotechnology, Inc., petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0024-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0024* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition, draft environmental assessment, and plant pest risk assessment are also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/10_33601p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/10_33601p_dea.pdf, and http://www.aphis.usda.gov/brs/aphisdocs/10_33601p_dpra.pdf*.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov*. To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 10–336–01p) from Syngenta Biotechnology, Inc., (Syngenta) of Research Triangle Park, NC, seeking a determination of nonregulated status of corn (*Zea mays* L.) designated as event SYN–05307–1, which has been genetically engineered for resistance to corn rootworm, an insect pest of corn. The petition states that this corn is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, corn event SYN–05307–1 has been genetically engineered to contain the transgene *ecry3.1Ab* encoding a novel rootworm-control protein, eCry3.1Ab, and the transgene *pmi* (also known as *manA*) encoding the enzyme phosphomannose isomerase (PMI). The eCry3.1Ab protein is an engineered chimera of the modified Cry3A (mCry3A) and Cry1Ab proteins, members of a class of insecticidal proteins derived from *Bacillus thuringiensis.* Corn event SYN–05307–1 is currently regulated under 7 CFR part 340. Interstate movements and field tests of corn event SYN–05307–1 have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a

nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment (PPRA) to determine if corn event SYN–05307–1 is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Syngenta, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of corn event SYN–05307–1 and it would continue to be a regulated article, or (2) make a determination of nonregulated status of corn event SYN–05307–1.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status of corn event SYN–05307–1. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our updated process for soliciting public comment when considering such petitions. As described in the notice, all petitions received by APHIS on or after March 6, 2012, will be handled using the updated process, whereby APHIS will publish two separate notices in the **Federal Register** for petitions for which APHIS prepares an environmental assessment. For petitions received before this date, however, we indicated that petitions may follow our previous process, i.e., the petition, draft EA, and PPRA will be made available in a single **Federal Register** notice for a 60-day comment period. For this petition, APHIS is following that previous process.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the PPRA and the draft EA prepared to examine any potential environmental impacts of the proposed determination for the deregulation of the subject corn line. The petition, draft EA, and PPRA are available for public review, and copies of the petition, draft EA, and PPRA are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and PPRA will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, PPRA, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of corn event SYN–05307–1 and the availability of APHIS' written environmental decision and regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17161 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0019]

Dow AgroSciences LLC; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status of Soybean Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Dow AgroSciences LLC seeking a determination of nonregulated status of soybean designated as DAS–68416–4, which has been genetically engineered for tolerance to broadleaf herbicides in the phenoxy auxin group (such as the herbicide 2,4-D) and the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered soybean is likely to pose a plant pest risk. We are making available for public comment the Dow AgroSciences LLC petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before September 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0019-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0019, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0019* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition, draft environmental assessment, and plant pest risk assessment are also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/09_34901p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/09_34901p_dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/09_34901p_dpra.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–

1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 09–349–01p) from Dow AgroSciences LLC (DAS) of Indianapolis, IN, seeking a determination of nonregulated status of soybean (*Glycine max*) designated as event DAS–68416–4, which has been genetically engineered for tolerance to broadleaf herbicides in the phenoxy auxin group (such as the herbicide 2,4-D) and the herbicide glufosinate, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, soybean event DAS–68416–4 has been genetically engineered to express the aryloxyalkanoate dioxygenase protein AAD–12 and phosphinothricin acetyltransferase protein. Soybean event DAS–68416–4 is currently regulated under 7 CFR part 340. Interstate movements and field tests of soybean event DAS–68416–4 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a Plant Pest Risk Assessment (PPRA) to determine if soybean event DAS–68416–4 is unlikely to pose a plant pest risk.

APHIS has also prepared a Draft Environmental Assessment (EA) in which it presents two alternatives based on its analyses of data submitted by DAS, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of soybean event DAS–68416–4 and it would continue to be a regulated article, or (2) make a determination of nonregulated status of soybean event DAS–68416–4.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status of soybean event DAS–68416–4. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our updated process for soliciting public comment when considering such petitions. As described in the notice, all petitions received by APHIS on or after March 6, 2012, will be handled using the updated process, whereby APHIS will publish two separate notices in the **Federal Register** for petitions for which APHIS prepares an environmental assessment. For petitions received before this date, however, we indicated that petitions may follow our previous process, i.e., the petition, draft EA, and PPRA will be made available in a single **Federal Register** notice for a 60-day comment period. For this petition, APHIS is following that previous process.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the PPRA and the draft EA prepared to examine any potential environmental impacts of the proposed determination for the deregulation of the subject soybean line. The petition, draft EA, and PPRA are available for public review, and copies of the petition, draft EA, and PPRA are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and PPRA will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, PPRA, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of soybean event DAS–68416–4 and the availability of APHIS' written environmental decision and regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17166 Filed 7–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Dairyland Power Cooperative: CapX 2020 Hampton-Rochester-La Crosse Transmission Line Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of a Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has prepared a Final Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA), RUS' implementing regulations, 7 CFR 1794, and other applicable environmental requirements related to providing financial assistance to Dairyland Power Cooperative (Dairyland) for its share in the construction of a proposed 345-kilovolt (kV) transmission line and associated infrastructure between Hampton, Minnesota and the La Crosse area in Wisconsin (the proposed project). Dairyland is participating in the proposed project with a number of other utilities (Applicants).

The purpose of the proposed project is to: (1) Improve community reliability of the transmission system in Rochester, Winona, La Crosse, and the surrounding areas, which include areas served by Dairyland; (2) improve the regional reliability of the transmission system; and (3) increase generation outlet capacity.

DATES: Written comments on this Final EIS will be accepted 30 days following the publication of the U.S. Environmental Protection Agency's notice of receipt of the Final EIS in the **Federal Register**.

ADDRESSES: A copy of the Final EIS may be viewed online at the following Web site: *http://www.rurdev.usda.gov/UWP-CapX2020-Hampton-Rochester-LaCrosse.html* and at the following repositories:

Alma Public Library, 312 North Main Street, Alma, WI 54610, Phone: 608–685–3823.

Arcadia Public Library, 406 E Main Street, Arcadia, WI 54612, Phone: 608–323–7505.

Campbell Library, 2219 Bainbridge Street, La Crosse, WI 54603, Phone: 608–783–0052.

Cannon Falls Library, 306 West Mill Street, Cannon Falls, MN 55009, Phone: 507–263–2804.

Dairyland Power Cooperative, 500 Old State Highway 35, Alma, WI 54610, Phone: 608–685–4497.

Galesville Public Library, 16787 South Main Street, Galesville, WI 54630, Phone: 608–582–2552.

Holmen Area Library, 103 State Street, Holmen, WI 54636, Phone: 608–526–4198.

Kenyon Public Library, 709 2nd Street, Kenyon, MN 55946, Phone: 507–789–6821.

Riverland Energy Cooperative, N28988 State Road 93, Arcadia, WI 54612, Phone: 608–323–3381.

Rochester Public Library, 101 2nd Street SE., Rochester, MN 55904, Phone: 507–328–2300.

Shirley M. Wright Memorial Library, 11455 Fremont Street, Trempealeau, WI 54661, Phone: 608–534–6197.

Tri-County Electric, 31110 Cooperative Way, Rushford, MN 55971, Phone: 507–864–7783.

La Crosse Public Library, 800 Main Street, La Crosse, WI 54601, Phone: 608–789–7100.

Onalaska Public Library, 741 Oak Avenue, South, Onalaska, WI 54650, Phone: 608–781–9568.

People's Cooperative Services, 3935 Hwy 14 E, Rochester, MN 55903, Phone: 507–288–4004.

Plainview Public Library, 345 1st Avenue Northwest, Plainview, MN 55964, Phone: 507–534–3425.

Van Horn Public Library, 115 SE 3rd Street, Pine Island, MN 55963, Phone: 507–356–8558.

Xcel Energy, 5050 Service Drive, Winona, MN 55987, Phone: 507–457–1236.

Xcel Energy, 1414 West Hamilton Avenue, Eau Claire, WI 54701, Phone: 715–839–2621.

Zumbrota Public Library, 100 West Avenue, Zumbrota, MN 55992, Phone: 507–732–5211.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the Final EIS or for further information, contact: Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue SW., Room 2244, Stop 1571, Washington, DC 20250–1571, or email *stephanie.strength@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (USFWS) are participating in the EIS as cooperating agencies, with RUS as the lead Federal agency. The Final EIS addresses the construction and operation of the proposed project, which, in addition to the 345–kV transmission line and associated infrastructure, includes 161–kV transmission lines in the vicinity of Rochester, Minnesota; construction of two new and expansion of three substations, with a total transmission line length of approximately 171 miles. Counties through which the proposed project may pass include Dakota, Goodhue, Wabasha, and Olmsted in Minnesota, and La Crosse, Trempealeau, and Buffalo in Wisconsin. Among the alternatives addressed in the Final EIS is the No Action alternative, under which the proposed project would not be undertaken. Additional alternatives addressed in the EIS include route alternatives prepared for the proposed project by the states of Minnesota and Wisconsin.

RUS has carefully studied public health and safety, environmental impacts, and engineering aspects of the proposed project. RUS used input provided by government agencies, private organizations, and the public in the preparation of the Final EIS. RUS has considered all comments received on the Draft EIS, and revised the EIS accordingly. Following the 30-day comment period for the Final EIS, RUS will prepare a Record of Decision (ROD). A notice announcing the availability of the ROD will be published in the **Federal Register**.

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic Properties'' (36 CFR 800) and as part of its broad environmental review process, RUS must take into account the effect of the proposed project on historic properties. Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Any party wishing to participate more directly with RUS as a ''consulting party'' in Section 106 review may submit a written request to the RUS contact provided in this notice.

The proposed project involves unavoidable impacts to wetlands and floodplains; this Notice of Availability also serves as a statement of no practicable alternatives to impacts on wetlands and floodplains, in accordance with Executive Orders 11990 and 11988, respectively (see Final EIS Sections 3.2 and 3.5).

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as promulgated in RUS' Environmental Policies and Procedures (7 CFR 1794).

Dated: July 5, 2012.

James R. Newby,

Chief of Staff, Rural Utilities Service.

[FR Doc. 2012–17127 Filed 7–12–12; 8:45 am]

BILLING CODE 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: Gear-Marking Requirement for Atlantic Large Whale Take Reduction Plan.

OMB Control Number: 0648–0364.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 4,270.

Average Hours per Response: 5 minutes.

Burden Hours: 10,235.

Needs and Uses: This request is for extension of a current information collection.

The purpose of this collection of information is to enable National Marine Fisheries Service (NMFS) to reduce the serious injury and mortality of large whales, especially right whales, due to incidental entanglement in the United States (U.S.) commercial fishing gear. Any persons setting trap/pot of gillnet gear in some areas of the Atlantic Ocean are required to paint or otherwise mark their gear with one or two color codes, designating the type of gear and area where the gear is set. The surface buoys of this gear need to be marked to identify the vessel or fishery. These marking requirements apply in the various management areas under the Atlantic Large Whale Take Reduction Plan (ALWTRP), developed under the authority of the Marine Mammal Protection Act.

The goals of this collection of information are to obtain more information on where large whales are being entangled and on what type of gear is responsible for the entanglement. This information will allow NMFS to focus further risk reduction measures in certain areas or fisheries, where needed, to meet the goals of the ALWTRP. Also, fisheries observers can provide information to managers on whether regulations need to be modified to address compliance or safety issues.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

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: July 10, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17101 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; 2013 Alternative Contact Strategy Test

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before September 11, 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(s) and instructions should be directed to Amy O'Hara, Census Bureau, CARRA Room 6H103, Washington, DC 20233, 301–763–5757 (or via the Internet at *amy.b.ohara@census.gov).*

SUPPLEMENTARY INFORMATION

I. Abstract

Decennial censuses have relied on primarily two modes of data collection, mail and in person interview. The Census Bureau seeks to explore alternative modes of contact and collection in an effort to reduce costs and increase self-response. This research will be conducted through a series of projects and tests throughout the decade. Contact involving cellular telephone numbers, text messages, and email are under investigation, extending the Census Bureau's existing knowledge and use of mail, landline telephone, and internet modes. The 2013 Alternative Contact Strategy Test is the first test to support this research.

The Census Bureau will test alternate contact information through a self-response test. Telephone numbers obtained from commercial vendors will be used to contact 40,000 households. Information on the household's communication and contact modes will be collected. The information will be analyzed to inform future contact strategies for 2020 Research and Testing Project tests and design options for the 2020 Census.

II. Method of Collection

The Census Bureau will conduct the 2013 Alternative Contact Strategy Test with a national sample of 40,000 households, utilizing Computer Assisted Telephone Interviews. The Census Bureau estimates the response rate to be 65 percent. Interviewers will call households to confirm and collect contact information such as address, telephone, cell, and email.

The Census Bureau plans to conduct the 2013 Alternative Contact Strategy Test data collection in early winter of 2013. The specific data collection start and end dates along with the duration of the data collection period are still under consideration. The Census Bureau, however, expects that the duration of the data collection period will be about a month.

III. Data

OMB Control Number: None.

Form Number: To be determined.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 40,000.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 4666.7 hours (280,000 minutes).

Estimated Total Annual Cost: There is no cost to the respondent other than the time to answer the information request.

Respondents Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141 and 193.

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: July 10, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17099 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Foreign Airline Operators' Revenues and Expenses in the United States

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 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 5 p.m. September 11, 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 email at *jjessup@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the survey and instructions to Damon Battaglia Special Surveys Branch, Balance of Payments Division, (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9826; fax: (202) 606–5318; or via email at *damon.battaglia@bea.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Form BE–9, Foreign Airline Operators' Revenues and Expenses in the United States, obtains quarterly data from U.S. offices, agents, or other representatives of foreign airline operators that transport passengers or freight and express to or from the United States and whose covered revenues or total covered expenses were $5,000,000 or more during the previous year or are expected to be $5,000,000 or more during the current year. The covered revenues are freight revenue on merchandise exported from, and imported into, the United States and shipping weights on which the freight revenues were earned. The covered expenses are expenses incurred in the United States for fuel and oil, wages and salaries paid to employees in the United States, agents' and brokers' fees and commissions for arrangement of freight and passenger transportation, aircraft handling and terminal services, aircraft (with crew) leasing expenses, and all other expenses incurred in the United States except aircraft leasing (without crew) expenses.

The data collected are cut-off sample data. The Bureau of Economic Analysis (BEA) estimates data for non-respondents.

The data are needed to monitor U.S. international trade in transportation services to analyze its impact on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in transportation services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities.

Responses will be due within 45 days after the close of each calendar quarter. The data from the survey are primarily intended as general purpose statistics. They are needed to answer any number of research and policy questions related to foreign airline operators' revenues and expenses in the United States.

There are two significant changes to the survey: (1) Two questions have been added to collect data on the number of passengers transported to/from the United States and the revenues associated with these passengers. (2) The due date for the survey has been changed to 45 days after the end of the calendar quarter from 50 days after the end of the calendar quarter. The remainder of the form is unchanged from the prior version. No changes in exemption levels are proposed.

II. Method of Collection

The surveys are sent to the respondents by U.S. mail; the surveys are also available from the BEA Web site. Respondents return the surveys one of four ways: U.S. mail, electronically using BEA's electronic collection system (eFile), fax, or email.

III. Data

OMB Control Number: 0608–0068.

Form Number: BE–9.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 72 per quarter; 288 annually.

Estimated Time per Response: 6 hours.

Estimated Total Annual Burden Hours: 1,728.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

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 will 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: July 10, 2012.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2012–17138 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Ocean Freight Revenues and Foreign Expenses of United States Carriers (Form BE–30) and U.S. Airline Operators' Foreign Revenues and Expenses (Form BE–37)

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 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 5:00 p.m. September 11, 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 email at *jjessup@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the survey and instructions to Damon Battaglia, Special Surveys Branch, Balance of Payments Division, (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9826; fax: (202) 606–5318; or via email at *damon.battaglia@bea.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Form BE–30, Ocean Freight Revenues and Foreign Expenses of United States Carriers, obtains quarterly data from U.S. carriers (owners and operators) that had total covered revenues or total covered expenses of $500,000 or more during the previous year or are expected to be $500,000 or more during the current year. The covered revenues are revenue on cargo outbound from U.S. ports and the associated shipping weight; revenue on cargo inbound into the United States and the associated shipping weight; revenue on cross-trade cargoes; and charter hire (with crew) and space leasing revenues from foreign residents. The covered expenses are expenses in foreign countries and charter hire (with crew) and space leasing payments to foreign residents. The data collected are cut-off sample data. The Bureau of Economic Analysis (BEA) estimates data for non-respondents.

Form BE–37, U.S. Airline Operators' Foreign Revenues and Expenses, obtains quarterly data from U.S. airline operators engaged in the international transportation of goods and/or passengers and whose total annual covered revenues or total annual covered expenses were $500,000 or more during the previous year or are expected to be $500,000 or more during the current year. The covered revenues are the revenues derived from carriage of export freight and express from the United States to points outside the United States; total revenue derived from carriage of freight and express originating from, and destined to, points outside the United States; revenue derived from carriage of passengers originating from, and destined to, points outside the United States; and interline settlement receipts from foreign airline operators. The covered expenses are expenses incurred outside the United States for fuel and oil, station and maintenance bases, wages, and other goods and services purchased abroad [except aircraft (without crew) leasing expenses]; aircraft (with crew) leasing expenses; and interline settlement payments to foreign airline operators. The data collected are cut-off sample data. BEA estimates data for non-respondents.

The data are needed to monitor U.S. international trade in transportation services to analyze its impact on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in transportation services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities.

Responses will be due within 45 days after the close of each calendar quarter. The data from the survey are primarily intended as general purpose statistics. They are needed to answer any number of research and policy questions related to ocean freight revenues and foreign expenses of United States carriers.

There are two significant changes to the BE–30 survey: (1) A question has been added to collect data on fuel expenses in foreign ports explicitly. Fuel expenses are currently reported indistinguishably within total expenses in foreign ports. (2) The due date for the survey has been changed to 45 days after the end of the calendar quarter from 50 days after the end of the calendar quarter. The remainder of the form is unchanged from the prior version. No changes in exemption levels are proposed.

There are three major changes to the BE–37 survey: (1) Fuel expenses will be collected separately. Fuel expenses are currently reported indistinguishably within total expenses in foreign ports. (2) Two questions have been added to collect data on the number of passengers transported to/from the United States and the revenues associated with these passengers. (3) The due date for the survey has been changed to 45 days after the end of the calendar quarter from 50 days after the end of the calendar quarter. The remainder of the form is unchanged from the prior version. No changes in exemption levels are proposed.

II. Method of Collection

The surveys are sent to the respondents by U.S. mail; the surveys are also available from the BEA Web site. Respondents return the surveys one of four ways: U.S. mail, electronically using BEA's electronic collection system (eFile), fax, or email.

III. Data

OMB Control Number: 0608–0011.

Form Number: BE–30 and BE–37.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 65 per quarter; 220 annually (BE–30: 32 per quarter and 128 annually; BE–37: 23 per quarter; 92 annually).

Estimated Time per Response: 4 hours per response for both BE–30 and BE–37.

Estimated Total Annual Burden Hours: 880.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

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 will 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: July 10, 2012.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2012–17140 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance (TAA) from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[06/20/2012 to 07/06/12]

Firm name	Firm address	Date accepted for investigation	Product(s)
Showman Fabricators, Inc	47–22 Pearson Place, Long Island City, NY 11101.	06/22/12	The firm builds props and sets for the trade show, theatrical, and broadcasting industries.
Crowell Cap and Embroidery d/b/a American Made Cap Co.	116 N. Avenue A, Crowell, TX 79227	06/22/12	The firm manufactures caps and custom apparel.
Sun Precast Company, Inc	4051 Ridge Road, Beaver Springs, PA 17812.	06/25/12	The firm manufactures architectural precast concrete and cast stone products.
Debond Corp. d/b/a Flexpak Corporation	3720 W. Washington Street, Phoenix, AZ 85009.	06/25/12	The firm manufactures custom thermoforming and contract packaging solutions.
Spike's Trophies, Ltd.	2701 Grant Avenue, Philadelphia, PA 19114.	07/06/12	The firm produces custom awards, plaques, trophies, medals, signage and other promotional products.
Micom Corporation	475 Old Highway 8 NW., New Brighton, MN 55112.	06/28/12	The firm manufactures multi-layered printed circuit boards.
Connor Winfield Corporation	2211 Comprehensive Drive, Aurora, IL 60505.	07/05/12	The firm manufactures diode, transistor, and semiconductor parts for the telecommunications industry.
Moore Merkowitz Tile, Ltd	5552 East Valley Road, P.O. Box 280, Alfred Station, NY 14803.	07/05/12	The firm manufactures ceramic tiles.
Young Electric Sign Company d/b/a YESCO.	2401 Foothill Drive, Salt Lake City, UT 84109.	06/28/12	The firm designs and manufactures custom electric signs for advertising purposes.
RJ Studios, Inc	206 Camars Drive, Warminster, PA 18974.	07/05/12	The firm designs and creates prototypes, including electronic prototypes and wax and clay sculpting.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: July 9, 2012.

Bryan Borlik,

Director, TAA for Firms.

[FR Doc. 2012–17102 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1839]

Reorganization and Expansion of Foreign-Trade Zone 99 Under Alternative Site Framework; Wilmington, DE

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR

1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the State of Delaware, grantee of Foreign-Trade Zone 99, submitted an application to the Board (FTZ Docket 81–2011, filed 12/19/2011) for authority to reorganize and expand under the ASF with a service area of New Castle, Kent and Sussex Counties, Delaware, in and adjacent to the Wilmington U.S. Customs and Border Protection port of entry, FTZ 99's existing Site 1 would be categorized as a magnet site, and the grantee proposes one initial usage-driven site (Site 2);

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 80331, 12/23/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 99 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 2 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by July 31, 2015.

Signed at Washington, DC, this 5th day of July 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2012–17167 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1840]

Reorganization of Foreign-Trade Zone 64 (Expansion of Service Area) Under Alternative Site Framework Jacksonville, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Jacksonville Port Authority, grantee of Foreign-Trade Zone 64, submitted an application to the Board (FTZ Docket 18–2012, filed 03/19/2012) for authority to expand the service area of the zone to include Bradford, Putnam and St. Johns Counties, as described in the application, within and adjacent to the Jacksonville, Florida, U.S. Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 17012–17013, 03/23/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 64 to expand the service area under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, this 5th day of July 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2012–17159 Filed 7–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 28, 2012, the United States Court of International Trade (the Court) sustained the Department of Commerce's (the Department) final results of redetermination pursuant to the Court's second remand order. *See United States Steel Corporation* v. *United States,* Court No. 08–00216, Slip Op. 12–91 (*U.S. Steel Corp. III*); Final Results of Redetermination Pursuant to Second Court Remand, CIT Court No. 08–00216 (May 22, 2012) (*Second Remand Results*). The Court previously upheld other aspects of the Department's final results of the 2005–2006 administrative review of the antidumping duty on certain hot-rolled carbon steel flat products from India. *See U.S. Steel Corp.* v. *United States,* No. 08–00216, 2012 WL 1259085 (Ct. Int'l Trade Apr. 11, 2012) (opinion on first remand results) (*U.S. Steel Corp. II*); Final Results of Redetermination Pursuant to Court Remand, CIT Court No. 08–00216 (Oct. 3, 2011) (*First Remand Results*); *U.S. Steel Corp.* v. *United States,* No. 08–00216, 2011 WL 2421154 (Ct. Int'l Trade June 14, 2011) (opinion on final results) (*U.S. Steel Corp. I*); *Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review,* 73 FR 31,961 (June 5, 2008) (*Final Results*).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.,* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* and is amending the final results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India covering the period December 1, 2005, through November 30, 2006, with

respect to the weighted-average dumping margin assigned to Essar Steel Limited (Essar).

DATES: *Effective Date:* July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or Christopher Hargett, 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) 482–5075, and (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

Subsequent to the completion of the administrative review under the antidumping duty order on certain hot-rolled carbon steel flat products from India, U.S. Steel Corporation (U.S. Steel) and Nucor Corporation (Nucor) challenged certain aspects of the *Final Results* at the Court. On June 14, 2011, the Court remanded the *Final Results* and instructed the Department (1) to determine whether record evidence proved that Essar's contingent liability for deferred import duties under the duty-drawback program had been removed or permanently excused, and (2) to reevaluate the record evidence and change, or more fully explain, the selection of date of sale. *See U.S. Steel Corp. I,* 2011 WL 2421154 at *1, 4.

On remand, the Department recalculated Essar's weighted-average dumping margin using the invoice date as the date of sale, and revised Essar's weighted-average dumping margin to deny an adjustment for duty drawback for a specific invoice. *See, generally, First Remand Results.* At that time, the Department declined to make certain changes to Essar's cost of production to account for exempted duties. *See id.* at 7–8.

On April 11, 2012, the Court sustained in part and remanded in part the Department's *First Remand Results.* Specifically, the Court remanded the proceeding for a second time and instructed the Department (1) to correct a ministerial error in computer programming and (2) to adjust normal value by adding exempted duties to Essar's cost of production or to explain why the Department must depart from its recently-affirmed practice of allowing for such adjustments to the cost of production. *See U.S. Steel Corp. II,* 2012 WL 1259085 at *4.

On remand, the Department corrected the computer programming error. *See Second Remand Results* at 2–3. Moreover, in accordance with its established practice, the Department adjusted normal value by adding exempted duties to Essar's cost of production. *See id.* at 3–4. As a result, Essar's weighted-average dumping margin changed from 5.22 percent to 9.01 percent. *See id.* at 5.

On June 28, 2012, the Court sustained the Department's *Second Remand Results* and entered judgment accordingly. *See U.S. Steel Corp. III,* Slip Op. 12–91 at 1–2.

Timken Notice

In its decision in *Timken,*[1] as clarified by *Diamond Sawblades,* the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's June 28, 2012, judgment sustaining the *Second Remand Results* constitutes a final decision of the Court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirement of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for Essar for the subsequent and most recent period during which the respondent was reviewed.[2]

Amended Final Determination

Because there is now a final court decision, we are amending the *Final Results* with respect to Essar's weighted-average dumping margin for the period December 1, 2005, through November 30, 2006. The revised weighted-average dumping margin is as follows:

Exporter	Weighted average dumping margin (percent)
Essar Steel Limited	9.01

In the event the Court's ruling is not appealed, or if appealed, upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by Essar using the revised assessment rate calculated by the Department in the *Second Remand Results.*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 3, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–17147 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Timken,* 893 F.2d at 341.

[2] *See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part,* 75 FR 27297, 27298 (May 14, 2010).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Limits on Applications of Take Prohibitions

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 11, 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 Steve Stone at (503) 231–2317, or *steve.stone@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it ''deems necessary and advisable to provide for the conservation of'' threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits ''take'' of any

endangered species (''take'' includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of the section 9 take prohibitions. There are now 22 separate Distinct Population Segments (DPS) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations. NMFS makes section 9 prohibitions generally applicable to many of those threatened DPS, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted (see 70 FR 37160, June 28, 2005, 71 FR 834, January 5, 2006, and 73 FR 55451, September 25, 2008). The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that limits impacts on, listed salmonids. Because we have determined that such programs/circumstances adequately protect listed salmonids, the regulations do not apply the ''take'' prohibitions to them. Some of these limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

II. Method of Collection

Submissions may be in paper or electronic format.

III. Data

OMB Control Number: 0648–0399.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: State, Local, or Tribal Government; business or other for-profit organizations.

Estimated Number of Respondents: 301.

Estimated Time per Response: 20 hours for a road maintenance agreement; 5 hours for a diversion screening limit project; 30 hours for an urban development package; 10 hours for an urban development report; 20 hours for a tribal plan; and 5 hours for a report of aided, salvaged, or disposed of salmonids.

Estimated Total Annual Burden Hours: 1,705.

Estimated Total Annual Cost to Public: $1,000.

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: July 10, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17092 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Council to convene public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene three web based meetings of the ABC Control Rule Working Group.

DATES: The first webinar meeting will convene on Tuesday, July 31, 2012. The webinar will begin at 9 a.m. and is expected end by 12 noon eastern time.

ADDRESSES: The webinars will be accessible via Internet. Please go to the Gulf of Mexico Fishery Management Council's Web site at *www.gulfcouncil.org* for instructions.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The ABC Control Rule Working Group will meet to review an alternative method of assigning appropriate risk of overfishing levels to stocks based on the status, productivity, susceptibility and resiliency of the stock. The working group will also review its previous recommendations for revisions to the ABC control rule and evaluate other possible revisions.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630. Materials will also be available to download from the ABC Control Rule Working Group folder of the Council's FTP site, which is accessible from the Quick Links section of the Council Web site (*http://www.gulfcouncil.org*).

Although other non-emergency issues not on the agenda may come before the ABC Control Rule Working Group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Working Group will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This webinar is accessible to people with disabilities. For assistance with any of our webinars contact Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the webinar.

Dated: July 10, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–17083 Filed 7–12–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Proposed Information Collection; Comment Request; Correction

ACTION: Notice of Correction.

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

SUMMARY: On Tuesday, July 3, 2012, the Committee published a Notice in **Federal Register** Volume 77, Number 128, Page 39486 of its intent to submit to the Office of Management and Budget for its review an information collection concerning Committee Forms 403 and 404. The date cited, July 28, 2009, for persons interested in submitting comments about the collection was incorrect and should have read July 28, 2012.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–17093 Filed 7–12–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 8/13/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/11/2012 (77 FR 27737–27738) and 5/18/2012 (77 FR 29596), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSNs:

MR 1169—Set, Bowl and Lid, Blue, 4 Piece.

MR 1168—Carrier, Cake and Cupcake, Collapsible.

NPA: Industries for the Blind, Inc., West Allis, WI.

Contracting Activity: Defense Commissary Agency, Fort Lee, VA.

Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services

Service Type/Location: Custodial and Grounds Services, Armed Forces Medical Examiner System, Building 115, 115 Purple Heart Drive, Dover AFB, DE.

NPA: The Chimes, Inc., Baltimore, MD.

Contracting Activity: Dept of the Army, W4PZ USA MED RSCH ACQUIS ACT, Fort Detrick, MD.

Service Type/Location: Document Destruction Service, Social Security Administration, Office of Disability Adjudication and Review (ODAR), (offsite: 9104 Red Branch Road, Columbia, MD), One Skyline Tower, 5107 Leesburg Pike, Falls Church, VA.

NPA: Athelas Institute, Inc., Columbia, MD.

Contracting Activity: Social Security Administration, HDQTRS-Office Of Acquisition & Grants, Baltimore, MD.

Service Type/Location: Grounds Maintenance, Gallagher Memorial, U.S. Army Reserve Center (USARC), 1300 West Brown Road, Las Cruces, NM.

NPA: Let's Go To Work, El Paso, TX.

Contracting Activity: Dept of the Army, W6QM MICC-Ft Hunter (RC–W), Presidio of Monterey, CA.

Service Type/Location: Janitorial Service, U.S. Army Reserve Center (USARC), Building 6981, 11601 Montana, El Paso, TX.

NPA: Let's Go To Work, El Paso, TX.

Contracting Activity: Dept of the Army, W6QM MICC-Ft Hunter (RC–W), Presidio of Monterey, CA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–17095 Filed 7–12–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received On or Before:* 8/13/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to provide the service listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other

than the small organization that will provide the service to the Government.

2. If approved, the action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to the Procurement List for provision by the nonprofit agency listed:

Service

Service Type/Location: Janitorial/Custodial Service, WA104 Seattle-Marysville Armed Forces Reserve Center (AFRC), 13613 40th Avenue NE., Marysville, WA.

NPA: Portland Habilitation Center, Inc., Portland, OR.

Contracting Activity: Dept of the Army, W6QM MICC–ARCC North, Fort McCoy, WI.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–17094 Filed 7–12–12; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974 System of Records Notice

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; publication of character of one revised system of records and two new systems of records

SUMMARY: The Commodity Futures Trading Commission (Commission) is revising one system of records under the Privacy Act of 1974: CFTC–44, Personnel Security Files, to be renamed CFTC–44, Personnel Clearance System. The Commission also is establishing two new systems of records: CFTC–48, Personal Property Claims, and CFTC–49, Whistleblower Records (Exempted). Revisions to CFTC–44 incorporate enhancements to the system of records with a new streamlined process of capturing personal information, minimizing paper records and eliminating manual entry into a legacy application when an individual applies for a security clearance. New CFTC–48 addresses information collected through a new process for employees to file and have adjudicated claims for damage or loss of certain personal property, as stated in Commission policies and applicable law. New CFTC–49 addresses information collected for the Commission's whistleblower program, which is described and defined in Section 23 of the Commodity Exchange Act, 7 U.S.C. 26, and the rules promulgated thereunder, 17 CFR part 165.

DATES: Comments must be received on or before August 13, 2012. This action will be effective without further notice on August 22, 2012, unless revised pursuant to comments received.

ADDRESSES: You may submit comments identified by ''Personnel Clearance System SORN,'' ''Personal Property Claims SORN,'' or ''Whistleblower Records SORN'' by any of the following methods:

- *Agency web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Federal eRulemaking Portal:* Comments may be submitted at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Section 145.9 of the Commission's regulations, 17 CFR part 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of a submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the notice will be retained in the public comment file and will be considered as required under all applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Kathy Harman-Stokes, Chief Privacy Officer, *kharman-stokes@cftc.gov,* 202–418–6629, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. The Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, a ''system of records'' is defined as any group of records under the control of a federal government agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act establishes the means by which government agencies must collect, maintain, and use personally identifiable information associated with an individual in a government system of records.

Each government agency is required to publish a notice in the **Federal Register** of a system of records in which the agency identifies and describes each system of records it maintains, the reasons why the agency uses the personally identifying information therein, the routine uses for which the agency will disclose such information outside the agency, and how individuals may exercise their rights under the Privacy Act to determine if the system contains information about them, among other things.

II. Routine Uses

Information in the systems of records covered by this **Federal Register** notice may be disclosed in accordance with the blanket routine uses numbered 1 through 19 published at 76 FR 5974 (Feb. 2, 2011) and copied below for convenience. These blanket routine uses apply to all CFTC systems of records, except as otherwise provided in a specific system of records notice:

1. Information may be used by the Commission in any administrative proceeding before the Commission, in any injunctive action authorized under the Commodity Exchange Act or in any other action or proceeding in which the Commission or its staff participates as a party or the Commission participates as amicus curiae.

2. Information may be disclosed to the Department of Justice, the Securities and Exchange Commission, the United States Postal Service, the Internal Revenue Service, the Department of Agriculture, the Office of Personnel Management, and to other Federal, state,

local, territorial or tribal law enforcement or regulatory agencies for use in meeting their statutory and regulatory requirements.

3. Information may be given to any ''registered entity,'' as defined in section 1a of the Commodity Exchange Act, 7 U.S.C. 1 et seq. (''the Act''), if the Commission has reason to believe that such information will assist the registered entity in carrying out its responsibilities under the Act. Information may also be given to any registered futures association registered under Section 17 of the Act (e.g., the National Futures Association) to assist it in carrying out its self-regulatory responsibilities under the Act, and to any national securities exchange or national securities association registered with the Securities and Exchange Commission to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq.

4. At the discretion of the Commission staff, information may be given or shown to anyone during the course of a Commission investigation if the staff has reason to believe that the person to whom it is disclosed may have further information about the matters discussed therein, and those matters appear relevant to the subject of the investigation.

5. Information may be included in a public report issued by the Commission following an investigation, to the extent that this is authorized under Section 8 of the Commodity Exchange Act, 7 U.S.C. § 12. Section 8 authorizes publication of such reports but contains restrictions on the publication of certain types of sensitive business information developed during an investigation. In certain contexts, some of this information might be considered personal in nature.

6. Information may be disclosed to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, or a grant or other benefit by the requesting agency, to the extent that the information may be relevant to the requesting agency's decision on the matter.

7. Information may be disclosed to a prospective employer in response to its request in connection with the hiring or retention of an employee, to the extent that the information is believed to be relevant to the prospective employer's decision in the matter.

8. Information may be disclosed to any person, pursuant to Section 12(a) of the Commodity Exchange Act, 7 U.S.C. 16(a), when disclosure will further the policies of that Act or of other provisions of law. Section 12(a) authorizes the Commission to cooperate with various other government authorities or with ''any person.''

9. Where information, either alone or in conjunction with other information indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant information may be disclosed to the appropriate Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

10. Information may be disclosed to the General Services Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

11. Information may be disclosed to the National Archives and Records Administration for the purpose of records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

12. Information may be disclosed to foreign law enforcement, investigatory, or administrative authorities in order to comply with requirements set forth in international arrangements, such as memoranda of understanding.

13. Information may be disclosed to contractors, grantees, volunteers, experts, students, and others performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government when necessary to accomplish an agency function.

14. Information may be disclosed to the Merit Systems Protection Board, including the Office of Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems.

15. Information may be disclosed to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body which the agency is authorized to appear, when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her official capacity where the Department of Justice or the agency has agreed to represent the employee; or

d. The United States, when the agency determines that litigation is likely to affect the agency or any of its components;

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

16. Information may be disclosed to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, or at the request of, the individual who is the subject of the record.

17. Information related to any traders or the amount or quantity of any commodity purchased or sold by such traders may be disclosed to any committee of either House of Congress upon its request, acting within the scope of its jurisdiction, pursuant to the Commodity Exchange Act, 7 U.S.C. 1 et seq., including Section 8(e) of such Act at 7 U.S.C. 12, and the rules and regulations promulgated thereunder.

18. Information may be disclosed to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

19. Information may be disclosed to appropriate agencies, entities, and individuals when:

a. The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

b. The Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and

c. The disclosure made to such agencies, entities, and individuals is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

III. Personnel Clearance System

The Commission proposes to revise a system of records, CFTC–44, Personnel Security Files, to rename the system

CFTC–44, Personnel Clearance System (PCS) and to identify enhancements. The PCS will contain information about individuals who require regular, on-going access to CFTC assets, including facilities, information technology systems or information classified in the interest of national security. The individuals may be Commission employees, contractors, interns, volunteers, candidates for employment, individuals formerly in any of these positions, and others.

Any individual who will regularly access CFTC assets must receive an official security clearance before access is authorized. CFTC collects personal information from the individual, such as social security number and date of birth. CFTC provides elements of that information to Federal investigative agencies, such as OPM. Once the completed investigation is provided to the CFTC, the CFTC adjudicates the clearance request.

In the past, the CFTC has handled much of this process manually, on paper, using a legacy, MS–Access-based application. The new system will minimize the need for paper records, thereby improving security of personal information. It also will eliminate the need for manual input of personal information into the legacy application, increasing efficiency and the accuracy of information. In addition, the enhancements will make it easier to share security clearance processing information in a timely manner with appropriate Federal officials.

IV. Personal Property Claims

The Commission is developing a policy and procedure for employee claims for damaged or lost personal property, pursuant to the Military Personnel & Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721. Under the policy and procedure, the Commission will pay or otherwise settle employee claims up to a defined amount per incident for damage or loss of personal property under certain circumstances.

The new system of records will include all information collected about the personal property claim from the employee and the related documentation of decisions and payment of such claims. The information will facilitate the review of the claim and collection of evidence by the Logistics and Operations Unit (L&O), the Executive Director's decision on the claim, and the payment for or replacement of the property. The new system of records also will contain information on requests for reconsideration when claims have been denied.

V. Whistleblower Records (Exempted)

The Commission is creating a system to maintain records related to the whistleblower program, which is described and defined in Section 23 of the Commodity Exchange Act, 7 U.S.C. 26, and the rules promulgated thereunder, 17 CFR part 165. The system may include all or any part of the records developed during the whistleblower tip, complaint or referral submission process, investigation or inquiry, and/or whistleblower award claim and determination process, including but not limited to data from Commission reporting forms, such as Commission Forms TCR and WB–APP, documents and information related to the whistleblower program, and records drafted and/or compiled for the Commission's Whistleblower Award Determination Panel. This system may include: Records, data and correspondence submitted by and sent to whistleblowers and/or their representatives; correspondence with other law enforcement and regulatory agencies regarding referral of whistleblower information and related actions brought by such agencies based on whistleblower information; interviews, memoranda and other work products prepared by Commission staff; affidavits, statements by witnesses, contracts and agreements with whistleblowers, including confidentiality agreements; and information available on the Internet or other electronic sources accessed for purposes of the whistleblower program. The system may also contain internal memoranda and declarations of Commission staff, correspondence and other miscellaneous investigatory matters.

VI. Notice: Personnel Clearance System

SYSTEM NUMBER:

CFTC–44

SYSTEM NAME:

Personnel Clearance System (PCS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system is located in the Commission's principal office, at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require regular, ongoing access to CFTC facilities, information technology systems, or information classified in the interest of national security, including candidates for Commission employment or contracts, Commission employees, contractors of the Commission, students, interns, volunteers, individuals authorized to perform or use services provided in Commission facilities, and individuals formerly in any of these positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include any or all of the following: First name, last name, social security number, date of birth, state of birth, country of birth, non CFTC phone number, non CFTC email address, CFTC duty location, CFTC hiring division, hiring manager, job title, job series, job grade, journeymen job grade, appointment type, prior CFTC employment, prior employment year, prior employment division, business manager, proposed start date, level of clearance needed, clearance valid date, clearance related investigation status, and clearance related investigation notes; copies of and information derived from passports, birth certificates, driver's licenses, OF 306 forms, US ''I–9 Forms'' and resumes; information provided by the Office of Personnel Management (OPM) for clearance determination purposes; and in addition for contractors only, estimated contract end date, option year information, hiring manager and/or Contract Officer Technical Reviewer (COTR), contract number, company name, company point of contact, and company address.

Note: This system of records does not include the Office of Personnel Management (OPM) background investigation report. An identical version of the investigation report is in the possession of the Commission, but is considered to be part of the OPM Central-9, Personnel Investigations Records. For information on how to request access to the OPM Central-9, Personnel Investigations Records, please see the Note in the Records Access Procedures section of this notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Applicants and appointees to Federal service are subject to a background investigation under 5 CFR parts 731, 732, and 736, Executive Order 10450, ''Security Requirements for Government Employment'' and the agency memorandum exercising authority to conduct investigations of non-competitive service applicants and appointees under these authorities. *See also* Executive Order 13292, ''Classified National Security Information,'' and Executive Order 12968, ''Access to Classified Information.'' HSPD–12 clarified that Federal contractors are

also subject to background investigation under these authorities. The Office of Personnel Management (OPM) is authorized to collect this information under 5 U.S.C. 3301, 3302, and 9101. 5 U.S.C. 1104 allows OPM to delegate the personnel management function to other Federal agencies.

Solicitation of the Social Security Number is also authorized by Executive Order 9397, which asks Federal agencies to use this number to help identify individuals in agency records.

PURPOSE(S):

The records in this system are used to verify identity and to facilitate background investigations by OPM and adjudications by the CFTC Security and Emergency Management Officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed as stated below:

a. Except as noted on Forms SF 85, 85–P, and 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

b. Employment, Clearances, Contract, or Other Benefits Decision by an Organization other than the Commission—disclosure may be made to a Federal State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, or the letting of a contract. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

c. National Security and Intelligence Matters—these records may be disclosed to Federal, State, local agencies, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

Information also may be disclosed as stated in the blanket routine uses numbered 1 through 19 that appear at the beginning of the Commission's compilation of its systems of records notices at 76 FR 5974 (Feb. 2, 2011), and copied in this **Federal Register** notice above for convenience, ''Supplementary Information,'' ''II. Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS CONTROLS, SAFEGUARDS, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The data will be collected and maintained electronically and in paper files. Paper records are stored in file folders, binders, computer files and computer disks. Electronic records, including computer files and electronically maintained data, are stored on the Commission's network and other electronic media as needed, such as encrypted hard drives.

RETRIEVABILITY:

Files are retrieved by name of the individual.

ACCESS CONTROLS, SAFEGUARDS:

Records in the system are protected from unauthorized access and misuse through various administrative, technical and physical security measures. Technical security measures within CFTC include restrictions on computer access to authorized individuals, required use of strong passwords that are frequently changed, use of encryption for certain data types and transfers, and regular review of security procedures and best practices to enhance security. Physical measures include restrictions on building access to authorized individuals only and maintaining records in lockable offices and filing cabinets. These records are kept in electronic form and in file folders in locked metal file cabinets in locked rooms at the headquarters office in the Security and Emergency Management Office.

RETENTION AND DISPOSAL:

The records will be maintained and disposed of in accordance with General Records Schedule 18, Item 22a and Item 22b. The schedules are available at *www.cftc.gov.* The data will be deleted by the Personnel Security staff 90 days after the separation of the individual from CFTC.

SYSTEM MANAGER(S) AND ADDRESS:

Security and Emergency Management Office within Logistics and Operations in the Commission's Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him/her by sending a request in writing, signed, to the Office of General Counsel, Paralegal Specialist, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Telephone (202) 418–5011.

When requesting notification of, or access to, records covered by this Notice, an individual should provide his/her full name, date of birth, agency name, and work location. An individual requesting notification of records in person must provide identity documents, such as a government-issue photo ID, sufficient to satisfy the custodian of the records that the requester is entitled to access. Individuals requesting notification via mail or telephone must furnish, at a minimum, name, date of birth, social security number, and home address in order to establish identity.

Note: For information on how to request access to the OPM Personnel Investigations Records which are part of the OPM Central-9 system of records, please see the Note in the Records Access Procedures section of this notice.

RECORDS ACCESS PROCEDURES:

Individuals wishing to request access to CFTC records about them should contact the system manager indicated above. Individuals must furnish their full name (first, middle, and last name) and birth date for their record to be located and identified. An individual requesting access must also follow CFTC Privacy Act requirements regarding verification of identity and amendment of records. Correspondence

between the requester and Human Resources staff on the subject of any background investigation and security adjudication may also be made available.

Note: The CFTC may not provide an individual with access to his/her OPM Personnel Investigations Records or to copies of OPM documentation of any background investigation conducted by OPM or contractors dealing with those investigations. These records, which are sent to the CFTC Security and Emergency Management Office to allow adjudication of the request for security clearance, are owned by OPM and reside within the OPM Central-9 system of records. OPM is solely responsible for controlling access to, or amendment of, those records. Those seeking access to, or amendment, of those records owned by OPM should submit a request in writing to the Federal Investigations Processing Center, as stated in OPM Central-9. The signed request should be made under the Privacy Act of 1974 and include the requester's full name, home address, Social Security Number, date and place of birth, and other information requested by OPM.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their CFTC records should contact the system manager indicated above. Individuals must furnish their full name (first, middle, and last name) and birth date for the record to be located and identified. An individual requesting amendment must also follow the CFTC Privacy Act requirements regarding verification of identity and amendment of records.

Note: Individuals who wish to request amendment of their OPM Personnel Investigations Records should follow the requirements of the OPM Central-9 system of records. For information on how to submit such a request, please see the Note in the Records Access Procedures section of this notice.

RECORD SOURCE CATEGORIES:

The individual and OPM will provide the information for this system of records.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

VII. Notice: Personal Property Claims

SYSTEM NUMBER:

CFTC–48

SYSTEM NAME:

Personal Property Claims.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system is located in the Commission's principal office at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CFTC employees and former employees who have experienced damage to or loss of personal property incident to Commission business. Covered individuals also may include authorized agents or legal representatives of CFTC employees or former employees, or their survivors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes the information provided by employees on a CFTC Personal Property Claims form, including the following when applicable: name of employee, information concerning the damage or loss of personal property, personal property at issue, corroborating statements from persons who have personal knowledge of the facts concerning the claim, either an itemized bill for repair of damaged property, or an itemized repair estimate or bill of sale or value estimate from a competent repairman or appraiser, evidence that the employee has filed a claim with the carrier or insurer, and copies of any pertinent correspondence, copies of travel and transportation orders, a statement concerning any reimbursement obtained from a carrier or insurer, describing reimbursement received for each item, copies of police reports, and other evidence which may be needed for CFTC review and determination of whether to pay the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. 3721, authorizes heads of federal agencies to pay or otherwise settle claims of employees up to a limit specified by the Act and/or CFTC policies for damage or loss of personal property incident to their services.

PURPOSE(S):

The purpose of the system of records is to include all information related to claims by employees for damage to or loss of personal property incident to Commission business, as provided in the Military Personnel & Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721. The system will facilitate the review of a claim and collection of evidence by CFTC Logistics and Operations Unit (L&O); will facilitate the Executive Director's decision as to whether to pay a claim, offer a replacement of the property in kind or otherwise settle the claim; will facilitate processing through Financial Management; and when a claim has been denied, will allow a claimant to request reconsideration, as stated in Commission policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in this system will be routinely used by CFTC staff in the Office of the Executive Director, including L&O, Security and Emergency Management Office and Financial Management Branch to review, process and adjudicate personal property claims. Information also may be disclosed as stated in the blanket routine uses numbered 1 through 19 that appear at the beginning of the Commission's compilation of its systems of records notices at 76 FR 5974 (Feb. 2, 2011), and copied in this **Federal Register** notice above for convenience, ''Supplementary Information,'' ''II. Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS CONTROLS, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders, binders, computer disks, and are uploaded into the CFTC network. Electronic records, including emails, spreadsheets, PDF files and documents are maintained on a SharePoint site, are stored on the Commission's network and other electronic media as needed, such as encrypted hard drives and back-up media.

RETRIEVABILITY:

By name of the employee who files the personal property claim.

ACCESS CONTROLS, SAFEGUARDS:

Records in the system are protected from unauthorized access and misuse through various administrative, technical and physical security measures. Technical security measures within CFTC include restrictions on computer access to authorized individuals, required use of strong passwords that are frequently changed, use of encryption for certain data types and transfers, and regular review of security procedures and best practices to enhance security. Physical measures include restrictions on building access to authorized individuals only and maintaining records in lockable offices and filing cabinets.

RETENTION AND DISPOSAL:

The records will be maintained in accordance with records disposition schedules approved by the National Archives and Records Administration. The schedules are available at *www.cftc.gov.*

SYSTEM MANAGER(S) AND ADDRESS:

Logistics & Operations in the Commission's Office of the Executive Director, located at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the Office of General Counsel, Paralegal Specialist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Telephone (202) 418–5011.

RECORD SOURCE CATEGORIES:

Individuals who file personal property claims; the individual's supervisor; information from witnesses collected by the Security and Emergency Management Office staff; the Executive Director, who makes the final decision regarding settlement of the claim; and personnel in the Commission's Financial Management Branch who handle financial reimbursement issues.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

VIII. Notice: Whistleblower Records (Exempted)

SYSTEM NUMBER:

CFTC–49

SYSTEM NAME:

Whistleblower Records (Exempted).

SYSTEM LOCATION:

This system is located in the Whistleblower Office, in the Office of the Executive Director, in the Commission's principal office at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who have submitted tips, complaints or referrals, award applications and/or related documents or information to the Whistleblower Office in relation to the Commission's whistleblower program, and any individuals who are referenced in any information submitted to or accessed by the Whistleblower Office in relation to the whistleblower program.

b. Individuals whom the Commission staff has reason to believe have violated, are violating, or are about to violate the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

c. Individuals whom the Commission staff has reason to believe have violated, are violating, or are about to violate a law or regulation or order of another federal, state or foreign authority.

d. Individuals whom the Commission staff has reason to believe may have information concerning violations of the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

e. Individuals whom the Commission staff has identified as relevant to an enforcement investigation, such as complainants, witnesses and counsel.

f. Individuals whom a foreign law enforcement authority has found or alleges to have, or suspects of having, violated foreign laws, rules, regulations or orders of such foreign law enforcement authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may include all or any part of the records developed during the whistleblower tip, complaint or referral submission process, investigation or inquiry, or whistleblower award claim and determination process, as described in Section 23 of the Commodity Exchange Act, 7 U.S.C. 26, and the rules promulgated thereunder, 17 CFR part 165, including but not limited to data from Commission reporting forms, such as Commission Forms TCR and WB–APP, documents and information related to the whistleblower program, and records drafted and/or compiled for the Commission's Whistleblower Award Determination Panel whose disclosure the Commission staff has determined could impair the effectiveness and orderly conduct of the Commission's whistleblower, regulatory and enforcement programs or compromise Commission investigations. This system may include: records, data and correspondence submitted by and sent to whistleblowers and/or their representatives; correspondence with other law enforcement and regulatory agencies regarding referral of whistleblower information and related actions brought by such agencies based on whistleblower information; interviews, memoranda and other work products prepared by Commission staff; affidavits, statements by witnesses, contracts and agreements with whistleblowers, including confidentiality agreements; and information available on the Internet or other electronic sources accessed for purposes of the whistleblower program. The system may also contain internal memoranda and declarations of Commission staff, correspondence and other miscellaneous investigatory matters. The nature of the personal information contained in these files varies according to what has been submitted by the whistleblower and/or his/her representative, and may include personal background information about individuals involved, their education and employment history, social security numbers, trading account details, information on prior violations, and a wide variety of financial information, as well as a detailed examination of the individuals' activities during the period in question.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Commodity Exchange Act Section 23, 7 U.S.C. § 26, and the rules promulgated thereunder, 17 CFR part 165, authorizing the creation and administration of the Commission's whistleblower program.

PURPOSE(S):

The Commission's whistleblower program is designed to pay awards to eligible individuals who voluntarily provide the Commission with original information about violations of the Commodity Exchange Act (CEA) that lead to the successful enforcement of covered judicial or administrative actions, or related actions. The whistleblower provisions also prohibit retaliation by employers against individuals who provide the Commission with information about possible CEA violations. As part of its administration of the whistleblower program, the Commission's Whistleblower Office maintains records of whistleblower tips, complaints, award claims and related supplemental records and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed in accordance with the blanket routine uses numbered 1 through 19 that appear at the beginning of the Commission's compilation of its systems of records notices at 76 FR 5974 (Feb. 2, 2011), and copied in this **Federal Register** notice above for

convenience, ''Supplementary Information,'' ''II. Routine Uses,'' which will be exercised in accordance with Commodity Exchange Act Section 23(h)(2), 7 U.S.C. 26(h)(2), and rule 165.4 thereunder, 17 CFR 165.4.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and binders. Electronic records, including PDFs of paper records and computer files, are stored on the Commission's network and on various other electronic media as needed, such as encrypted hard drives.

RETRIEVABILITY:

By the name, submission number or other individual identifier of the individual or individuals seeking whistleblower status or claiming a whistleblower award.

SAFEGUARDS:

Records are protected from unauthorized access and improper use through administrative, technical and physical security measures. Technical security measures within the Commission include restrictions on computer access to authorized individuals, required use of strong passwords that are frequently changed, use of encryption for certain data types and transfers, and regular review of security procedures and best practices to enhance security. Physical measures include restrictions on building access to authorized individuals and maintenance of certain records in secured filing rooms and/or locked filing cabinets. Also, all employees are made aware of the sensitive nature of whistleblower information.

RETENTION AND DISPOSAL:

1. Whistleblower Submission Files:

a. Includes but is not limited to Forms TCR and WB–APP, records provided by whistleblowers and/or their representatives in support of their submissions, memoranda of interviews with whistleblowers, correspondence with whistleblowers and/or their representatives, and other related records.

b. Such files will be closed after the last action on the relevant Division of Enforcement matter, after the final appeal of the decision of the Whistleblower Award Determination Panel is exhausted, or after the award payment to the whistleblower has been made, whichever is applicable and whichever is latest (the cut-off date). Such files will be destroyed 15 years after the end of the fiscal year on which the latest cut-off date occurs.

2. Whistleblower Award Determination Panel Records:

a. Includes but is not limited to documentation that the Whistleblower Office collects and prepares for the Whistleblower Award Determination Panel to make eligibility and award decisions, the Panel's determinations, records documenting payment of awards to whistleblowers, Panel membership lists and other records related to the administration of the Panel, and other related records.

b. Such files will be closed after the final appeal of the Whistleblower Award Determination Panel decision is exhausted, or after the award payment to the whistleblower has been made, whichever is applicable and whichever is latest (the cut-off date). Such files will be transferred to the National Archives and Records Administration 15 years after the end of the fiscal year in which the latest cut-off date occurs.

All whistleblower records remain exempt from disclosure under the Privacy Act.

SYSTEM MANAGER(S) AND ADDRESS:

Whistleblower Officer in the Office of the Executive Director, in the Commission's principal office at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Reporting forms and other information filed with or submitted to the Commission by: Individuals interested in participating in the whistleblower program; self-regulatory organizations; individuals or firms covered by the Commission's registration requirements; federal, state and local regulatory and law enforcement agencies; banks, credit organizations and other institutions; corporations; individuals having knowledge of the facts; attorneys; publications; courts; the Whistleblower Award Determination Panel; and other sources which may have information related to the handling of a whistleblower matter.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a(k)(2), and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempt from the notification procedures, records access procedures, and record contest procedures set forth in the system notices of other systems of records, and from the requirement that the sources of records in the system be described.

Issued in Washington, DC, this 3rd day of July 2012, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–17087 Filed 7–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences (USU), Department of Defense.

ACTION: Quarterly Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences.

DATES:

Tuesday, August 14, 2012.

8:00 a.m. to 11:30 a.m. (Open Session).

11:30 a.m. to 1:00 p.m. (Closed Session).

ADDRESSES: Everett Alvarez Jr. Board of Regents Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066. Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held May 18, 2012; recommendations regarding the approval of faculty appointments and promotions in the School of Medicine and the Graduate School of Nursing; and recommendations regarding the

awarding of master's and doctoral degrees in the biomedical sciences and public health. The President, USU will present a report and Regents will also receive information from both academic and administrative University officials. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of the meeting is open to the public. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Janet S. Taylor at the address and phone number in **FOR FURTHER INFORMATION CONTACT**. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address in **FOR FURTHER INFORMATION CONTACT**. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the August 2012 meeting or at a future meeting.

Dated: July 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–17111 Filed 7–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meetings for the Draft Environmental Impact Statement for the Proposed Modernization and Expansion of Townsend Bombing Range, GA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (42 United States Code [U.S.C.] Sections 4321–4370h); the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (Title 40 Code of Federal Regulations (CFR) Parts 1500–1508); Department of the Navy Procedures for Implementing NEPA (32 CFR part 775); and Marine Corps NEPA directives (Marine Corps Order P5090.2A), the U. S. Marine Corps (USMC)as prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (EIS) that evaluates potential environmental impacts of acquiring additional property and constructing the necessary infrastructure to allow the use of inert precision-guided munitions (PGMs) at Townsend Bombing Range (TBR), Georgia. Through the use of PGMs at TBR, the USMC can more efficiently meet current training requirements for pilots by significantly increasing air-to-ground training capabilities for Marine Air Group (MAG) 31 stationed at Marine Corps Air Station (MCAS) Beaufort, South Carolina.

With the filing of the Draft EIS, the USMC is initiating a 45-day public comment period and has scheduled two public open house meetings to receive oral and written comments on the Draft EIS. Federal, state and local agencies and interested parties are encouraged to provide comments in person at the public meetings, or in writing anytime during the public comment period. This notice announces the dates and locations of the public meetings and provides supplementary information about the environmental planning effort.

DATES AND ADDRESSES: The Draft EIS public review period will begin July 13, 2012 and end August 27, 2012. The two public meetings will inform the public about the proposed action and the alternatives under consideration, and provide an opportunity for the public to comment on the Draft EIS. USMC representatives will be on hand to discuss the NEPA process, findings, and the Proposed Action presented in the Draft EIS. The public meetings will be held from 4:00 p.m. to 7:00 p.m. on the following dates and at the following locations in Georgia:

(1) Tuesday, August 7, 2012 at McIntosh County Middle School Gymnasium 500 Green Street Darien, GA 31305.

(2) Thursday, August 9, 2012 at City Hall of Ludowici Meeting Room 469 North Macon Street Ludowici, GA 31316.

Copies of the Draft EIS are available for public review at the following public libraries:

Ida Hilton Public Library, 1105 North Way, Darien, GA, 31305;

Long County Public Library, 28 S. Main Street, Ludowici, GA, 31316; and Hog Hammock Public Library, 1023 Hillery Lane, Sapelo Island, GA, 31327.

The Draft EIS was distributed to Federal, State, and local agencies, elected officials, and other interested parties and individuals on July 13, 2012. The document can be viewed online and downloaded from *http://www.townsendbombingrangeeis.com*.

A copy of the Draft EIS will also be made available upon written request to Townsend Bombing Range EIS Project Manager, Post Office Box 180458, Tallahassee, Florida, 32318.

Comments: Attendees will be able to submit written comments at the public meeting; a stenographer will also be present to transcribe oral comments. Equal weight will be given to oral and written statements. Comments on the Draft EIS can be submitted via the project email address (*townsendbombingrangeeise@ene.com*), project Web site or submitted in writing to: Townsend Bombing Range EIS Project Manager, Post Office Box 180458, Tallahassee, Florida, 32318. All comments must be postmarked or electronically dated on or before August 27, 2012 to be sure they become part of the public record. All statements, oral transcription and written, submitted during the public review period will become part of the public record on the Draft EIS and will be responded to in the Final EIS.

FOR FURTHER ASSISTANCE: Contact Capt. Cochran, 596 Geiger Blvd. MCAS Beaufort, SC 29904 at 843–228–6123. Please submit requests for special assistance, sign language interpretation for the hearing impaired, or other auxiliary aids at the public meeting to Capt. Cochran.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare this EIS was published in the **Federal Register** on August 6, 2010 (Vol. 75, No. 151, pp. 47564–47565).

Purpose and Need: The purpose of the Proposed Action is to provide an air-to-ground training range capable of providing a wider variety of air-to-ground operations, including the use of PGMs, to meet current training requirements. The Proposed Action is needed to more efficiently meet current training requirements for USMC aviation assets by significantly increasing air-to-ground training

capabilities in the Beaufort, South Carolina Region.

Proposed Action: The Proposed Action evaluated in the Draft EIS is to modernize and expand TBR to accommodate the MAG–31 requirement to train with inert PGMs and the larger Weapons Danger Zones (WDZs) their use requires. To accomplish this, the USMC proposes to acquire lands in the vicinity of TBR on which to create new target areas to allow for a greater variety of training activities. The Proposed Action includes five interrelated components:

(1) Acquisition of land adjacent to TBR to accommodate the larger WDZs required for PGM training. To effectively deliver PGMs at TBR, the land area must be increased to ensure the containment of the WDZs, allow for their realistic combat employment, and ensure the safety of military personnel and civilians present at and around TBR.

(2) Acquisition of a timber easement within the current TBR boundary to ensure public safety. It is necessary for the USMC to own all the timberland and to manage it in support of mission requirements.

(3) Modification of existing airspace Restricted Area R–3007C by extending the current restricted area laterally to the proposed acquisition area boundary. The purpose of this additional airspace is to exclude non-participating aircraft from intruding into hazardous operations, as required by Federal Aviation Administration regulations. The proposed modification would eliminate the current gap from 100 feet Above Ground Level down to the surface of the ground over the areas proposed for acquisition.

(4) Construction of Infrastructure to support PGM training. This includes the placement and/or construction of new targets, a new observation tower, and support facilities, as well as additional utilities, roads, and fencing.

(5) Improvement of training capabilities of the individual aircrew air-to-ground ordnance delivery training syllabus for the F/A–18. Currently, MAG 31 pilots can accomplish less than half of their air-to-ground training requirements at TBR. The expansion of TBR and the creation of new target areas would increase capabilities from 47 percent to 85 percent of the individual air-to-ground ordnance delivery training syllabus for the F/A–18 at TBR.

Alternatives Considered in the Draft EIS: The Draft EIS examines four action alternatives and a No Action Alternative. All four action alternatives would involve the acquisition and management of land and a timber easement, the modification of existing airspace, the infrastructure to support PGM training, and would result in the improvement of training capabilities. The land acquired under each action alternative would involve different strategic combinations of three possible land acquisition areas (referred to in the Draft EIS as ''Acquisition Area 1A,'' ''Acquisition Area 1B,'' and ''Acquisition Area 3''). Similarly under all four action alternatives, the USMC proposes to modify the existing airspace based on the amount of land acquired. Any combination of the land proposed to be acquired would be under the current Restricted Area R–3007.

Alternative 1 includes Acquisition Area 1A and Acquisition Area 1B, totaling an acquisition of 11,187 acres. Alternative 1 also includes the acquisition of a 3,007-acre timber easement. Restricted Area R–3007A would be modified by extending the current restricted area laterally to the proposed acquisition area boundary. The proposed modification would eliminate the current gap from 100 feet above ground level down to the surface of the ground over the areas that are proposed for acquisition. Alternative 1 includes the construction of three new target areas: Target Area 6 (Airfield Site with Simulated Petroleum, Oil, and Lubricants [POL] Site/Fuel Farm); Target Area 7 (Urban Target Area [UTA]); and Target Area 8 (Fuel Farm/POL Site). Under Alternative 1, air-to-ground training capabilities would increase from 47 percent up to 72 percent.

Alternative 2 includes Acquisition Area 3, totaling an acquisition of 23,480 acres. Like Alternative 1, Alternative 2 also includes the acquisition of the timber easement and the same modification to existing airspace. Alternative 2 includes the construction of five new target areas: Target Area 1 (UTA); Target Area 2 (Terrorist Training Camp); Target Area 3 (Conventional Bull's Eye); Target Area 4 (Convoy Site); and Target Area 5 (Train Depot). Under Alternative 2, air-to-ground training capabilities would increase from 47 percent up to 85 percent.

Alternative 3 includes Acquisition Area 1A, Acquisition Area 1B, and Acquisition Area 3, totaling an acquisition of 34,667 acres. Like Alternatives 1 and 2, Alternative 3 includes the acquisition of the timber easement and the same modification to existing airspace. Alternative 3 includes the construction of eight new target areas (Target Areas 1, 2, 3, 4, 5, 6, 7, and 8), and training capabilities would increase from 47 percent up to 85 percent.

Alternative 4 (Preferred Alternative) includes Acquisition Area 1B and Acquisition Area 3, totaling an acquisition of 28,436 acres. Like Alternatives 1, 2, and 3, Alternative 4 includes the acquisition of the timber easement and the same modification to existing airspace. Alternative 4 includes the construction of six new target areas (Target Areas 1, 2, 3, 4, 5, and 8), and training capabilities would increase from 47 percent up to 85 percent.

No Action Alternative. Under the No Action Alternative, the Proposed Action would not take place and the status quo would continue, the USMC would not acquire any land for training purposes, and training operations at TBR would not change. The No Action Alternative would not provide a local East Coast range capable of supporting the use of PGMs by MAG–31. Aviation units stationed at MCAS Beaufort would continue to deploy to the southwestern United States to undergo PGM training and meet individual aircrew training requirements. TBR would continue to support current training operations, but would be unable to accommodate PGM training.

Environmental Issues: The Draft EIS evaluates the potential environmental effects associated with each of the alternatives. Issues addressed include: Land use; socioeconomics; recreation; wetlands; water resources; airspace; noise; biological resources; cultural resources; air quality; transportation; noise; biological resources; cultural resources; topography, geology, and soils; utilities and infrastructure; and hazardous materials and waste. The Draft EIS also analyzes cumulative impacts from other past, present, and reasonably foreseeable future actions occurring near the project area. Environmental consequences of the Proposed Action would principally arise from tax revenue and timber sales tax revenue lost in both McIntosh and Long Counties, Georgia. Relevant and reasonable measures that could alleviate environmental effects have been considered.

Schedule: A 45-day public comment period will start upon publication of the EPA Notice of Availability (NOA) in the **Federal Register**. Comments on the Draft EIS must be received by August 27, 2012. The Department of the Navy (DoN) will consider and respond to all comments received on the Draft EIS when preparing the Final EIS. The DoN expects to issue the Final EIS in spring 2013, at which time a NOA will be published in the **Federal Register** and

local print media. A Record of Decision is expected in summer 2013.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–17098 Filed 7–12–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Rehabilitation Research and Training Center on Vocational Rehabilitation and Developing Strategies To Meet Employer Needs in Changing Economic Environments

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Center (RRTCs) on Vocational Rehabilitation (VR) and Developing Strategies to Meet Employer Needs in Changing Economic Environments.

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–1.

Dates:

Applications Available: July 13, 2012.

Date of Pre-Application Meeting: August 3, 2012.

Deadline for Transmittal of Applications: August 27, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: This competition includes two absolute priorities. The *General RRTC Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132) and the *RRTC on Vocational Rehabilitation and Developing Strategies to Meet Employer Needs in Changing Economic Environments* priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

(1) *General RRTC Requirements.*

(2) *RRTC on Vocational Rehabilitation and Developing Strategies to Meet Employer Needs in Changing Economic Environments.*

Note: The full text of these priorities is included in the pertinent notice of final priority or priorities published in the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $650,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of approved but unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $650,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133B–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc)

by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

2. b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for this competition, an application may include business information that an applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because we plan to make the narrative portions of the applications selected for funding available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information, please see 34 CFR 5.11(c).

2. c. *Accessibility of Application Narratives.* To ensure accessibility of application information posted on the Department's Web site, applicants selected for funding under this competition will be required to provide an electronic copy of the narrative portion of their application that is accessible to individuals with disabilities. Guidelines on preparing accessible documents in various formats are available at: *http://www2.ed.gov/internal/internalguidelines.html.*

3. *Submission Dates and Times:*

Applications Available: July 13, 2012.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on August 3, 2012. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact either Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 27, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS

number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under RRTC on Vocational Rehabilitation (VR) and Developing Strategies to Meet Employer Needs in Changing Economic Environments, CFDA number 84.133B–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the RRTC on VR and Developing Strategies to Meet Employer Needs in Changing Economic Environments at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability

of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Fax: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–1), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–1), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you

receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 10, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–17190 Filed 7–12–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Priority; Rehabilitation Research and Training Center on Vocational Rehabilitation and Developing Strategies To Meet Employer Needs in Changing Economic Environments

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: CFDA Number: 84.133B–1. Final priority; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Center (RRTCs) on Vocational Rehabilitation (VR) and Developing Strategies to Meet Employer Needs in Changing Economic Environments.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this priority is for an RRTC on VR and developing strategies to meet employer needs in changing economic environments. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2012 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve employment outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective August 13, 2012.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority (NFP) is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

By implementing the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of

expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice announces a final priority that NIDRR intends to use for an RRTC competition in FY 2012 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program

The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated and advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority for this program in the **Federal Register** on May 8, 2012 (77 FR 27035). That notice contained background information and our reasons for proposing this particular priority.

Public Comment: In response to our invitation in the notice of proposed priority, one party submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: The commenter asked whether under the priority, the RRTC could conduct research on employer demand strategies in countries outside of the United States.

Discussion: RRTCs are funded under the Disability and Rehabilitation Research Projects and Centers program. The regulations for this program (34 CFR 350.2) indicate that its purpose is to plan and conduct research, demonstration projects, training, and related activities, including international activities. This RRTC must conduct research that contributes to identifying effective VR practices that take into account economic conditions, labor market trends, and employer needs. Nothing in the priority precludes the RRTC from conducting research on employer demand strategies in countries outside of the United States, so long as the results of the research are generalizable to the workforce needs and expectations of potential employers of individuals receiving services from State VR agencies and can be used to contribute to the intended outcomes of the priority.

Changes: None.

Comment: The commenter asked whether under the priority, the RRTC could conduct research activities with an employer or industry.

Discussion: This RRTC must conduct research that contributes to identifying effective VR practices that take into account economic conditions, labor market trends, and employer needs. Nothing in the priority precludes the RRTC from conducting research with an employer or industry, so long as the results of the research can be used to contribute to the intended outcomes of the priority.

Changes: None.

Comment: The commenter asked how NIDRR distinguishes between research and development activities. The commenter also asked how NIDRR defines a development activity.

Discussion: Descriptions of research and development activities are provided in the regulations for NIDRR's Disability and Rehabilitation Research Projects program. These regulations apply to a broad range of NIDRR's grant mechanisms, including RRTCs, and describe a research activity as an ''intensive systematic study directed toward new or full scientific knowledge, or understanding of the subject or problem studied.'' 34 CFR 350.13. The regulations describe a development activity as using ''knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including the design and development of prototypes and processes.'' 34 CFR 350.16.

Changes: None.

Comment: The commenter stated that the outcome on improved training and continuing education for VR professionals in paragraph (c) of the priority appears to limit the target audience to State VR agencies and asked NIDRR to consider expanding it to include rehabilitation service vendors, employers, and people with disabilities. The commenter also noted that such an expansion may better align with the research requirements listed under paragraph (b) of this priority.

Discussion: The purpose of this priority, as conveyed in the opening paragraph, is to conduct research that will generate new knowledge about effective practices that can be used by State VR agencies to better serve their customers, including individuals with disabilities and their employers. Consistent with this purpose, paragraph (c) requires that the new knowledge be used to develop and disseminate materials that will improve training and continuing education on effective practices that can be used by VR State agencies in responding to workforce needs in a changing economy. Therefore, expanding paragraph (c) to engage in activities that improve the training and continuing education of professionals outside of the State VR system is beyond the scope of this priority.

Changes: Our review of the priority in response to this comment indicated that paragraph (b) did not make clear that the focus of the intended outcome is improving services and strategies utilized by State VR agencies. Therefore, we have edited the opening sentence of paragraph (b) by adding the words ''utilized by State VR agencies'' to the end of the sentence.

Comment: None.

Discussion: The Department is committed to ensuring that all Department-sponsored Web sites and documents posted to them are accessible to individuals with disabilities. We inadvertently neglected to add such a requirement in the NPP.

Changes: NIDRR has amended paragraph (c) to require the RRTC's Web site, as well as documents posted on its Web site, to meet government or industry-recognized standards for accessibility.

Final Priority

Priority—Rehabilitation Research and Training Center (RRTC) on Vocational Rehabilitation and Developing Strategies To Meet Employer Needs in Changing Economic Environments

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Vocational Rehabilitation (VR) and Developing Strategies to Meet Employer Needs in Changing Economic Environments. This RRTC must conduct research that contributes to identifying effective VR practices that take into account economic conditions, labor market trends, and employer needs. This RRTC will contribute to improved employment outcomes by generating new knowledge about effective practices that can be used by State VR agencies in serving their customers, including both program participants and employers. Under this priority, the RRTC must contribute to the following outcomes:

(a) New knowledge to improve responsiveness of VR agencies to employer workforce needs in a changing economy. The RRTC must contribute to this outcome by conducting research or development activities on effective ways for State VR agencies to assess employer needs and expectations in the changing economic environment in which businesses operate. The RRTC must conduct research to identify or develop effective strategic planning models that will support State VR agency efforts to anticipate and prepare for changing employer and labor market needs. In addition, the RRTC must conduct research to identify existing programs, e.g., Workforce Investment Act ''Rapid Response'' programs, that may be useful in helping VR agencies mitigate the impact of changing economic conditions. These research or development activities must include identifying methods of tracking, analyzing, and reacting to changing employer needs, including those related to economic conditions, such as analyses of labor market trends and analyses of projected growth areas.

(b) Improved job training, development, and placement services and strategies utilized by State VR agencies. The RRTC must contribute to this outcome by conducting research to identify or develop effective service delivery models that take into account current and future employer workforce needs, including needed job skills. Components of these models may include, but are not limited to: Employer partnerships to facilitate the identification of employer needs; incorporation of employer needs in planning job development, placement, and retention strategies; training opportunities to provide individuals with disabilities with skills that match employer needs; and strategic planning processes designed to respond to changing employer and economic needs.

(c) Improved training and continuing education for VR professionals. The RRTC must contribute to this outcome by developing and disseminating materials that incorporate findings from the research and development activities conducted under paragraphs (a) and (b) of this priority. These materials must be developed for use by State VR agencies to improve their ability to use information generated to develop strategies and services that will better meet the needs of employers in the context of local and regional economic and labor market conditions and to increase employment outcomes for VR participants. If the RRTC maintains a Web site with the purpose of disseminating these materials, the Web site must meet government or industry-recognized standards for accessibility. Documents posted on the RRTC Web site must meet the accessibility standards set out at: *http://www2.ed.gov/internal/internalguidelines.html.*

In addition, through coordination with the NIDRR Project Officer, this RRTC must—

(1) Collaborate with RSA's Regional Technical Assistance Network, including Regional Technical Assistance and Continuing Education (TACE) Centers to disseminate new knowledge to VR State agency personnel and key stakeholders; and

(2) Collaborate with NIDRR grantees that are conducting work relevant to this RRTC.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of this final priority is that the establishment of a new RRTC will improve the lives of individuals with disabilities. The new RRTC will generate, disseminate, and promote the use of new information that will contribute to improved employment outcomes for individuals with disabilities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 10, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–17186 Filed 7–12–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2012–OESE–0009]

Notice Reopening the Request for Information (RFI) To Gather Technical Expertise Pertaining to the Disaggregation of Asian and Native Hawaiian and Other Pacific Islander Student Data

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice reopening comment period.

SUMMARY: On May 4, 2012, we published in the **Federal Register** (77 FR 26531) an RFI that established a July 3, 2012, deadline for the submission of written comments. We are reopening the public comment period to give interested parties additional time to submit written comments.

DATES: Written submissions must be received by August 13, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure

that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''Data Disaggregation Response'' at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use This Site.''

• *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Donald Yu, Attention: ANHPI Student Data Disaggregation RFI, U.S. Department of Education, 400 Maryland Avenue SW., Room 7C157, Washington, DC 20202–6132.

• *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines ''confidential commercial information'' as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify any specific information in your comments that you consider confidential commercial information. Please list the information by page and paragraph numbers.

While this RFI is seeking to gather information related to policies and practices, you should still make certain your comments do not include disclosures of personally identifiable information from students' education records in a manner that violates the Family Educational Rights and Privacy Act of 1974 (FERPA).

FOR FURTHER INFORMATION CONTACT: Don Yu, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W104, Washington, DC 20202–6132 by phone at 202–205–4499.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-(800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2012, we published an RFI in the **Federal Register** (77 FR 26531) to collect information about promising practices and policies regarding existing education data systems and models that disaggregate data on subgroups within the Asian and Native Hawaiian or Other Pacific Island student population. The deadline for written submissions during the initial comment period was July 3, 2012. We are reopening the comment period for written submissions in response to the RFI notice through August 13, 2012. We are reopening the comment period to maximize opportunities for State educational agencies, local educational agencies, schools, and institutions of higher education to respond with their disaggregation practices so as to yield beneficial data for the Department to analyze and report on.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 10, 2012.

Martha Kanter,

Under Secretary.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–17185 Filed 7–12–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 26, 2012, 8:30 a.m.–5 p.m., and Friday, July 27, 2012, 9 a.m.–12 p.m.

ADDRESSES: Bethesda North Hotel and Conference Center, 5701 Marinelli Road, Bethesda, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Katie Perine, Office of Basic Energy Sciences, U.S. Department of Energy, Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (301) 903–6529.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from Office of Science/DOE
- News from the Office of Basic Energy Sciences
- Future of ARPA–E
- Linac Coherent Light Source (LCLS) update
- Materials Sciences and Engineering Division Committee of Visitors Report
- Mesoscale Discussion

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Perine at (301) 903–6594 (fax) or by email at: *katie.perine@science.doe.gov*. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and

copying within 45 days from the Committee's Web site at: *http://science.energy.gov/bes/besac/*.

Issued in Washington, DC, on July 9, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–17108 Filed 7–12–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13953–002]

Mahoning Hydropower, LLC; Notice of Application Accepted for Filing With the Commision, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Intent To Waive Scoping, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 13953–002.

c. *Date filed:* November 22, 2011.

d. *Applicant:* Mahoning Hydropower, LLC.

e. *Name of Project:* Lake Milton Hydroelectric Project.

f. *Location:* The project would be located on the Mahoning River, in Mahoning County, Ohio at an existing dam owned by the Ohio Department of Natural Resources. The project would not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mahoning Hydropower, LLC, c/o Anthony J. Marra III, General Manager, 11365 Normandy Lane, Chagrin Falls, Ohio 44023, Phone (440) 804–6627.

i. *FERC Contact:* Isis Johnson, (202) 502–6346, *isis.johnson@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The project would be located at the existing Lake Milton Dam, currently owned by the Ohio Department of Natural Resources. Water releases through Lake Milton Dam would continue to be controlled by the U.S. Army Corps of Engineers (Corps). Lake Milton Dam is a concrete gravity dam about 54 feet high and 760 feet long, with a 650-foot-long spillway and four, 60-inch-diameter gate valves. The project would also consist of the following new facilities: (1) A tubular S-Type propeller, 650-kilowatt turbine-generating unit; (2) a trash rack with a 1-inch clear bar spacing that would be placed over the existing trashrack; and (3) a 25-foot by 35-foot powerhouse that would be built below the crest of the dam and over the existing discharge pipe exiting the dam. No new penstock or tailrace are proposed as the proposed turbine would utilize the existing 70-foot-long by 60-inch diameter cast iron conduit that currently passes through the dam, and the flows exiting the turbine would be discharged directly into an existing concrete stilling basin. The proposed project would also include a new 12.5-kilovolt, 320-foot-long underground transmission line that would interconnect with an existing distribution line located west of the dam.

The two-mile-long reservoir (Lake Milton) has a surface area of 1,685 acres at a normal pool elevation of 948 feet above mean sea level. The project would operate in a run-of-release mode, based on Corp releases upstream, using flows that range between 25 cubic feet per second (cfs) and 250 cfs. When higher flows need to be released from the reservoir, flows above 250 cfs can be discharged through any of the three remaining 60-inch discharge pipes. The estimated annual generation of the Lake Milton Project would be 3,659 megawatt-hours based on a head range at the dam of between 26 and 40 feet.

m. We intend to waive scoping and expedite the review process based on several factors: (1) The dam already exists, (2) there is limited construction proposed at the project site, (3) the applicant coordinated closely with federal and state resource agencies during the preparation of the application, and (4) the studies conducted by the applicant were completed during pre-filing consultation. Based on a review of the application and resource agency consultation letters, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping. The EA will assess the potential effects of project construction and operation on geology and soils, aquatic resources, terrestrial resources, threatened and endangered species, recreation and land use, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those

who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (e.g., if scoping is not waived, the schedule would be lengthened).

Milestone	Target date
Notice of the availability of the EA.	Sept. 2012.

Dated: July 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17044 Filed 7–12–12; 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: RP12–853–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: VPEM Negotiated Rate Correction to be effective 4/1/2012.

Filed Date: 7/5/12.

Accession Number: 20120705–5033.

Comments Due: 5 p.m. ET 7/17/12.

Docket Numbers: RP12–854–000.

Applicants: Honeoye Storage Corporation.

Description: Priority Non-Firm Storage Service Filing to be effective 8/1/2012.

Filed Date: 7/6/12.

Accession Number: 20120706–5019.

Comments Due: 5 p.m. ET 7/18/12.

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 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: July 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17149 Filed 7–12–12; 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: ER11–4380–002; ER10–2431–003; ER11–2363–002; ER10–2434–003; ER10–2467–003; ER11–3731–003; ER10–2488–003; ER12–1931–001; ER10–2504–002; ER12–610–002; ER10–2436–003; ER11–4381–002.

Applicants: Fenton Power Partners I, LLC, Wapsipinicon Wind Project, LLC, Shiloh Wind Project 2, LLC, Hoosier Wind Project, LLC, Oasis Power Partners, LLC, Bellevue Solar, LLC, Yamhill Solar, LLC, Chanarambie Power Partners, LLC, LWP Lessee, LLC, Chestnut Flats Wind, LLC, Shiloh III Lessee, LLC, Pacific Wind Lessee, LLC.

Description: Notice of Change in Status of enXco Entities. (Attachment B and C are informational only).

Filed Date: 7/5/12.

Accession Number: 20120705–5125.

Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–1742–002.

Applicants: International Transmission Company.

Description: ITC Transmission RS 12 to be effective 7/10/2012.

Filed Date: 7/6/12.

Accession Number: 20120706–5037.

Comments Due: 5 p.m. ET 7/27/12.

Docket Numbers: ER12–1931–001.

Applicants: Pacific Wind Lessee, LLC.

Description: Pacific Wind Lessee Notice of Change in Status and Compliance Filing—Clone to be effective 6/25/2012.

Filed Date: 7/5/12.

Accession Number: 20120705–5091.

Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–2009–001.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.17(b): Errata to correct metadata in ER12–2009 re Cancellation of SA No. 2951 to be effective 5/11/2012.

Filed Date: 7/6/12.

Accession Number: 20120706–5055.

Comments Due: 5 p.m. ET 7/27/12.

Docket Numbers: ER12–2205–000.

Applicants: Meadow Creek Project Company LLC.

Description: Application for MBR Authority to be effective 9/5/2012.

Filed Date: 7/5/12.

Accession Number: 20120705–5098.

Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–2206–000.

Applicants: Southern California Edison Company.

Description: Unexecuted SGIA with Western Antelope Dry Ranch LLC to be effective 7/6/2012.

Filed Date: 7/5/12.

Accession Number: 20120705–5100.

Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–2207–000.

Applicants: California Independent System Operator Corporation.

Description: 2012–07–05 Western Antelope Dry Ranch SGIA to be effective 7/6/2012.

Filed Date: 7/5/12.

Accession Number: 20120705–5110.

Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–2208–000.

Applicants: Southern California Edison Company.

Description: Unexecuted SGIA with Western Antelope Blue Sky Ranch A LLC to be effective 7/6/2012.

Filed Date: 7/5/12.
Accession Number: 20120705–5113.
Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–2209–000.
Applicants: California Independent System Operator Corporation.
Description: 2012–07–05 Western Antelope Blue Sky SGIA to be effective 7/6/2012.
Filed Date: 7/5/12.
Accession Number: 20120705–5115.
Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–2210–000.
Applicants: Westar Energy, Inc.
Description: Notice of Termination of Generation Interconnection Agreement of Westar Energy, Inc.
Filed Date: 7/5/12.
Accession Number: 20120705–5121.
Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–2211–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits Notice of Cancellation of 1995 Edison-Banning Firm Transmission Service Agreement.
Filed Date: 7/6/12.
Accession Number: 20120706–5032.
Comments Due: 5 p.m. ET 7/27/12.

Docket Numbers: ER12–2212–000
Applicants: Demand Response Partners, Inc.
Description: Request for Limited Tariff Waiver of Demand Response Partners, Inc.
Filed Date: 7/6/12.
Accession Number: 20120706–5034.
Comments Due: 5 p.m. ET 7/27/12.

Docket Numbers: ER12–2213–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Vermont Public Power Supply Authority Resource Termination.
Filed Date: 7/6/12.
Accession Number: 20120706–5038.
Comments Due: 5 p.m. ET 7/27/12.

Docket Numbers: ER12–2214–000.
Applicants: ISO New England Inc., Green Mountain Power Corporation.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Kingdom Wind LGIA/GMP–12–01 to be effective 7/7/2012.
Filed Date: 7/6/12.
Accession Number: 20120706–5056.
Comments Due: 5 p.m. ET 7/27/12.

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 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: July 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17150 Filed 7–12–12; 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: ER10–2042–007; ER10–1874–001; ER10–1861–001; ER10–1993–001.
Applicants: Calpine Energy Services, L.P., Mankato Energy Center, LLC, RockGen Energy, LLC, Riverside Energy Center, LLC.
Description: Updated Market Power Analysis of Calpine Energy Services, L.P., *et al.*
Filed Date: 7/2/12.
Accession Number: 20120702–5348.
Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–30–002; ER11–47–002; ER11–46–005; ER10–2975–005; ER10–2981–002; ER11–41–002.
Applicants: BlueStar Energy Services Inc., Appalachian Power Company, AEP Energy Partners, Inc., CSW Energy Services, Inc., AEP Texas Central Company, AEP Retail Energy Partners.
Description: Triennial update for market based rate authority for AEP West by American Electric Power Service Corporation.
Filed Date: 6/29/12.
Accession Number: 20120629–5300.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER12–2173–000.
Applicants: New York State Electric & Gas Corporation.
Description: Cayuga Non-conforming Large Generator Interconnection Agreement to be effective 6/29/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5342.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: ER12–2173–001.
Applicants: New York State Electric & Gas Corporation.
Description: Errata to Cayuga Non-conforming Large Generator Interconnection Agreement to be effective 6/29/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5169.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2193–000.
Applicants: New York State Electric & Gas Corporation.
Description: Somerset Non-conforming Large Generator Interconnection Agreement to be effective 6/29/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5344.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: ER12–2193–001.
Applicants: New York State Electric & Gas Corporation.
Description: Errata to Somerset Non-conforming Large Generator Interconnection Agreement to be effective 6/29/2012.
Filed Date: 7/5/12.
Accession Number: 20120705–5001.
Comments Due: 5 p.m. ET 7/26/12.

Docket Numbers: ER12–2199–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3340—Queue Position X3–052 to be effective 6/6/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5137.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2200–000.
Applicants: Mehoopany Wind Energy LLC.
Description: MBR Application of Mehoopany Wind Energy LLC to be effective 8/31/2012.
Filed Date: 7/3/12
Accession Number: 20120703–5147.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2201–000.
Applicants: Harvest II Windfarm, LLC.
Description: Application for Market-Based Rate Authorization to be effective 9/1/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5153.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2202–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: Correction of Service. Agreement Number for Cost Reimbursement Agreement to be effective 1/9/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5157.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2203–000.
Applicants: GUSC Energy Inc.
Description: GUSC Energy MBR Application to be effective 9/3/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5170.
Comments Due: 5 p.m. ET 7/24/12.

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: July 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17157 Filed 7–12–12; 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 rate filings:

Docket Numbers: ER10–1836–002; ER10–2005–002; ER11–26–002; ER10–1839–002; ER10–2551–001; ER10–1841–002; ER10–1843–002; ER10–1844–002; ER10–1845–002; ER10–1846–001; ER10–1855–001; ER10–1897–002; ER10–1905–002; ER10–1907–002; ER10–1918–002; ER10–1925–002; ER10–1927–002; ER11–2642–002; ER10–1950–002; ER10–2006–003; ER10–1964–002; ER10–1965–002; ER10–1970–002; ER10–1972–002; ER10–1971–005; ER11–4462–003; ER10–1983–002; ER10–1984–002; ER10–1991–002; ER12–1660–002; ER10–1994–001; ER10–2078–003; ER10–1995–001; ER12–631–001.

Applicants: Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Badger Windpower, LLC, Baldwin Wind, LLC, Butler Ridge Wind Energy Center, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Day County Wind, LLC, FPL Energy Burleigh County Wind, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Mower, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy South Dakota Wind, LLC, Garden Wind, LLC, Hawkeye Power Partners, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Power Marketing, LLC, NEPM II, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Story Wind, LLC, Tuscola Bay Wind, LLC, Wessington Wind Energy Center, White Oak Energy LLC, Wilton Wind II, LLC, Windpower Partners 1993, LLC.

Description: Updated Market Power Analysis for the Central Region of NextEra Energy Companies.

Filed Date: 7/2/12

Accession Number: 20120702–5349

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–2204–000.

Applicants: Public Service Company of New Mexico.

Description: Notice of Cancellation of Service Schedule G to the Interconnection Agreement between Public Service Company of New Mexico and Los Alamos County.

Filed Date: 7/3/12.

Accession Number: 20120703–5178.

Comments Due: 5 p.m. ET 7/24/12.

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 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: July 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17158 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2145–000]

EC&R O&M, 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 EC&R O&M, 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 July 26, 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: July 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17151 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2159–000]

Canadian Hills Wind, 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 Canadian Hills Wind, 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 July 26, 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: July 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17152 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2178–000]

AV Solar Ranch 1, 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 AV Solar Ranch 1, 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 July 26, 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: July 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17153 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2200–000]

Mehoopany Wind Energy 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 Mehoopany Wind Energy 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 July 26, 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: July 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17154 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2201–000]

Harvest II Windfarm, 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 Harvest II Windfarm, 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 July 26, 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: July 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17155 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2203–000]

GUSC Energy 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 GUSC Energy 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 July 26, 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: July 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17156 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER11–4580–000; ER12–50–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following date members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *www.caiso.com.*

July 12, 2012 Board of Governors and Audit Committee Market Update

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants and staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov* (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov,* (916) 294–0275.

Dated: July 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17045 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[AD12–17–000, et al.]

Supplemental Notice of Technical Conference

Review of Small Generator Interconnection Agreements and Procedures	Docket Nos. AD12–17–000.
Solar Energy Industries Association	Docket Nos. RM12–10–000.
California Independent System Operator Corporation	Docket Nos. ER12–502–001, ER12–502–002.
PJM Interconnection, LLC	Docket Nos. ER12–1177–001.
California Independent System Operator Corporation	Docket Nos. ER12–1855–000.

On June 13, 2012, the Federal Energy Regulatory Commission (Commission) announced that a Technical Conference on issues related to a petition for rulemaking recently submitted by the Solar Energy Industries Association (Docket No. RM12–10–000) will be held on Tuesday, July 17, 2012. Please note that the time for the conference has been changed; the conference will be convened from 9 a.m. to approximately 4 p.m. (EDT). The staff-led conference will be held in the Commission Meeting Room at the Commission's headquarters at 888 First Street NE., Washington, DC 20426. Members of the Commission may attend the conference, which will also be open for the public to attend. Advance registration is not required, but is encouraged. We will provide nametags for those who register on or before July 10, 2012. Participants may register at the following Web page: *https://www.ferc.gov/whats-new/registration/small-generator-7–17–12-form.asp.*

Attached to this supplemental notice is an agenda for the conference. If any changes are made, the revised agenda will be posted prior to the event on the Calendar of Events on the Commission's Web site, *www.ferc.gov.*

Notice is also hereby given that discussions at the conference may address matters at issue in the above-referenced individual proceedings that are either pending or within their rehearing period.

A free webcast of the technical conference will be available. Anyone with Internet access who desires to listen to this event can do so by navigating to the Calendar of Events on the Commission's Web site and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for webcasts and will offer the option of listening to the conference via phone-bridge for a fee. If you have any questions about the webcast, visit *www.CapitolConnection.org* or call (703) 993–3100.

This conference will also be transcribed. Transcripts will be available from Ace Reporting Company (202–347–3700 or 800–336–6646).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

Anyone wishing to comment on issues raised at the technical conference should submit written comments to the Commission no later than August 16, 2012.

For information related to the agenda, please contact Leslie Kerr at *leslie.kerr@ferc.gov* or (202) 502–8540. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: July 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16883 Filed 7–12–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9003–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/02/2012 Through 07/06/2012

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

SUPPLEMENTARY INFORMATION: EPA is seeking agencies to participate in its e-NEPA electronic EIS submission pilot. Participating agencies can fulfill all requirements for EIS filing, eliminating the need to submit paper copies to EPA Headquarters, by filing documents online and providing feedback on the process. To participate in the pilot, register at: *https://cdx.epa.gov.*

EIS No. 20120223, Draft EIS, USFWS, TX, Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan, Application for an Incidental Take Permit of 11 Federally Listed or Petitioned Species, Several Counties, Texas, *Comment Period Ends:* 10/10/2012, *Contact:* Adam Zerrenner 512–490–0057.

EIS No. 20120224, Draft EIS, FHWA, IL, Illiana Corridor Project Tier One Transportation System Improvements, Will and Kankakee Counties, IL and Lake County, IN, *Comment Period Ends:* 08/29/2012, *Contact:* Norman Stoner 217–492–4600.

EIS No. 20120225, Draft EIS, USFS, AZ, Bill Williams Mountain Restoration Project, Kaibab National Forest, Coconino County, AZ, *Comment Period Ends:* 08/27/2012, *Contact:* Martie Schramm 928–635–5630.

EIS No. 20120226, Final EIS, USFS, CA, Creeks II Forest Restoration Project, Proposal to Protect Rural Communities from Hazards by Constructing Fuel Breaks known as Defensible Fuel Profile Zones (DFPZs), Lassen National Forest, Almanor Ranger District, Plumas County, CA, *Review Period Ends:* 08/13/2012, *Contact:* Al Vazquez 530–258–2141.

EIS No. 20120227, Draft EIS, USMC, GA, Proposed Modernization and Expansion of Townsend Bombing Range, Acquiring Additional Property and Constructing Infrastructure to Allow the Use of Precision-Guided Munitions, McIntosh and Long Counties, GA, *Comment Period Ends:* 08/27/2012, *Contact:* Veronda Johnson 571–256–2783.

EIS No. 20120228, Final EIS, NHTSA, 00, Corporate Average Fuel Economy Standards Passenger Cars and Light Truck, Model Years 2017–2025, To Reduce National Energy Consumption by Increasing the Fuel Economy of Passenger Cars and Light Trucks sold in the U.S., *Review Period Ends:* 08/13/2012, *Contact:* James MacIsaac 202–366–9108.

This document is available on the Internet at: *http://www.nhtsa.gov/fuel-economy.*

EIS No. 20120229, Draft EIS, FHWA, CA, I–710 Corridor Project, Improvements, from Ocean Boulevard in the City of Long Beach to State Route 60 in East Los Angeles, Funding, Los Angeles County, CA, *Comment Period Ends:* 08/27/2012, *Contact:* Cesar E. Perez 916–498–5065.

Amended Notices

EIS No. 20120161, Draft EIS, USFS, NM, North Fork Eagle Creek Wells, Special Use Authorization Project, Operation of Four Municipal Supply Water Wells, Lincoln National Forest, Lincoln County, NM, *Comment Period Ends:* 09/07/2012, *Contact:* Dave Warnack 575–257–4095 Revision to FR Notice Published 5/25/2012; Extending Comment Period to 09/07/2012.

EIS No. 20120196, Draft EIS, NPS, OH, Cuyahoga Valley National Park Comprehensive Trail Management Plan, Cuyahoga and Summit Counties, OH, *Comment Period Ends:* 08/20/2012, *Contact:* Stan Austin 330–657–2752 Revision to FR Notice Published 06/22/2012; Change Comment Period from 08/06/201 to 8/20/2012.

Dated: July 10, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–17188 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9700–3]

Meetings of the Local Government Advisory Committee and the Small Communities Advisory Subcommittee (SCAS)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Small Communities Advisory Subcommittee (SCAS) will meet via teleconference on Tuesday, July 24, 2012, 2:30 p.m.–4 p.m. (ET). The Subcommittee will discuss sustainable communities, decentralized wastewater treatment, and other issues and recommendations regarding environmental issues affecting small communities. The Local Government Advisory Committee (LGAC) will meet via teleconference on Tuesday, July 31, 2012, 1 p.m.–2 p.m. (EDT). The Committee will discuss air quality issues, water quality issues, environmental justice and/or Title VI, and other environmental issues of importance to local governments.

ADDRESSES: EPA's Local Government Advisory Committee meetings will be held via teleconference. Meeting summaries will be available after the meeting online at *www.epa.gov/ocir/scas_lgac/lgac_index.htm* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Local Government Advisory Committee (LGAC) contact Frances Eargle at (202) 564–3115 or email at *eargle.frances@epa.gov.*

SUPPLEMENTARY INFORMATION: The Small Communities Advisory Subcommittee (SCAS) will meet via teleconference on Tuesday, July 24, 2012, 2:30 p.m.–4 p.m. (ET). The Subcommittee will discuss sustainable communities, decentralized wastewater treatment, and other issues and recommendations regarding environmental issues affecting small communities. This is an open meeting and all interested persons are invited to participate. The Subcommittee will hear comments from the public between 2:35 p.m.–2:45 p.m. on Tuesday, July 24, 2012. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *davis.catherinem@epa.gov*. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for appearances requires it. The Local Government Advisory Committee (LGAC) will meet via teleconference on Tuesday, July 31, 2012, 1 p.m.–2 p.m. (EDT). The Committee will discuss air quality issues, water quality issues, environmental justice and/or Title VI, and other environmental issues of importance to local governments. This is an open meeting and all interested persons are invited to participate. The Committee will hear comments from the public between 1:15 p.m.–1:25 p.m. (EDT) on Tuesday, July 31, 2012. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

Information Services for Those with Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting,

to give EPA as much time as possible to process your request.

Dated: July 2, 2012.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2012–17160 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, July 18, 2012, 9:30 a.m.. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 M Street NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session:

1. Announcement of Notation Votes, and

2. Public Input into the Development of EEOC's Strategic Enforcement Plan.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, *eeoc.gov.*, and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. **CONTACT PERSON FOR MORE INFORMATION:** Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

Dated: July 11, 2012.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2012–17224 Filed 7–11–12; 11:15 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 11, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0349.

Title: Equal Employment Opportunity (''EEO'') Policy, Sections 73.2080, 76.73, 76.75, 76.79 and 76.1702.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 14,178 respondents and 14,178 responses.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping requirement; Annual and five-year reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 CFR 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 595,476 hours.

Total Annual Costs: None.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex.

Section 73.2080 requires that each broadcast station employment unit with 5 or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice.

Section 76.73 provides that equal opportunity in employment shall be afforded by all multichannel video program distributors (''MVPD'') to all qualified persons and no person shall be discriminated against in employment by such entities because of race, color, religion, national origin, age or sex.

Section 76.75 requires that each MVPD employment unit shall establish, maintain and carry out a program to assure equal opportunity in every aspect of an MVPD entity's policy and practice.

Section 76.79 requires that every MVPD employment unit maintain, for public inspection, a file containing copies of all annual employment reports and related documents.

Section 76.1702 requires that every MVPD place certain information concerning its EEO program in the public inspection file and on its Web site if it has a Web site.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–17106 Filed 7–12–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: July 9, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10448	Montgomery Bank & Trust	Ailey	GA	7/6/2012

[FR Doc. 2012–17116 Filed 7–12–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Suspicious Activity Report by Depository Institutions.

Agency form number: FR 2230.

OMB Control number: 7100–0212.

Frequency: On occasion.[1]

Reporters: State member banks, bank holding companies and their nonbank subsidiaries, Edge and agreement corporations, and the U.S. branches and agencies, representative offices, and nonbank subsidiaries of foreign banks supervised by the Federal Reserve.

Annual reporting hours: 90,397 hours.

Estimated average hours per response: 1 hour.

Number of respondents: 6,000.

General description of report: The Suspicious Activity Report by Depository Institutions (SAR) is mandatory, pursuant to authority contained in the following statutes: 12 U.S.C. 248(a)(1), 625, 1844(c), 3105(c)(2), 3106(a), and 1818(s). SARs are exempt from Freedom of Information Act (FOIA) disclosure by 31 U.S.C. 5319 and FOIA exemption 3 which incorporates into the FOIA certain nondisclosure provisions that are contained in other federal statutes, 5 U.S.C. 552 (b)(3), by FOIA exemption 7, which generally exempts from public disclosure ''records or information compiled for law enforcement purposes,'' 5 U.S.C. 552 (b)(7), and by exemption 8, 5 U.S.C. 552 (b)(8), which exempts information ''contained in or related to examination, operating, or condition reports,'' prepared for the use of financial institution supervisory agencies. Additionally, pursuant to 31 U.S.C. 5318(g), officers and employees of the Federal government are generally forbidden from disclosing the contents of a SAR, or even acknowledging that a SAR exists, to a party involved in a transaction that is the subject of a SAR. Finally, information contained in SARs may be exempt from certain disclosure and other requirements of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Abstract: Since 1996, the federal banking agencies (the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration) and the Department of the Treasury's Financial Crimes Enforcement Network have required certain types of financial

[1] Between October 1, 2010, and September 30, 2011, 6,000 state member banks, bank holding companies, Edge and agreement corporations, and U.S. branches and agencies, representative offices, and nonbank subsidiaries of foreign banks filed 90,397 suspicious activity reports, generating an annual frequency of 15.0661 for each institution.

institutions to report known or suspected violations of law and suspicious transactions. To fulfill these requirements, supervised banking organizations file SARs. Law enforcement agencies use the information submitted on the reporting form to initiate investigations and the Federal Reserve uses the information in the examination and oversight of supervised institutions.

Current actions: On April 23, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 24205) requesting public comment for 60 days on the extension, without revision, of the interagency Suspicious Activities Report by Depository Institutions. The comment period for this notice expired on June 22, 2012. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, July 10, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–17183 Filed 7–12–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Public Comment on a Nomination to the Office of Health Assessment and Translation

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for public comment.

SUMMARY: The NTP requests comments on Air Pollution and Children's Health, which was nominated for a possible evaluation by the Office of Health Assessment and Translation (OHAT). This nomination focuses on substances, mixtures, and exposure circumstances (collectively referred to as ''substances'') related to traffic/near road air pollution and their association with emerging children's health outcomes.

DATES: The deadline for submission of public comments on the nominated substances is August 24, 2012; comments submitted after this date will be considered as time permits.

ADDRESSES: Comments should be sent to Dr. Kembra Howdeshell, Office of Health Assessment and Translation, DNTP, NIEHS, P.O. Box 12233, MD K2–04, Research Triangle Park, NC 27709; *telephone* (919) 316–4708; FAX: (919) 316–4511; *howdeshellkl@niehs.nih.gov.* Courier address: NIEHS, Room 2161, 530 Davis Drive, Morrisville, NC 27560. Comments can also be submitted online at the OHAT Web site (*http://ntp.niehs.nih.gov/go/evals*).

FOR FURTHER INFORMATION CONTACT: Dr. Kembra Howdeshell (telephone: (919) 316–4708 or email *howdeshellkl@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Request for Public Comment on Nomination to OHAT

The NTP requests public comment on the nomination of Air Pollution and Children's Health for possible evaluation by OHAT. Specifically, the NTP requests information on the following topics: (1) Current exposures and health outcomes considered in this nomination (see list below and the draft literature search strategy provided on the OHAT Web site (*http://ntp.niehs.gov/go/evals*), (2) published, ongoing, or planned studies related to traffic/near road air pollution and children's health, (3) scientific issues important for assessing emerging health outcomes in children associated with traffic/near road air pollution, and (4) names of scientists with expertise or knowledge about traffic/near road air pollution and children's health. Please include any available bibliographic citations for the information. The NTP will use this information for refining the draft literature search strategy for the nomination prior to a potential formal evaluation by OHAT.

The exposures associated with the nomination include air pollution and the following components: benzene, carbon monoxide, diesel, nitrogen oxides, ozone, particulate matter (PM_{10}, $PM_{2.5}$, coarse PM, and ultrafine PM), polyaromatic hydrocarbons, and sulfur oxides. The emerging children's health outcomes associated with the nomination include: Incidence and exacerbation of asthma, incidence of allergic disease, adverse birth outcomes (i.e., premature birth, small for gestational age birth weight, and congenital anomalies), respiratory infections in early life, pediatric cancer, development of the nervous system, modifying risk of adult onset diseases (i.e., fetal basis of adult cardiovascular, metabolic or chronic obstructive pulmonary disease), and compromised lung function, development, and growth. Several important air contaminants, including tobacco smoke, mercury, lead, arsenic, indoor aeroallergens, and indoor volatile organic compounds, are not included because they have been addressed in other comprehensive reviews.

Persons submitting public comments are asked to include their name, contact information, affiliation, and sponsoring organization (if any) and to send them to Dr. Howdeshell (see **ADDRESSES** above). All information received will be posted on the OHAT Web site and the submitter identified by name, affiliation, and sponsoring organization, if applicable. The deadline for submission of public comment is August 24, 2012. Comments and information received after that date will be added to the public record and used by the NTP, as time permits, in refining the literature search strategy and scope of this nomination for potential evaluation by OHAT.

Background Information on OHAT

The NTP and the National Institute of Environmental Health Sciences established the Office of Health Assessment and Translation (OHAT) to serve as an environmental health resource to the public and to regulatory and health agencies. This office conducts evaluations to assess the evidence that environmental chemicals, physical substances, or mixtures (collectively referred to as ''substances'') cause adverse health effects and provides opinions on whether these substances may be of concern given what is known about current human exposure levels. OHAT evaluations are published as NTP Monographs. OHAT also organizes state-of-the-science workshops to address issues of importance in environmental health sciences. Information about the OHAT is available on the OHAT Web site (*http://ntp.niehs.gov/go/ohat*) or by contacting Dr. Howdeshell (see **ADDRESSES**).

Dated: July 5, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–17114 Filed 7–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Evaluation of In Vitro Tests for Identifying Eye Injury Hazard Potential of Chemicals and Products: Request for Nominations for an Independent Expert Panel and Submission of Relevant Data

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for Data; Request for Nomination of Scientific Experts.

SUMMARY: The NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), is planning to convene an independent scientific peer review panel (Panel) to assess the validation status of *in vitro* tests and integrated non-animal testing strategies proposed for identifying eye injury hazard potential of chemicals and products. On behalf of ICCVAM, NICEATM requests nominations of scientific experts who can be considered for the Panel and submission of data from substances tested in *in vitro* tests for identifying eye injury hazard potential. Of particular interest are data generated in the short-time exposure (STE) (Takahashi *et al.,* 2008) and isolated rabbit eye (IRE) (ICCVAM, 2006, 2010a) tests and data from approaches using two or more *in vitro* tests. However, NICEATM requests data from other tests including, but not limited to, the bovine corneal opacity and permeability (BCOP), isolated chicken eye (ICE), hen's egg test—chorioallantoic membrane (HET–CAM), Cytosensor microphysiometer (CM), fluorescein leakage (FL), SkinEthic™ human corneal epithelium, and EpiOcular™ tests. If available, corresponding *in vivo* data for these substances are also requested, including data from any ethical human or animal studies or accidental human exposures.

DATES: Nominations and test method data for the STE and IRE tests should be submitted by August 27, 2012. Data submitted after this date will be considered in the evaluation where feasible.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (email) *niceatm@niehs.nih.gov*. Courier address: NICEATM, NIEHS, Room 2034, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

The development of *in vitro* alternatives to animals for eye safety assessments is an ICCVAM priority (ICCVAM, 2008). See *http://iccvam.niehs.nih.gov/methods/ocutox/ocutox.htm* for more information on ICCVAM evaluations of ocular toxicity test methods. An efficient non-animal evaluation of substances for their eye hazard potential is expected to require a number of adequately validated *in vitro* tests that can be considered for use in integrated testing and decision strategies. *In vivo* reference data and *in vitro* test data for available methods is sought to support the validity of individual methods and to construct integrated testing and decision strategies using multiple methods.

In 2006, ICCVAM evaluated the validation status of the *in vitro* tests BCOP, ICE, HET–CAM, and IRE for their usefulness and limitation for identifying ocular corrosives and severe irritants (ICCVAM, 2006). ICCVAM concluded that BCOP and ICE had sufficient relevance and reliability to support their use for identifying certain types of substances as ocular corrosives and severe irritants for regulatory hazard classification. Subsequently, BCOP and ICE were adopted as Organisation for Economic Co-operation and Development (OECD) Test Guidelines 437 and 438, respectively (OECD, 2009a, 2009b). The IRE and HET–CAM tests lacked sufficient data and/or had insufficient relevance and reliability to support their use for regulatory hazard classification.

In 2009, ICCVAM evaluated the validation status of these four *in vitro* tests for identifying eye injury hazard potential, along with the CM test, to assess their usefulness for identifying nonsevere eye irritants and substances not classified as irritants (ICCVAM, 2010a). ICCVAM concluded that the CM test could be used as a screening test to identify some types of substances that may cause permanent or severe eye injuries. ICCVAM also recommended that the CM test could be used to determine if some types of substances will not cause sufficient injury to require hazard classification for eye irritation. The predictivity of the remaining four *in vitro* tests was considered insufficient to support their use for identifying substances that may cause reversible and nonsevere eye injuries.

ICCVAM also evaluated the validation status of the antimicrobial cleaning products (AMCP) testing strategy, which included the BCOP, CM, and EpiOcular™ tests. ICCVAM concluded that the data were insufficient to adequately demonstrate that the AMCP testing strategy can identify all four U.S. Environmental Protection Agency (EPA) eye hazard categories (ICCVAM, 2010b). An EPA-implemented voluntary pilot program is ongoing to evaluate the use of the AMCP testing strategy for eye irritation labeling for certain antimicrobial products (*http://www.epa.gov/oppad001/eye-irritation.pdf*).

The IRE test is an organotypic test method that evaluates the eye injury potential of a test substance by measuring corneal opacity, corneal swelling, epithelial integrity, and fluorescein staining. During the previous evaluations of the IRE test, ICCVAM recommended further standardization of the test protocol and additional studies using all four endpoints to expand the IRE test validation database (ICCVAM, 2006, 2010a).

The STE test measures the viability of rabbit corneal epithelial cells following test substance exposure (Takahashi *et al.,* 2008). NICEATM is requesting additional data that can be considered in assessing the validity of the STE and the IRE. Other test methods and integrated testing and decision strategies will also be considered for review if there are sufficient new data available.

For test methods and strategies for which there are sufficient data, ICCVAM will develop draft recommendations on test method usefulness and limitations, standardized test method protocols, future studies that may expand the usefulness of the test method, and test method performance standards. These draft recommendations and supporting data will be provided to the Panel and made available to the public. The Panel will meet in public session to review the validation status of the proposed methods and comment on the extent to which the data support the draft ICCVAM test method recommendations. Meeting information, including dates, locations, and public availability of the meeting documents will be announced in a future **Federal Register** notice and will also be posted on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*).

Request for Nominations of Scientific Experts

NICEATM requests nominations of scientists with relevant knowledge and expertise to serve on the Panel. Areas of relevant expertise include, but are not limited to biostatistics; human and veterinary ophthalmology, with an emphasis on evaluation and treatment of chemical injuries; *in vivo* eye safety testing; *in vitro* eye safety testing; and test method validation. Each nomination should include the nominee's name, affiliation, contact information (*i.e.,* mailing address, email address, telephone and fax numbers), curriculum vitae, and a brief summary of relevant experience and qualifications.

Request for Data

NICEATM invites the submission of data from substances tested in any *in vitro* test and integrated non-animal

testing strategies proposed for identifying eye injury hazard potential of chemicals and products. If available, *in vivo* reference data for substances tested in these data sets are also requested. Although data can be accepted at any time, please submit data by August 27, 2012 to ensure consideration during the ICCVAM evaluation process. Relevant data received after this date will be considered where feasible. All information submitted in response to this notice will be made publicly available and may be incorporated into future NICEATM and ICCVAM reports and publications, as appropriate.

When submitting data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, email, and sponsoring organization, as applicable). NICEATM prefers that data be submitted as copies of pages from study notebooks and/or study reports, if available. Laboratory data and analyses available in electronic format may also be submitted. Each submission for a substance should preferably include the following information, as appropriate: common and trade name, Chemical Abstracts Service Registry Number (CASRN), commercial source, *in vitro* test protocol used, rabbit eye test protocol used, individual animal or *in vitro* responses at each observation time (*i.e.,* raw data), extent to which the data were collected in accordance with national or international Good Laboratory Practice guidelines, date and testing organization, and physical and chemical properties (e.g., molecular weight, pH, water solubility, etc.)

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability and promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (enhance animal well-being and lessen or avoid pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM and ICCVAM can be found on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*).

References

ICCVAM. 2006. ICCVAM Test Method Evaluation Report: *In Vitro* Ocular Toxicity Test Methods for Identifying Severe Irritants and Corrosives. NIH Publication No. 07–4517. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/ivocutox/ocu_tmer.htm*.

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Dated: July 5, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–17118 Filed 7–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0114]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Request for Samples and Protocols

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 August 13, 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 0910–0206. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Food and Drug Administration, 1350 Piccard Dr., PI50–

400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@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.

Request for Samples and Protocols—(OMB Control Number 0910–0206)—Extension

Under section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to issue regulations that prescribe standards designed to ensure the safety, purity, and potency of biological products and to ensure that the biologics licenses for such products are only issued when a product meets the prescribed standards. Under § 610.2 (21 CFR 610.2), the Center for Biologics Evaluation and Research (CBER) or the Center for Drug Evaluation and Research may at any time require manufacturers of licensed biological products to submit to FDA samples of any lot along with the protocols showing the results of applicable tests prior to distributing the lot of the product. In addition to § 610.2, there are other regulations that require the submission of samples and protocols for specific licensed biological products: §§ 660.6 (21 CFR 660.6) (Antibody to Hepatitis B Surface Antigen); 660.36 (21 CFR 660.36) (Reagent Red Blood Cells); and 660.46 (21 CFR 660.46) (Hepatitis B Surface Antigen).

Section 660.6(a) provides requirements for the frequency of submission of samples from each lot of Antibody to Hepatitis B Surface Antigen product, and § 660.6(b) provides the requirements for the submission of a protocol containing specific information along with each required sample. For § 660.6 products subject to official release by FDA, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history of manufacture of the product, including all results of each test for which test results are requested by CBER. After official release is no longer required, one sample along with a protocol is required to be submitted at 90-day intervals. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to CBER if continued evaluation is deemed necessary.

Section 660.36(a) requires, after each routine establishment inspection by FDA, the submission of samples from a lot of final Reagent Red Blood Cell product along with a protocol containing specific information. Section 660.36(a)(2) requires that a protocol contain information including, but not limited to, manufacturing records, certain test records, and identity test results. Section 660.36(b) requires a copy of the antigenic constitution matrix specifying the antigens present or absent to be submitted to the CBER Director at the time of initial distribution of each lot.

Section 660.46(a) contains requirements as to the frequency of submission of samples from each lot of Hepatitis B Surface Antigen product, and § 660.46(b) contains the requirements as to the submission of a protocol containing specific information along with each required sample. For § 660.46 products subject to official release by FDA, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history of manufacture of the product, including all results of each test for which test results are requested by CBER. After notification of official release is received, one sample along with a protocol is required to be submitted at 90-day intervals. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to CBER if continued evaluation is deemed necessary.

Samples and protocols are required by FDA to help ensure the safety, purity, or potency of a product because of the potential lot-to-lot variability of a product produced from living organisms. In cases of certain biological products (e.g., Albumin, Plasma Protein Fraction, and therapeutic biological products) that are known to have lot-to-lot consistency, official lot release is not normally required. However, submissions of samples and protocols of these products may still be required for surveillance, licensing, and export purposes, or in the event that FDA obtains information that the manufacturing process may not result in consistent quality of the product.

The following burden estimate is for the protocols required to be submitted with each sample. The collection of samples is not a collection of information under 5 CFR 1320.3(h)(2). Respondents to the collection of information under § 610.2 are manufacturers of licensed biological products. Respondents to the collection of information under §§ 660.6(b), 660.36(a)(2) and (b), and 660.46(b) are manufacturers of the specific products referenced previously in this document. The estimated number of respondents for each regulation is based on the annual number of manufacturers that submitted samples and protocols for biological products including submissions for lot release, surveillance, licensing, or export. Based on information obtained from FDA's database system, approximately 77 manufacturers submitted samples and protocols in fiscal year (FY) 2011, under the regulations cited previously in this document. FDA estimates that approximately 73 manufacturers submitted protocols under § 610.2 and 2 manufacturers submitted protocols under the regulation (§ 660.6) for the other specific product. FDA received no submissions under § 660.36 or § 660.46; however, FDA is using the estimate of one protocol submission under each regulation in the event that protocols are submitted in the future.

The estimated total annual responses are based on FDA's final actions completed in FY 2011 for the various submission requirements of samples and protocols for the licensed biological products. The average burden per response is based on information provided by industry. The burden estimates provided by industry ranged from 1 to 5.5 hours. Under § 610.2, the average burden per response is based on the average of these estimates and rounded to 3 hours. Under the remaining regulations, the average burden per response is based on the higher end of the estimate (rounded to 5 or 6 hours) since more information is generally required to be submitted in the other protocols than under § 610.2.

In the **Federal Register** of February 17, 2012 (77 FR 9663), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
610.2	73	92.9	6,782	3	20,346
660.6(b)	2	21.5	43	5	215
660.36(a) (2) and (b)	1	1	1	6	6
660.46(b)	1	1	1	5	5
Total	77		6,827		20,572

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 6, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17079 Filed 7–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0115]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request: Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document; Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle

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 August 13, 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 0910–0594. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@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.

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle (OMB Control Number 0910–0594)—Extension

Under the Safe Medical Devices Act of 1990 (Pub. L. 101–629), FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device.

The special control guidance serves to support the reclassification from class III to class II of the automated blood cell separator device operating on a centrifugal separation principle intended for the routine collection of blood and blood components as well as the special control for the automated blood cell separator device operating on a filtration separation principle intended for the routine collection of blood and blood components reclassified as class II (§ 864.9245 (21 CFR 864.9245)).

For currently marketed products not approved under the premarket approval process, the manufacturer should file with FDA for 3 consecutive years an annual report on the anniversary date of the device reclassification from class III to class II or, on the anniversary date of the 510(k) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the FD&C Act should be included in the annual report. Also, a manufacturer of a device determined to be substantially equivalent to the centrifugal or filtration-based automated cell separator device intended for the routine collection of blood and blood components, should comply with the same general and special controls.

The annual report should include, at a minimum, a summary of anticipated and unanticipated adverse events that have occurred and that are not required to be reported by manufacturers under Medical Device Reporting (MDR) (part 803 (21 CFR part 803)). The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation.

Reclassification of this device from class III to class II for the intended use of routine collection of blood and blood components relieves manufacturers of the burden of complying with the premarket approval requirements of section 515 of the FD&C Act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by reducing the burden. Although the special control guidance recommends that manufacturers of these devices file with FDA an annual report for 3 consecutive years, this would be less burdensome than the current postapproval requirements under part 814, subpart E (21 CFR part 814, subpart E), including the submission of periodic reports under § 814.84.

Collecting or transfusing facilities, and manufacturers have certain responsibilities under the Federal regulations. For example, collecting or transfusing facilities are required to maintain records of any reports of complaints of adverse reactions (21 CFR 606.170), while the manufacturer is responsible for conducting an investigation of each event that is reasonably known to the manufacturer and evaluating the cause of the event (§ 803.50(b)). In addition, manufacturers of medical devices are required to submit to FDA individual adverse event

reports of death, serious injury, and malfunctions (§ 803.50).

In the special control guidance document, FDA recommends that manufacturers include in their three annual reports a summary of adverse reactions maintained by the collecting or transfusing facility or similar reports of adverse events collected in addition to those required under the MDR regulation. The MedWatch medical device reporting code instructions (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm106737.htm*) contains a comprehensive list of adverse events associated with device use, including most of those events that we recommend summarizing in the annual report.

In the **Federal Register** of February 15, 2012 (77 FR 8879), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Reporting activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual Reporting	4	1	4	5	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA records, there are approximately four manufactures of automated blood cell separator devices. We estimate that the manufacturers will spend approximately 5 hours preparing and submitting the annual report.

Other burden hours required for § 864.9245 are reported and approved under OMB control number 0910–0120 (premarket notification submission 501(k), 21 CFR part 807, subpart E), and OMB control number 0910–0437 (MDR, 21 CFR part 803).

Dated: *July 6, 2012.*

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17080 Filed 7–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–P–0271]

Determination That TOPOTECAN INJECTION (Topotecan Hydrochloride) 1 Milligram (Base)/1 Milliliter, 3 Milligram (Base)/3 Milliliter, 4 Milligram (Base)/4 Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that TOPOTECAN INJECTION (topotecan hydrochloride) 1 milligram (mg) (base)/1 milliliter (mL), 3 mg (base)/3 mL, 4 mg (base)/4 mL, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for topotecan hydrochloride intravenous solution 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Rachel Turow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–5094.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

TOPOTECAN INJECTION (topotecan hydrochloride) 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL, is the subject of NDA 200199, held by Sandoz Inc., and initially approved on February 25, 2011. TOPOTECAN INJECTION is indicated for the treatment of small cell lung cancer sensitive disease after failure of first-line chemotherapy. In clinical studies submitted to support approval, sensitive disease was defined as disease responding to chemotherapy but subsequently progressing at least 60 days (in the phase 3 study) or at least 90 days (in the phase 2 studies) after chemotherapy. TOPOTECAN INJECTION in combination with cisplatin is indicated for the treatment of stage IV–B, recurrent, or persistent carcinoma of the cervix, which is not amenable to curative treatment with surgery and/or radiation therapy.

Sandoz Inc. has never marketed TOPOTECAN INJECTION (topotecan hydrochloride) 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL. In previous instances (see, e.g., 72 FR 9763, March 5, 2007; 61 FR 25497, May 21, 1996), the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved

drug product is equivalent to withdrawing the drug from sale.

Lachman Consultant Services, Inc., submitted a citizen petition dated March 14, 2012 (Docket No. FDA–2012–P–0271), under 21 CFR 10.30, requesting that the Agency determine whether TOPOTECAN INJECTION (topotecan hydrochloride) 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, and based on the information we have at this time, FDA has determined under § 314.161 that TOPOTECAN INJECTION (topotecan hydrochloride) 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that TOPOTECAN INJECTION (topotecan hydrochloride) 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of TOPOTECAN INJECTION (topotecan hydrochloride) 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list TOPOTECAN INJECTION (topotecan hydrochloride) 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to TOPOTECAN INJECTION (topotecan hydrochloride) 1 mg (base)/1 mL, 3 mg (base)/3 mL, 4 mg (base)/4 mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 10, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17090 Filed 7–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–P–0081]

Determination That CHLOROMYCETIN (Chloramphenicol) Capsules, 250 Milligrams, Were Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that CHLOROMYCETIN (chloramphenicol) Capsules, 250 milligrams (mg), were withdrawn from sale for reasons of safety or effectiveness. The Agency will not accept or approve abbreviated new drug applications (ANDAs) for chloramphenicol capsules, 250 mg.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6312, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, are the subject of ANDA 60–591, held by Parkedale Pharmaceuticals, and initially approved on December 8, 1950. CHLOROMYCETIN is an antibiotic indicated to treat only serious infections for which less potentially dangerous drugs are ineffective or contraindicated.

In a letter dated October 9, 2007, Parkedale Pharmaceuticals requested withdrawal of ANDA 60–591 for CHLOROMYCETIN (chloramphenicol) Capsules, 50 mg, 100 mg and 250 mg. In the **Federal Register** of February 11, 2009 (74 FR 6896), FDA announced that it was withdrawing approval of ANDA 60–591, effective March 13, 2009, and moved the drug to the ''Discontinued Drug Product List'' section of the Orange Book.

Armenpharm, Ltd., submitted a citizen petition dated February 7, 2011 (Docket No. FDA–2011–P–0081), under 21 CFR 10.30, requesting that the Agency determine whether CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition, and based on the information we have at this time, FDA has determined under § 314.161 that CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed Agency records concerning the withdrawal of CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. At the time of the approval of CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, there was significant unmet medical need. With the approval of additional therapies with less severe adverse drug effects, FDA has determined that the risks associated with CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, as currently labeled, outweigh the benefits. Most importantly, CHLOROMYCETIN

(chloramphenicol) Capsules, 250 mg, may cause a number of adverse reactions, the most serious being bone marrow depression (anemia, thrombocytopenia, and granulocytopenia temporally associated with treatment). A boxed warning in the prescribing information for both chloramphenicol sodium succinate injection and chloramphenicol capsules states that serious hypoplastic anemia, thrombocytopenia, and granulocytopenia are known to occur after administration of chloramphenicol. The drug product labeling recommends extensive safety monitoring, including baseline blood studies followed by periodic blood studies approximately every 2 days during therapy. The boxed warning also describes fatal aplastic anemia associated with administration of the drug and aplastic anemia attributed to chloramphenicol that later terminated in leukemia. There is published literature which suggests that the risk of fatal aplastic anemia associated with the oral formulation of chloramphenicol may be higher than the risk associated with the intravenous formation.

FDA has also reviewed the latest approved labeling for the product and has determined that this labeling is inadequate and a Risk Evaluation and Mitigation Strategy (REMS) would be required to ensure that the benefits of the drug outweigh its risks. The REMS may include Elements to Assure Safe Use, including restricted distribution, and a Medication Guide could be required as part of the labeling. FDA has determined that additional nonclinical and possibly clinical studies of safety and efficacy would be necessary before CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, could be considered for reintroduction to the market.

Accordingly, the Agency will remove CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, from the list of drug products published in the Orange Book. FDA will not accept or approve ANDAs that refer to this drug product.

Dated: July 10, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17091 Filed 7–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0530]

Draft Guidance for Industry and Food and Drug Administration Staff; Medical Devices: The Pre-Submission Program and Meetings With FDA Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Medical Devices: The Pre-Submission Program and Meetings with FDA Staff.'' The purpose of this guidance is to describe the Pre-Submission program (formerly the pre-Investigational Device Exemption (IDE) program) for medical devices reviewed in the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER). In addition, the guidance provides recommendations regarding information that should be included in a Pre-Submission Package. This guidance also describes the procedures that CDRH and CBER intend to follow when industry representatives or application sponsors request a meeting with review staff. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 11, 2012. Submit either written or electronic comments on this collection of information by September 11, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Medical Devices: The Pre-Submission Program and Meetings with FDA Staff'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Angela Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993–0002, 301–796–6380; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Since its establishment in 1995, the pre-IDE program has been a successful resource for both medical device applicants and the FDA. Originally, this program was designed to provide applicants a mechanism to obtain FDA feedback on future IDE applications prior to their submission. Over time, the pre-IDE program evolved to include feedback on other device submission program areas, such as Premarket Approval (PMA) applications, Humanitarian Device Exemption (HDE) applications, and Premarket Notification (510(k)) Submissions, as well as to address questions related to whether a clinical study requires submission of an IDE. The purpose of this guidance is to update the pre-IDE program to reflect this broader scope and make important modifications to reflect changes in the premarket program areas as a result of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85). This guidance also broadens the scope of the program to include those devices regulated by CBER. Accordingly, FDA is changing the name for this program from the pre-IDE program to the Pre-Submission (Pre-Sub) program.

The main purpose of the Pre-Sub program remains the same as the pre-IDE program: to facilitate providing advice to applicants when they have specific questions during product development and early protocol

planning, about device studies that present significant risk(s) (SR) as well as non-significant risk(s) (NSR) or when developing protocols for clinical studies conducted outside of the United States to support future U.S. marketing applications (Ref. 1). Consequently, the Pre-Sub program can provide an efficient path from device concept to market while facilitating the Agency's goal of meeting FDAAA and Medical Device User Fee Act of 2008 (MDUFA II) review milestones.

The Pre-Sub program has also faced several challenges, and the guidance is intended to address these challenges and improve the Pre-Sub program by: (1) Describing the types of information that FDA would recommend submitting in order to get the best possible feedback from FDA; (2) outlining the process by which FDA meetings should be scheduled; and (3) explaining the Agency's expectations regarding advice given during the Pre-Sub process.

This guidance outlines clear recommendations for sponsors and for FDA staff and managers as well as expected timeframes for scheduling meetings. FDA intends to provide the best possible advice in accordance with the information provided, ensure it is captured accurately in the meeting minutes drafted by the sponsor, and commit to that advice unless the circumstances sufficiently change such that our advice is no longer applicable, such as when a sponsor changes the intended use of their device after we provide feedback. It is also our intention to hold timely meetings with appropriate staff and managers present, if resources permit. However, both our ability to provide advice and to hold timely meetings are dependent on our receiving the necessary information in advance of the meeting.

In addition, this guidance also describes the procedures that CDRH and CBER intend to follow when industry representatives or application sponsors request a meeting with review staff, either as the preferred method of feedback in response to a Pre-Sub, or to discuss an existing regulatory submission. This guidance also recommends how to prepare for meetings with FDA staff. FDA plans to revise the document as necessary to reflect any MDUFA III agreements.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on Medical Device Pre-Submissions and Meetings with CDRH and CBER Staff. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Medical Devices: Pre-Submissions and Meetings with FDA Staff,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1677 to identify the guidance you are requesting. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm;* a search capability for all CBER guidance documents is available at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Guidance documents are also available at *http://www.regulations.gov.*

IV. Paperwork Reduction Act of 1995

Under the PRA (44 U.S.C. 3501–3502), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry and Food and Drug Administration Staff; Medical Devices: The Pre-Submission Program and Meetings With FDA Staff

This draft guidance describes the Pre-Submission program for medical devices reviewed in CDRH and CBER. The guidance provides recommendations regarding the information that should be submitted in a Pre-Submission Package and procedures that should be followed for meetings between CDRH and CBER staff and industry representatives or application sponsors. When final, this document will supersede ''Pre-IDE Program: Issues and Answers—Blue Book Memo D99–1'' dated March 25, 1999.

A Pre-Submission is defined as a formal written request from an applicant for feedback from FDA to be provided in the form of a formal written response or, if the manufacturer chooses, a meeting or teleconference in which the feedback is documented in meeting minutes. A Pre-Submission is appropriate when FDA's feedback on specific questions is necessary to guide product development and/or application preparation. The proposed collections of information are necessary to allow the Agency to receive Pre-Submission Packages in order to implement this voluntary submission program.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Submission of information for Pre-Submission Program	Number of respondents	Numer of responses per respondent	Total annual responses	Average burden per respondent (in hours)	Total hours
CDRH	2465	1	2465	137	337,705
CBER	79	1	79	137	10,823
Total	2544	1	2544	137	348,528

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents are medical device manufacturers subject to FDA's laws and regulations. FDA estimates that it will receive approximately 2544 pre-submission packages annually. The Agency reached this estimate by reviewing the number of submissions received by the Agency under the Pre-IDE program over the past 10 years. Based on FDA's experience with the Pre-IDE program, FDA expects the Pre-Submission program to continue to be utilized as a viable program in the future and expects that the number of pre-submission packages will increase over its current rate and reach a steady state of approximately 2544 submissions per year.

FDA estimates from past experience with the Pre-IDE program that the complete process involved with the program takes approximately 137 hours. This average is based upon estimates by FDA administrative and technical staff that is familiar with the requirements for submission of a Pre-Submission and related materials, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

Therefore, the total reporting burden hours is estimated to be 348,528 hours.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Number of respondents	Total burden hours annualized	Hourly wage rate	Total cost annualized
2544	137	$150	$52,279,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The average to industry per hour for this type of work is $150, resulting in a cost of $20,550 per respondent. The estimated submission cost of $20,550 multiplied by 2544 submissions per year equals $52,279,200, which is the aggregated industry reporting cost annualized.

This draft guidance also refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 803 are approved under OMB control number 0910–0437; the collections of information in 21 CFR part 807, subpart E is approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078.

V. Comments

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

VI. References

The following references have been placed on display in the Division of Dockets Management (see *Comments*) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**)

1. Please see 21 CFR 812.3(m) and FDA's Web page on Clinical Trials, available at *www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/default.htm.*

Dated: July 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17078 Filed 7–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0563]

Single-Ingredient, Immediate-Release Drug Products Containing Oxycodone for Oral Administration and Labeled for Human Use; Enforcement Action Dates; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 6, 2012 (77 FR 40069). The document announced FDA's intention to take enforcement action against all unapproved single-ingredient, immediate-release drug products that contain oxycodone hydrochloride for oral administration and are labeled for human use, and persons who manufacture or cause the manufacture or distribution of such products in interstate commerce. The document was published with an incorrect Web link. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Astrid Lopez-Goldberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5368, Silver Spring, MD 20993–0002, 301–796–3485, *astrid.lopezgoldberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2012–16475, appearing on page 40069 in the **Federal Register** of Friday, July 06, 2012, the following correction is made:

1. On page 40070, in the first column, in the last paragraph, the Web link ''*http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/SelectedEnforcementActionsonUnapprovedDrugs/ucm238675.htm*'' is corrected to read ''*http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/SelectedEnforcementActionsonUnapprovedDrugs/ucm238675.htm#narcotics*''.

Dated: July 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17089 Filed 7–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Food and Drug Administration/Xavier University Global Outsourcing Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) Cincinnati District, in cosponsorship with Xavier University, is announcing a public conference entitled ''FDA/Xavier University Global Outsourcing Conference.'' This public conference for the pharmaceutical industry is in direct alignment with the ''FDA Strategic Priorities 2011–2015,'' and includes presentations from key FDA officials, global regulators, and industry experts. This conference drives collaboration on the topic of global outsourcing compliance by bringing pharmaceutical/biotechnology companies and contract partners to the same event to address the issues that reside on both sides of the contract. Expert presentations address the ''how to'' aspects of improving outsourced product quality through topics such as FDA International Initiatives, FDA Inspection Trends, Supply Chain Development, Quality Agreements, Supplier Qualification, and many more. The experience level of our audience has fostered engaged dialogue that has led to innovative initiatives.

Dates and Times: The public conference will be held on September 24, 2012, from 8:30 a.m. to 5 p.m.; September 25, 2012, from 8:30 a.m. to 5:30 p.m.; and September 26, 2012, from 8:30 a.m. to 12:45 p.m.

Location: The public conference will be held on the campus of Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073 or 513–745–3396.

Contact Persons:

For information regarding this notice: Steven Eastham, Food and Drug Administration, Cincinnati South Office, 36 East Seventh Street, Cincinnati, OH 45202, 513–246–4134, email: *steven.eastham@fda.hhs.gov.*

For information regarding the conference and registration: Marla Phillips, Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073, email: *phillipsm4@xavier.edu.*

Registration: There is a registration fee. The conference registration fees cover the cost of the presentations, training materials, receptions, breakfasts, lunches, and dinners for the 2 ½ days of the conference. Early registration ends August 5, 2012. Standard registration ends September 2, 2012. Late registration occurs September 3 to September 23, 2012. There will also be onsite registration. The cost of registration is as follows:

TABLE 1—REGISTRATION FEES [1]

Attendee	Fee on or before August 5th	Fee August 6th–September 2nd	Fee September 3rd–September 23rd
Industry	$995	$1,295	$1,495
Small Business (<100 employees)	800	900	1,000
Consultants	500	600	700
Startup Manufacturers/Academic	200	250	300
Media/Government	Free	Free	Free

[1] The fourth registration from the same company is free.

The following forms of payment will be accepted: American Express, Visa, Mastercard, and company checks.

To register online for the public conference, please visit the ''Register Now'' link on the conference Web site at *http://www.XavierGOC.com.* FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

To register by mail, please send your name, title, firm name, address, telephone and fax numbers, email, and payment information for the fee to Xavier University, Attention: Sue Bensman, 3800 Victory Pkwy., Cincinnati, OH 45207. An email will be sent confirming your registration.

Attendees are responsible for their own accommodations. The conference headquarters hotel is the Downtown Cincinnati Hilton Netherlands Plaza, 35 West Fifth St., Cincinnati, OH 45202, 513–421–9100. To make reservations online, please visit the ''Venue & Logistics'' link at *http://www.XavierGOC.com* to make reservations. The hotel is expected to sell out during this timeframe, so early reservation in the conference room-block is encouraged.

If you need special accommodations due to a disability, please contact Marla Phillips (see *Contact Persons*) at least 7 days in advance of the conference.

SUPPLEMENTARY INFORMATION: The public conference helps fulfill the Department of Health and Human Services and FDA's important mission to protect the public health. The conference will provide those engaged in FDA-regulated outsourcing with information on the following topics:

- FDA International Initiatives
- European Union Regulator Perspective

- United States Pharmacopeia Chapter Development Impact
- Total Cost of Quality
- FDA New Inspectional Approach and Trends
- Supplier Selection and Due Diligence
- How to Operate in Different Regions of the World
- Establishing a Meaningful Supplier Qualification Program
- Supply Chain Development
- Finished Product Distribution Channel
- Enterprise Resource Planning
- Self Inspections & Corporate Audits
- Quality Agreements
- Business Process Management
- Global Standards Association Near Term Solutions

The conference includes:

- Deep Dive Lunch Sessions
- Live Polling Used by Speakers
- Case Studies
- Small Group Discussions
- Networking Lunch by Topic

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) by providing outreach activities by Government Agencies to small businesses.

Dated: July 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17077 Filed 7–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0622]

Regulatory Science Considerations for Medical Countermeasure Radiation Biodosimetry Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing the following public meeting entitled ''Regulatory Science Considerations for Medical Countermeasure (MCM) Radiation Biodosimetry Devices.'' The purpose of the public meeting is to obtain input from academia, Government, industry, and other stakeholders on the clinical application and scientific and technological challenges for performance validation of radiation biodosimetry devices.

Date and Time: The public meeting will be held on September 27 and 28, 2012, from 8 a.m. to 5 p.m.

Location: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Bldg. 1 where routine security check procedures will be performed. For parking and security information, please visit the following Web site: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* The public meeting will also be webcast.

Contact: Jennifer S. Dickey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4254, Silver Spring, MD 20993–0002, 301–796–5028, Fax: 301–847–8512, email: *Jennifer.Dickey@fda.hhs.gov.*

Registration: Registration is free and will be on a first-come, first-served basis. Persons interested in attending this public meeting must register online by 4 p.m., September 13, 2012. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public meeting will be provided beginning at 7 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4321, Silver Spring, MD 20993–0002, 301–796–5661, email: Susan.Monahan@fda.hhs.gov at least 7 days in advance of the meeting.

To register for the public meeting, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public meeting from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Susan Monahan to register (see previous paragraph). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast. Persons interested in viewing the webcast must register online by 4 p.m., September 13, 2012. Early registration is recommended because webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after September 20, 2012. If you have never attended a Connect Pro meeting before, test your connection at: *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit: *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**)

Requests for Oral Presentations: This public meeting includes public comment sessions. During online registration you may indicate if you wish to present during a public comment session or participate in a specific session, and which topics you wish to address. FDA has included general topics in this document. FDA will do its best to accommodate requests to make public comment. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is to begin, and will select and notify participants by September 18, 2012. All requests to make oral presentations must be received by the close of registration on September 13, 2012 by 4 p.m. If selected for presentation, any presentation materials must be emailed to Jennifer Dickey (see *Contact*) no later than September 24, 2012. No commercial or promotional material will be permitted to be presented or distributed at the meeting.

Comments: FDA is holding this public meeting to obtain information on the clinical application and scientific and technological challenges for performance validation of radiation biodosimetry devices. In order to permit

the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public meeting topics. The deadline for submitting comments related to this public meeting is October 12, 2012 (2 weeks after the public meeting).

Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments. Submit electronic comments to http://www.regulations.gov. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Please identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific topics as outlined in section III of this document, please identify the topic you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcript will also be available approximately 45 days after the public meeting on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this meeting from the posted events list.)

SUPPLEMENTARY INFORMATION:

I. Background

In the event of an accident or terrorist attack that exposes a large population to radiation, an accurate assessment of the absorbed ionizing radiation dose received by victims will be essential for triage and medical management. Because there is currently no cleared or approved radiation biodosimeter for use in a mass exposure scenario, the development of proper radiation biodosimetry tools is a critical unmet public health need. However, because it is impossible to obtain samples that accurately reflect the intended use population of the device, validating the performance of radiation biodosimeters poses significant scientific and regulatory challenges. As such, FDA is holding this public meeting to obtain input from academia, Government, industry, and other stakeholders on the clinical application and scientific and technological challenges for performance validation of radiation biodosimetry devices. Individual perspectives from meeting participants may help to identify solutions for the scientific challenges associated with radiation biodosimetry development, and may clarify the regulatory path forward to ensure device safety and effectiveness and thereby provide significant clinical and public health benefits.

II. Meeting Overview

The public meeting will consist of the following: (1) Presentations providing background on anticipated uses of radiation biodosimetry medical countermeasure devices, (2) the device design and performance evaluation challenges identified by FDA, (3) specific technology considerations in radiation biodosimetry, (4) an open public comment session, and (5) an open discussion on topics identified by FDA and those raised by the presentations (see section III of this document). The purpose of this meeting is for participants to share individual perspectives during the discussions. FDA is not seeking group opinions, recommendations, or advice on any matter. Additional information, including a meeting agenda, will be available on the Internet immediately after publication of this document in the **Federal Register.** This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov.* This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select the appropriate meeting from the list.)

III. Topics for Discussion at the Public Meeting

The following questions represent the kinds of topics that will be discussed at the meeting.

1. Performance Evaluation for Radiation Biodosimetry:

A. What data would support the use of ex vivo radiation human samples in device performance validation?

B. What types of in vivo radiation human samples may be available to validate the performance of radiation biodosimeters?

C. What pre-clinical or clinical animal model testing might be necessary to demonstrate radiation biodosimeter performance?

D. Would a non-human primate pivotal clinical study be appropriate to support clearance/approval of biodosimetry MCM devices?

E. What data would support device applicability to both partial body and total body irradiation scenarios?

F. How should the impact of delays in sampling, delays in testing, combined injury, and other potential confounders on the performance of a radiation biodosimeter be assessed?

G. What challenges does the use of novel technologies bring to radiation biodosimetry development and performance validation?

2. Public Health Considerations for Radiation Biodosimetry:

A. What device design elements would address the need for rapid patient triage in a crisis scenario?

B. What device design elements should be included to account for the potential for high demand, device use by untrained medical personnel, and therapeutic decisionmaking based on limited resources?

C. What information should the Agency clarify in regards to the regulatory path forward for radiation biodosimetry MCM devices?

Dated: July 5, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17082 Filed 7–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0004]

Statement of Cooperation Between the Food and Drug Administration and the Secretaria of Health of the United Mexican States: Safety and Sanitary Quality of Fresh and Frozen Molluscan Shellfish Exported From Mexico to the United States

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a Statement of Cooperation (SOC) between FDA and Secretariat of Health (SS) of the United Mexican States, through the Federal Commission for Protection from Sanitary Risks (COFEPRIS). The purpose of the SOC is to safeguard public health and to ensure the safety and sanitary quality of fresh

and frozen molluscan shellfish harvested from aquacultured and wild populations that are now or may be exported into the United States.

DATES: The arrangement came into effect on June 28, 2012 for 5 years.

FOR FURTHER INFORMATION CONTACT: Phyllis Marquitz, Latin American Office, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 3550, Silver Spring, MD 20993–0002, 301–796–8400, Fax: 301–595–7941.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the Agency is publishing notice of this MOU.

Dated: July 5, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–P

STATEMENT OF COOPERATION
BETWEEN
THE UNITED STATES FOOD AND DRUG ADMINISTRATION
AND
THE SECRETARIAT OF HEALTH OF THE UNITED MEXICAN STATES THROUGH THE FEDERAL COMMISSION FOR PROTECTION FROM SANITARY RISKS
COVERING THE SAFETY AND SANITARY QUALITY OF FRESH AND FROZEN MOLLUSCAN SHELLFISH EXPORTED FROM THE UNITED MEXICAN STATES TO THE UNITED STATES OF AMERICA

The United States Food and Drug Administration (FDA), and the Secretariat of Health (SS) of the United Mexican States, through the Federal Commission for Protection from Sanitary Risks (COFEPRIS), hereinafter the "Participants,"

Desiring to safeguard public health and to ensure the safety and sanitary quality of fresh and frozen molluscan shellfish harvested from aquacultured and wild populations that are now or may be exported into the United States of America,

In keeping with the beneficial and cooperative work conducted under terms of the 2003 Memorandum of Understanding between the Department of Health and Human Services of the United States of America through the Food and Drug Administration and the Ministry of Health of the United Mexican States through the Federal Commission for Protection from Sanitary Risks covering the safety and quality of fresh and frozen aquacultured molluscan shellfish exported from the United Mexican States to the United States of America; and as extended in the 2008 Exchange of Letters concerning the safety and quality of fresh and frozen molluscan shellfish exported from the United Mexican States to the United States of America,

Recognizing that the COFEPRIS through the Mexican Shellfish Sanitation Program (MSSP), has an effective molluscan shellfish sanitary control system in place,

Acknowledging that the FDA recognizes the MSSP and finds that the MSSP adequately meets the U.S. National Shellfish Sanitation Program (NSSP) guidelines, and that COFEPRIS retains the overall responsibility for the MSSP and coordinates the participation of federal and state level Mexican government agencies in the MSSP to jointly ensure the safety of molluscan shellfish exported to the United States of America,

Recognizing that nothing in this Cooperative Arrangement will in any way abrogate the responsibility or authority of the FDA under Section 801 of the Federal Food, Drug and Cosmetic Act to examine, and, where appropriate, refuse admission of, any food product intended to enter the United States of America, or to comply with and enforce any other Law administered by the FDA,

The Participants have established the following understanding;

SECTION I
Purpose

The purpose of this Statement of Cooperation (Statement) is to assure that all molluscan shellfish exported from the United Mexican States to the United States of America are safe for human consumption, and that all MSSP guidelines for the harvest, processing, transport, and labeling of molluscan shellfish are in accordance with the provisions of the FDA's NSSP *Guide for the Control of Molluscan Shellfish,* and applicable requirements of the U.S. Federal Food, Drug and Cosmetic Act, the U.S. Public Health Service Act, the U.S. Fair Packaging and Labeling Act, and Title 21 of the U.S. Code of Federal Regulations.

SECTION II
Definitions

For the purposes of this Arrangement the terms listed below will have the following meanings:

1. "Approved" is a sanitary classification used to identify a growing area (growing and harvesting) where the harvesting of aquacultured or wild population molluscan shellfish for direct marketing is allowed;
2. "Aquaculture" is the growing (cultivation) of seed or shellstock other than seed in natural or artificial growing areas, as well as the group of activities directed to its controlled reproduction, prefeeding and feeding, by using culturing techniques;
3. "Central File" is the area where the COFEPRIS keeps a copy of all MSSP-related information, data, reports, maps, minutes and final decisions, among others;
4. "Dealer" is a person or firm to whom certification is issued for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor;
5. "Depuration" is the process of reducing the pathogenic and indicator bacteria that may be present in shellstock by using a controlled aquatic environment approved and authorized by the MSSP as the treatment process;
6. "Harvest" (when used as a verb) is the removing of molluscan shellfish from growing areas under a fishing permit or license issued by the National Aquaculture and Fisheries Commission (CONAPESCA) and complying with MSSP provisions, or (when used as a noun) means any species of molluscan shellfish removed from growing areas under a fishing permit or license issued by the National Aquaculture and Fisheries Commission (CONAPESCA) and complying with MSSP provisions;
7. "Inspection and Surveillance" is the active control of molluscan shellfish harvest and transportation, including patrol of unapproved areas, to ensure that only molluscan shellfish from Approved areas are harvested, processed, labeled, and transported for export to the United States of America;

8. "Interstate Certified Shellfish Shippers List" (ICSSL) is the FDA publication of molluscan shellfish dealers, both domestic and foreign, who have been certified by a state or foreign shellfish control authority before FDA, and who abide to public health control measures that are specified in the FDA's *Guide for the Control of Molluscan Shellfish;*
9. "Lot of shellfish" is bulk shellstock or containers of a single species of shellstock containing no more than one day's harvest from a single defined growing area harvested by one identified harvester, and designated by a common container code or marking;
10. "Lot of shucked molluscan shellfish" is a collection of containers of no more than one day's harvest of a single species of shucked molluscan shellfish from a single defined growing area harvested by one identified harvester, produced under conditions as nearly uniform as possible, and designated by a common container code or marking;
11. "Marine biotoxin" is any poisonous compound produced by marine microorganisms and potentially accumulated by molluscan shellfish;
12. "Mexican Shellfish Sanitation Program" (MSSP) is the United Mexican States sanitary control system implemented by the COFEPRIS to assure the production of safe molluscan shellfish through the implementation of control measures described by the NSSP. Its operating principles and guidelines are set forth in the MSSP *Technical Guide;*
13. "Molluscan shellfish" is all edible species of oysters, clams, mussels, and whole or roe-on scallops harvested from aquacultured or wild population, whether shucked or as shellstock, fresh or frozen;
14. "National Shellfish Sanitation Program" (NSSP) is the federal/state cooperative program (domestic and foreign) between FDA and industry to ensure the safety and quality of molluscan shellfish intended for human consumption. The technical guidelines for ensuring the safety and quality of molluscan shellfish are set forth in the FDA's *Guide for the Control of Molluscan Shellfish;*
15. "Prohibited area" is a sanitary classification used to identify a growing area where the harvest of molluscan shellfish for any purpose, except depletion or gathering of seed for aquaculture, is not permitted;
16. "Relay" is the transfer of shellstock from areas classified as Restricted to areas classified as Approved for the purpose of reducing pathogens as measured by the coliform indicator group, or poisonous or deleterious substances (except biotoxins) that may be present in the shellstock, by using the ambient (Approved area) environment as the treatment process;
17. "Restricted area" is a sanitary classification used to identify a cultivation area (growing and harvesting) where harvesting aquacultured or wild-caught molluscan shellfish for direct marketing is not allowed, and where any harvesting activity is authorized by special license from COFEPRIS and with direct supervision by the state shellfish control authority, and from which all shellstock harvested are subjected to a suitable and effective treatment process approved by COFEPRIS through relaying or depuration;
18. "Sanitary survey" is the written evaluation report of all factors, including actual and potential pollution sources of direct or indirect impact and environmental

conditions which have a bearing on the water quality in a shellfish cultivating (growing or harvesting) area;

19. "Shellstock" is live molluscan shellfish in the shell; and
20. "Shucked shellfish" is the edible portion of molluscan shellfish that has been removed from the shell.

SECTION III
Responsibilities of the Participants

A. COFEPRIS

1. The COFEPRIS is responsible for coordinating and implementing the MSSP.

2. The COFEPRIS intends to:

   a. Maintain legal, administrative, and regulatory authority and infrastructure, including formal agreements with participating Mexican States, for the sanitary and safety control of fresh and frozen molluscan shellfish, whether shellstock or shucked shellfish, from aquaculture and wild populations, as provided in the MSSP;
   b. Ensure that the MSSP conforms to the NSSP, including but not limited to the following:
      i. Classify area of molluscan shellfish growing and harvest based on comprehensive sanitary surveys;
      ii. Prepare, evaluate, and approve sanitary survey reports for growing and harvest areas, and maintain a copy of each in the central file, including exhibits thereto;
      iii. Update all sanitary surveys annually and triennially to assure proper sanitary classification for each growing and harvest area;
      iv. Approve shellfish harvesting activities, supervise relay operations, and ensure proper labeling and identification of molluscan shellfish;
      v. Control molluscan shellfish harvesting and marketing to prevent shellfish from unapproved areas (areas classified as Restricted or Prohibited) from being mixed, commingled with or mislabeled as shellfish from Approved areas;
      vi. Restrict the harvest of molluscan shellfish from unapproved growing areas and take enforcement action against persons or companies harvesting from unapproved areas;
      vii. Prohibit and prevent the harvest of molluscan shellfish from growing and harvest areas affected by contamination or marine biotoxins emergencies, and rescind such prohibitions when causes for the emergency conditions have ended and analyses demonstrate that such areas and the shellfish therein meet MSSP approved area criteria;

viii. Recall or otherwise remove from the market any molluscan shellfish unsafe for human consumption;

ix. Maintain NSSP conforming laboratories certified to participate in the MSSP;

x. Verify annually that dealers of fresh and/or frozen molluscan shellfish exporting to the United States of America comply with MSSP technical criteria;

xi. Annually certify dealers exporting fresh and/or frozen molluscan shellfish to the United States of America for inclusion in the FDA's Interstate Certified Shellfish Shippers List (ICSSL);

xii. Forward electronically to FDA the filled-out Form FDA-3038, "Shellfish Dealer Certification," giving the name, location, and certification number for each of the MSSP certified dealers exporting molluscan shellfish to the United States of America;

xiii. Cancel the certification and notify FDA to revoke from the ICSSL, any dealer that:

a. Operates out of compliance with the MSSP;

b. Distributes molluscan shellfish harvested from unapproved MSSP areas;

c. Markets or tries to market in the United States of America molluscan shellfish not conforming to the U.S. Food, Drug and Cosmetic Act, the U.S. Public Health Service Act, the U.S. Fair Packaging and Labeling Act, or title 21 of the U.S. Code of federal regulations; and

d. Fails to collaborate with COFEPRIS to recall molluscan shellfish deemed to be unsafe for human consumption;

xiv. Ensure that each container in a lot of shellstock or shucked molluscan shellfish marketed to the United States of America is properly labeled in accordance with MSSP criteria;

xv. Maintain a central file copy in English of all MSSP records, including growing and harvest area sanitary survey reports, control of harvest and patrol (inspection and surveillance) records, dealer inspections, laboratory evaluations, and enforcement actions, and make them available to FDA upon request;

xvi. Provide FDA evaluation reports, interpretations, laboratory quality assurance program information, and other molluscan shellfish program information to all Mexican federal and state government agencies having responsibility for the MSSP;

xvii. Review at least annually the level of conformity with NSSP requirements being enforced under the MSSP and provide FDA with a brief summary of the findings described in the written annual report;

xviii. Provide FDA with information concerning current and potential public health risks affecting molluscan shellfish intended for export to the United States of America;

xix. Upon written request from FDA, make arrangements to accommodate the travel and audit activities of FDA evaluation officials for conducting on-site inspections of the MSSP to be performed jointly with the COFEPRIS officials, and provide ground transportation as needed;

xx. Within 30 days from receipt of written notification from the FDA of MSSP deficiencies or other non-conformances with the NSSP, develop a written corrective action plan and submit this to FDA for review and concurrence;

xxi. Take appropriate preventative and corrective actions upon notice of any MSSP deficiency; and

xxii. Update the MSSP Technical Guide for consistency with the published NSSP *Guide for the Control of Molluscan Shellfish.*

c. Permit the harvest of molluscan shellfish for processing and/or shipping by MSSP certified dealers to the United States of America only from growing and harvesting areas approved by the COFEPRIS with concurrence from FDA.

3. The COFEPRIS intends to have specific laboratory procedures and qualified personnel to:

   a. Certify or otherwise ensure that laboratories participating in the MSSP substantially conform to NSSP requirements for laboratories and analysts;
   b. Periodically evaluate MSSP participating laboratories for conformance with MSSP provisions and NSSP requirements and observance of laboratory quality assurance procedures;
   c. Notify FDA of laboratories not in conformance with the NSSP;
   d. Maintain a marine biotoxin contingency plan and monitoring program in growing and harvesting areas where molluscan shellfish are harvested for export to the United States of America;
   e. Promote a split sample program among the MSSP laboratories for evaluating microbiological proficiencies among analysts and uniformity among laboratories; and
   f. Prevent laboratories not conforming to MSSP provisions or NSSP requirements from participating in the MSSP.

4. The COFEPRIS intends to have specific procedures and maintain a Standardization Officer for shellfish dealer inspections, trained and certified by FDA, to:

   a. Train and certify other government molluscan shellfish dealer inspectors as needed to meet inspection frequencies and standards;

b. Ensure that all molluscan shellfish dealers exporting to the United States of America are inspected at required frequencies and reliably comply with NSSP requirements;
c. Ensure that MSSP certified molluscan shellfish dealers are appropriately listed by FDA on the ICSSL;
d. Ensure that all action plans to correct deficiencies are appropriate for maintaining compliance with NSSP requirements; and
e. Ensure that all action plans are followed and all deficiencies are corrected by dealers in accordance with NSSP requirements.

5. The COFEPRIS intends to report to FDA any change in responsibility from the COFEPRIS to another authority within 30 days of such change.

B. FDA

FDA intends to:

1. Accept the United Mexican States as a participant in the NSSP and the Interstate Shellfish Sanitation Conference (ISSC), and in cooperative research programs, seminars, conferences, training courses, and other NSSP activities;

2. Accept Mexican shellfish dealers certified by the COFEPRIS for inclusion in the ICSSL, and publish the names, dealer types, locations, and certification numbers in the FDA ICSSL publication upon receipt of completed FDA Form 3038 from COFEPRIS;

3. Provide training and technical assistance to the COFEPRIS and the United Mexican States MSSP personnel upon request, subject to availability of resources for such purposes;

4. Give immediate written notice to the COFEPRIS of the reasons for any detention of certified molluscan shellfish shipments from the United Mexican States to the United States of America;

5. Participate with the COFEPRIS in joint evaluations of the MSSP to ascertain the level of conformance with the NSSP and with the responsibilities specified in this Statement; the FDA should pay round trip transportation expenses between the United States of America and the United Mexican States, air transportation inside the United Mexican States, and the per diem expenses of the FDA evaluation team while in the United Mexican States;

6. Within 30 days after a MSSP evaluation, notify the COFEPRIS of any NSSP deficiencies and request that the COFEPRIS of submitting to FDA within 30 days after notification, a written Corrective Action Plan for review and concurrence. If a Corrective Action Plan is not developed and submitted

within 30 days after notification, or if any deficiencies are not addressed and corrected in accordance with the Corrective Action Plan, FDA is to remove Mexican dealers from the FDA ICSSL and/or take other appropriate action to stop Mexican molluscan shellfish from entering the United States of America. In case of a serious public health threat, this 30 day period may be reduced or eliminated. Such action should remain in effect until all NSSP deficiencies have been corrected and FDA has determined that the MSSP is in conformance with the NSSP;

7. Remove individual Mexican dealers from the FDA's ICSSL when it is determined by FDA or COFEPRIS that the dealer is not in compliance with NSSP requirements or when an imminent health hazard exists with a dealer's product; and

8. Report to the COFEPRIS any transfer of responsibilities from FDA to another federal authority in the United States of America within 30 days of such transfer.

SECTION IV
Technical Information Exchange

The working language for documents exchanged under this Arrangement is English. The Participants plan to share technical expertise, provide assistance, and exchange information. Such collaboration may include, but is not limited to the following:

1. Exchange of information concerning proposed and final changes to MSSP operations and procedures including, among other things, the following:
   a. Sample methods and procedures;
   b. Methods of analysis;
   c. Methods of confirmation;
   d. Design of sanitary survey reports;
   e. Administrative procedures and changes thereto, sanitary standards and guidelines, reference standards, and nomenclature;
   f. Inspection procedures for growing and harvesting areas and dealers; and
   g. Inspection and surveillance procedures.

2. Written notification to the other Participant of any changes in liaison officials within 30 days of such change; and

3. Facilitating the exchange of information between the Participants and the federal and state agencies of the United Mexican States and the United States of America concerned with the introduction and proliferation of exotic organisms that might be carried by Mexican molluscan shellfish.

SECTION V
Liaison Officials

Unless and until changed pursuant to Section VI(2), the liaison officials will be:

A. For the COFEPRIS:

Comisionado(a) de Operación Sanitaria
Comisión Federal para la Protección Contra Riesgos Sanitarios (COFEPRIS)
Secretaria de Salud
Avenida Monterrey No. 33, Tercer Piso
Col. Roma C.P. 06700
México, D.F., Estados Unidos Mexicanos
Telephone: 011 52 55 80 52 00 ext. 1254, 1230, 1263

B. For the FDA:

Director, Division of Seafood Safety, HFS-325
Office of Food Safety, Center for Food Safety and Applied Nutrition
U.S. Food and Drug Administration
5100 Paint Branch Parkway
College Park, Maryland 20740
United States of America
Telephone: 01 240 402 2300

The liaison officials may establish other contact points to facilitate the exchange of information and other operational activities.

SECTION VI
Final Provisions

This Statement comes in to effect as of the date of signature by both Participants and continues for five (5) years, period that may be extended upon the written consent of both Participants.

This Statement is to be evaluated by the Participants over such five-year period and may be amended upon mutual consent given in writing and specifying the effective date for such amendment.

All actions taken pursuant to this Arrangement are to be taken in accordance with the laws, regulations, and standards of the United Mexican States and the United States of America, and are subject to the availability of personnel, resources, and appropriated funds.

This Arrangement is not intended to create any obligation under international or other laws.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective government agencies, have signed this Arrangement.

SIGNED in the of Spanish and English languages.

Signed on behalf of FDA:

Deborah M. Autor, Esq.
Deputy Commissioner
Global Regulatory Operations and Policy
U. S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
Tel. +1 301-796-4600
Fax. +1 301-595-7937

6/26/2012
Date

Signed on behalf of SS:

Mikel Andoni Arriola Peñalosa
Federal Commissioner
Federal Commission for the Protection against Sanitary Risk
Monterrey No. 33, Col. Roma
Del. Cuauhtémoc , México, D.F., 06700
Tel. +52 55 5080-5200

6/18/2012
Date

[FR Doc. 2012–17081 Filed 7–12–12; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Indian Health Services

[HHS–2012–IHS–HLY–0001]

Healthy Lifestyles in Youth Project; Proposed Single Source Cooperative Agreement With National Congress of American Indians

Application Due Date: August 16, 2012.
Review Date: August 21, 2012.
Earliest Start Date: September 1, 2012.

I. Funding Opportunity Description

The Indian Health Service (IHS) proposes a single source competing continuation cooperative agreement with the National Congress of American Indians (NCAI) for the purpose of continued implementation of the Healthy Lifestyles in Youth Project in selected Native American Boys and Girls Clubs of America. This program promotes healthy lifestyles among American Indian and Alaska Native (AI/AN) youth using the curriculum ''Together Raising Awareness for Indian Life'' (TRAIL) among selected Boys and Girls Club sites.

This program is authorized under the authority of the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001; and the Public Health Service Act, as amended, 42 U.S.C. 241(a). Under this cooperative agreement, IHS proposes to enter into a collaborative effort/initiative with NCAI, because of their unique experience partnering with the IHS and Boys and Girls Clubs of America in successfully establishing this program, as well as, their overall expertise and experience in addressing and evaluating healthy lifestyle techniques in AI/AN youth. This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.933.

The focus of the project continues to be on addressing healthy lifestyle development, emphasizing nutrition and physical activity for AI/AN children and youth 6 through 17 years of age. The long term goal is to prevent or delay the onset of obesity and related diseases such as type 2 diabetes. NCAI will continue partnering work with selected Tribal Boys and Girls Club sites to: (a) Provide health and physical education programs; (b) help youth achieve and maintain healthy lifestyles through participation in fitness programs; (c) help youth to acquire a range of physical skills; and (d) help youth develop a sense of teamwork and cooperation.

These early intervention strategies provide evidence based opportunities to reduce and/or halt the increasing trend of obesity and diabetes among youth and young adults. Clubs that develop a health promotion program that includes the TRAIL curriculum may help curtail the effects of unhealthy eating behaviors and lack of physical activity that can lead to obesity, diabetes, and other chronic diseases later in life. The T.R.A.I.L. curriculum was developed to provide information on good nutrition and to promote physical activity among youth participating in Tribal Boys and Girls Clubs. T.R.A.I.L. is a three-month (12 lessons) program that provides youth with a comprehensive understanding of healthy lifestyles in order to prevent diabetes. Woven throughout the program are self-esteem and prevention activities. Participants

draw from tribal traditions and history to learn about nutrition, healthy food choices, media influences, and the impact of diabetes. Clubs also implement the Nike Let Me Play and SPARK physical activity programs to foster Club-wide participation in fun activities and games for 60 minutes every day. T.R.A.I.L. emphasizes the importance of teamwork and community service. Members engage in service projects to improve healthy lifestyles in their communities, including starting community gardens to connect youth to their food source and organizing community-wide physical fitness events.

This work will continue to support the IHS mission to improve the health of AI/AN youth through health promotion and health education programs. This work also represents a significant collaborative endeavor which is supportive of the IHS Director's Healthy Weight for Life Initiative and the First Lady's Let's Move Indian Country Initiative.

Since the inception of the program in 2003, T.R.A.I.L. has been implemented at 79 AI/AN Boys and Girls Club of America (BGCA) sites located in 17 states. There are currently 35 sites in 15 states participating in the program.

The overall results show improvement in participant knowledge of diabetes, health, and healthy food choices, as well as, improved fitness and level of physical activity. To support this project, NCAI will select and assist 50 Native American Boys and Girls Club sites to establish and implement this curriculum project. Boys and Girl Club sites that are located outside of Tribal communities will not be considered by the grantee. The Boys and Girls Club sites selected by the grantee may use IHS grant funds to provide services to members of Federally-recognized Tribes only. The grantee will be expected to: provide technical consultation; train; monitor; evaluate; as well as provide funds to support these activities.

II. Award Information

Type of Award: Single Source Competing Continuation Cooperative Agreement.

Estimated Funds Available: The IHS intends to commit $1,000,000 each year.

Anticipated Number of Awards: One award will be granted from this announcement.

Project Period: The project period will be for five years and will run consecutively from September 1, 2012 to August 31, 2017. The average award amount will be $1,000,000 annually. Competing and continuation awards issued under this announcement are subject to the availability of funds. In the absence of funding, IHS is under no obligation to make awards under this announcement.

A. IHS Cooperative Agreement Activities

1. Identify a core group of IHS staff to work with the grantee in providing technical assistance and guidance.

2. Meet with the grantee to review grantee work plan and provide guidance on implementation and data collection tools.

3. Participate in quarterly conference calls. Work with the grantee to showcase the results of this project by publishing on shared Web sites as well as in jointly authored publications.

B. Grantee Cooperative Agreement Award Activities

1. Develop a written plan for the planning, implementation, and evaluation of this project to include selection of at least 50 sites as agreed upon with the IHS. This task will be completed within 30 days from award and approved by the IHS.

2. Develop selection criteria for new sites, announce, evaluate, and select sites. Sites must submit documentation verifying they serve only AI/AN youth from Federally recognized Tribes as a requirement for selection by the grantee. A start-up planning meeting with new sites will be conducted within 2 months of each site's initial selection and award.

3. Plan and facilitate an orientation and training meeting for new sites within 2 months of selection. Submit agenda, training goals and objectives, and participant list to IHS within 1 month of completion of each orientation session.

4. Update T.R.A.I.L. curriculum and implement use.

5. Develop, in consultation with the IHS, the implementation and technical assistance plan for the coordination of the 50 sites (35 existing and 15 new). Submit criteria to the IHS for approval. Grantee will continue work with sites to develop and report measurements for assessment of physical activity and nutrition behaviors among club participants.

6. Each site will implement the T.R.A.I.L. program, emphasizing healthy behaviors such as physical activity and nutrition. Each program plan will also include a parent component describing approaches for involving the families of participants.

7. Each site will implement a 6-minute walk test three times, six to eight weeks apart. Physical activity data will be collected and summarized.

8. Grantee will promote and facilitate local, state, and national partnerships for the purpose of establishing or enhancing program support that involves increasing physical activity and good nutrition for the Tribally-managed Boys and Girls Club sites. This includes but is not limited to establishing other partners such as American Indian-Alaska Native Program Branch (AI–ANPB) of Head Start Programs, Wings of America, United National Indian Tribal Youth, Inc. (UNITY), Tribal colleges, Boys and Girls Club of America, Tribal organizations, local community health providers and other private organizations as appropriate.

9. Grantee will continue to implement current evaluation processes in consultation for the T.R.A.I.L. project. At a minimum, the evaluation will include:

(a) Training attendance (gender, age, grade level); and

(b) Pre- and post- tests to assess participant knowledge.

(c) Monthly activity logs from each site on the physical activity portion of their program. Daily data to be collected includes the date, number of minutes of physical activity, and number of children participating.

(d) Information/log on parent and family participation in education and activity programs, community involvement and partnerships.

Submit collated and summarized data to the IHS. Work with the IHS in drafting an evaluation summary at the end of the project period for publication. Submit collated and summarized data and project evaluation summaries to all sites. Provide a minimum of annual reports (feedback) to each site on how their data compare to data (mean, median, and range) from other selected sites.

10. Provide ongoing technical support to the sites for the duration of the initiative. Provide training and technical assistance in all forms, i.e., on-site, on-line, by phone, and mail. The planning, design and delivery of training and technical assistance will support the local organization's long-term planning and outreach efforts. The training will be customized based on sites' capability and experience. Technical assistance will also be provided on program planning and implementation. Collaborate with IHS to provide services to club sites. Maintain records and reports.

11. Provide technical consultation to the sites in developing a written work plan, with measurable goals, objectives, and activities.

12. Establish a formal agreement with Tribal Boys and Girls Club sites which involves minimal fiscal assistance but substantial technical support to make sure clubs successfully implement the T.R.A.I.L. program.

13. Submit to the IHS a written work plan and report describing each site's demographics, information on the number of youth in the eligible age range in the catchment area, the number that attend the Boys and Girls Clubs regularly, and the number served by this project, goals, objectives, activities, partnerships, and proposed outcomes.

14. Provide IHS written quarterly reports on the evaluation outcomes, activity reports at each site, any parent involvement activities and other participation, description of the community partnerships, and other activities as appropriate. Quarterly reports shall coincide with dates for IHS quarterly reports to HHS and shall highlight work supporting Healthy Weight for Life and Let's Move Indian Country.

15. Conduct quarterly conference calls with IHS to review project status.

C. Continuation of Ongoing and Prior Activity as a Cooperative Agreement

All of the identified activities are continuation activities associated with the previous cooperative agreement. This collaboration for the implementation of the T.R.A.I.L. program at selected sites, along with the evaluation process and reporting are deemed very successful and supportive of ongoing Agency and Administration activities and initiatives. This agreement is proposed for the purpose of continuation of these activities.

III. Justification for Single Source Award

NCAI is identified as the single source for the award, based on their successful record of performance with this project, their unique relationship and work in developing and maintaining: (1) Relationships with the Boys and Girls Clubs organization and staff, (2) being able to successfully implement the T.R.A.I.L. program curriculum, (3) the project web site information, and (4) the project data and evaluation systems. The award is for a continuation of activities identified. These activities, the collaboration with the network of Native American Boys and Girls Clubs, and the evaluation process have been effectively undertaken by NCAI for the past 8 years. The process, as well as, the outcomes have been deemed very successful and clearly supportive of Agency initiatives for youth (including Healthy Weight for Life), as well as the Administration's Let's Move Indian Country initiative.

The grantee has documented success in (1) Recruiting and working with sites, (2) developing and implementing the T.R.A.I.L. curriculum at the sites, (3) implementing a method for collecting data from the sites, (4) fostering collaboration between sites and their communities, and (5) collecting and reporting data that demonstrates participant increases in health and food choice knowledge and increases in participant physical activity and level of fitness. Some of the data for the current 3 year cooperative agreement (2008–2011) and 1 year extension (2012) are as follows:

Year One Data (2008–2009)	
# of AI/AN Children Participating in Training	1691 (811 males/880 females).
Age Range of Children Participating	ages 4–14 (67% were 8–10 year olds).
# of Children Participating in the Walk Challenges	668 (542/81% showed improvement).
Hours of Physical Activity	19,688.
Program test scores indicate: (a) Increased knowledge about diabetes, (b) increased physical activity, and (c) increased ability to identify healthier food options (increase in post test scores vs. pre test scores).	
Year Two Data (2009–2010)	
# of AI/AN Children Participating in Training	1673 (767 males/906 females).
Age Range of Children Participating	ages 4–14 (72% were 8–10 year olds).
# of Children Participating in the Walk Challenges	654 (438/67% showed improvement in level of physical activity).
Hours of Physical Activity	14,527.
Program test scores indicate: (a) Increased knowledge about diabetes, (b) increased physical activity, and (c) increased ability to identify healthier food options (increase in post test scores vs. pre test scores).	
Year Three Data (2010–2011)	
# of AI/AN Children Participating in Training	1762 (839 males/923 females).
Age Range of Children Participating	Ages 4–14 (average age was 8.5).
# of Children Participating in the Walk Challenges	509 (360/71% showed improvement in level of physical activity).
Hours of Physical Activity	12,150.
Program test scores indicate: (a) Increased knowledge about diabetes, (b) increased physical activity, and (c) increased ability to identify healthier food options (increase in post test scores vs. pre test scores).	

The T.R.A.I.L. curriculum was developed by the grantee as a part of the initial agreement. The requested update to the curriculum and subsequent implementation will be more efficiently and cost effectively performed as the grantee is very familiar with the existing curriculum and the implementation.

The grantee uses a sub-contractor (First Pic) to develop and implement the evaluation and reporting process for individual sites and for analysis and reporting of aggregated data. This unique and program specific evaluation system has been beneficial to sites and to IHS. All of the tools for using this system have been made available via the Native American Boys and Girls Clubs Web site—*www.naclubs.org/trailCurrent* information about health and fitness activities is available at—*http://www.naclubs.org/media/pdf/Club Notes_2012V1.pdf*.

The grantee (NCAI) has been effective, timely, and cooperative, and has

consistently achieved or exceeded requirements of the previous agreement. NCAI and First Pic are uniquely qualified to continue to receive the award and provide the identified program activities based on their history with this project and project sites, their evaluation system, their knowledge of the curriculum, and their documented performance achievements with the sites under the previous agreement.

All HHS and IHS policies, regulations, grants management and programmatic reporting requirements from the prior funding segment remain in effect under this renewal announcement unless otherwise stated or modified in the terms and conditions of the new Notice of Award.

Agency Contacts

1. Questions on the programmatic issues may be directed to: Lorraine Valdez, MPA, BSN, RN, Acting Director, IHS Division of Diabetes Treatment and Prevention, 5300 Homestead Road NE., Albuquerque, NM 87110, 505–248–4182, *s.lorraine.valdez@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Mr. Andrew Diggs, Grants Management Specialist, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, 301–443–2262, *Andrew.diggs@ihs.gov*.

Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: June 27, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–17182 Filed 7–12–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request: Impact of Clinical Research Training and Medical Education at the Clinical Center on Physician Careers in Academia and Clinical Research

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Clinical Center, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Impact of Clinical Research Training and Medical Education at the Clinical Center on Physician Careers in Academia and Clinical Research.

Type of Information Collection Request: Extension; 0925–0602.

Need and Use of Information Collection: The information collected will allow continued assessment of the value of the training provided by the Office of Clinical Research Training and Medical Education (OCRTME) at the NIH Clinical Center and the extent to which this training promotes (a) Patient safety; (b) research productivity and independence; and (c) future career development within clinical, translational, and academic research settings. The information received from respondents is presented to, evaluated by, and incorporated into the ongoing operational improvement efforts of the Director of the Office of Clinical Research Training and Education, and the Clinical Center Director. This information will enable the ongoing operational improvement efforts of the OCRTME and its commitment to providing clinical research training and medical education of the highest quality to each trainee.

Frequency of Response: Annually.

Affected Public: Former clinical research trainees at the NIH Clinical Center.

Type of Respondents: MD's, MD trainees, and students.

The annual reporting burden is as follows:

Estimated Number of Respondents: 825; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.35; and *Estimated Total Annual Burden Hours Requested:* 289.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Doctoral Level	625	1	0.35	219
Students	100	1	0.35	35
Other	100	1	0.35	35
Total				289

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact:

Contact: Robert M. Lembo, MD.

Address: 10 Center Drive/1N252C, Bethesda, MD 20892–1352.

Telephone: 301–496–2636.

Fax: 301–435–5275.

Email: robert.lembo@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: June 28, 2012.

Laura Lee,

Project Clearance Liaison, Warren Grant Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 2012–17120 Filed 7–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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.

Project: Uniform Application for the Mental Health Block Grant and Substance Abuse Block Grant FY 2014–2015 Application Guidance and Instructions (OMB No. 0930–0168)–Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting approval from the Office of Management and Budget (OMB) for a revision of the 2014 and 2015 Mental Health Block Grant (MHBG) and Substance Abuse Block Grant (SABG) Guidance and Instructions into a uniform block grant application.

Currently, the SABG and the MHBG differ on a number of their practices (e.g., data collection at individual or aggregate levels) and statutory authorities (e.g., method of calculating MOE, stakeholder input requirements for planning, set asides for specific populations or programs, etc.). Historically, the Centers within SAMHSA that administer these Block Grants have had different approaches to application requirements and reporting. To compound this variation, states have had different structures for accepting, planning, and accounting for the Block Grants and the Prevention Set Aside within the SABG. As a result, how these dollars are spent and what is known about the services and clients that receive these funds varies by Block Grant and by state.

In addition, between 2013 and 2015, 32 million individuals who are uninsured will have the opportunity to enroll in Medicaid or private health insurance. This expansion of health insurance coverage will have a significant impact on how State Mental Health Authorities (SMHAs) and State Substance Abuse Authorities (SSAs) use their limited resources. Many individuals served by these authorities are funded through Federal Block Grant funds. SAMHSA proposes that Block Grant funds be directed toward four purposes: (1) To fund priority treatment and support services for individuals without insurance or who cycle in and out of health insurance coverage; (2) to fund those priority treatment and support services not covered by Medicaid, Medicare or private insurance offered through the exchanges and that demonstrate success in improving outcomes and/or supporting recovery; (3) to fund universal, selective and targeted prevention activities and services; and (4) to collect performance and outcome data to determine the ongoing effectiveness of behavioral health prevention, treatment and recovery support services and to plan the implementation of new services on a nationwide basis.

States should begin planning now for FY 2014 when more individuals are insured. To ensure sufficient and comprehensive preparation, SAMHSA will use FY 2013 to continue to work with states to plan for and transition the Block Grants to these four purposes. This transition includes fully exercising SAMHSA's existing authority regarding States' and Jurisdictions' (subsequently referred to as ''states'') use of Block Grant funds, and a shift in SAMHSA staff functions to support and provide technical assistance for states receiving Block Grant funds as they move through these changes.

The proposed MHBG and SABG build on ongoing efforts to reform health care, ensure parity and provide States and Territories with new tools, new flexibility, and state/territory-specific plans for available resources to provide their residents the health care benefits they need. The planning section of the Block Grant application provides a process for states and Territories to identify priorities for individuals who need behavioral health services in their jurisdictions, develop strategies to address these needs, and decide how to expend Block Grant Funds. In addition, the Planning Section of the Block Grant requests additional information from states that could be used to assist them in their reform efforts. The plan submitted by each state and Territory will provide information for SAMHSA and other federal partners to use in working with states and Territories to improve their behavioral health systems over the next two years as health care and economic conditions evolve.

The 2014–2015 Block Grant application provides states and Territories the flexibility to submit one rather than two separate Block Grant applications if they choose. It also allows states and Territories to develop and submit a bi-annual rather than an annual plan, recognizing that the demographics and epidemiology do not often change on an annual basis. These options may decrease the number of applications submitted from four in two years to one.

Over the next several months, SAMHSA will assist states and Territories (individually and in smaller groups) as they develop their Block Grant applications. While there are some specific statutory requirements that SAMHSA will look for in each submitted application, SAMHSA intends to approach this process with the goal of assisting states and Territories in setting a clear direction for system improvements over time, rather than as a simple effort to seek compliance with minimal requirements.

Consistent with previous applications, the FY 2014–2015 application has sections that are required and other sections where additional information is requested, but not required. The FY 2014–2015 application requires states to submit a face sheet, a table of contents, a behavioral health assessment and plan, reports of expenditures and persons served, executive summary, and funding agreements, assurances, and certifications. In addition, SAMHSA is

requesting information on key areas that are critical to their success to address health reform and parity. States will continue to receive their annual grant funding if they only chose to submit the required section of their state plans or choose to submit separate plans for the MHBG or SABG. Therefore, as part of this Block Grant planning process, SAMHSA is asking states and Territories to identify their technical assistance needs to implement the strategies they identify in their plans for FY 2014 and 2015.

To facilitate an efficient application process for states in FY 2014–2015, SAMHSA convened an internal workgroup to develop the application for the Block Grant planning section. In addition, SAMHSA consulted with representatives from the State Mental Health and State Substance Abuse Authorities to receive input regarding proposed changes to the Block Grant. Comments were requested from federal partners including HHS, OMB, ONDCP, and ASFR. Other stakeholder groups consulted with included NASADAD and NASMHPD. Based on these discussions with states, federal partners, and stakeholder groups, SAMHSA is proposing the following revisions to the Block Grant application.

Changes to Assessment and Planning Activities

SAMHSA has not made major revisions to the 2014–2015 application. The proposed revisions are based primarily on previous instructions provided in the 2012–2013 application guidance. In building on the 2012–2013 guidance, SAMHSA proposed revisions to expand the areas of focus (environmental factors) for states to describe their comprehensive plans to provide treatment, services, and supports for individuals with behavioral health needs. These revisions will enable SAMHSA to assess the extent to which states plan for and implement provisions of the Affordable Care Act and determine whether Block Grants funds are being directed toward the four purposes of the grant.

The proposed revisions reflect changes within the planning section of the application. The most significant of these changes relate to prevention, particularly primary prevention; data and quality; enrollment of individuals and providers; and descriptions of good and modern behavioral health services. States are encouraged to address each of the focus areas. SAMHSA has provided a set of guiding questions to stimulate and direct the dialogue that states may engage in to determine the various approaches used to develop their responses to each of the focus areas. The proposed revisions are described below:

Areas of Focus/Environmental Factors

• *Coverage for M/SUD Services*—Beginning in 2014, Block Grant dollars should be used to pay for (1) people who are uninsured, and (2) services that are not covered by insurance and Medicaid. Presumably, there will be similar concerns at the state level that state dollars are being used for people and/or services not otherwise covered. States (or the federal exchange) are currently making plans to implement the benchmark plan chosen for Qualified Health Plans (QHPs) and their expended Medicaid program. States should begin to develop strategies that will monitor the implementation of the Act in their states. States should begin to identify whether people have better access to mental health and substance use disorder services. In particular, states will need to determine if QHPs and Medicaid are offering mental and substance abuse services and whether services are offered consistent with provisions of MHPAEA.

• *Affordable Insurance Exchanges*—Affordable Insurance Exchanges (Exchanges) will be responsible for performing a variety of critical functions to ensure access to much needed behavioral health services. Outreach and education regarding enrollment in QHPs or expanded Medicaid will be critical. SMHAs and SSAs should understand their state's new eligibility determination and enrollment system. They should also understand how insurers (commercial, Medicaid and Medicare plans) will be making decisions regarding their provider networks. States should consider developing benchmarks regarding the expected number of individuals in their publicly funded behavioral health system that should be insured by the end of FY 2015. In addition, states should set benchmarks for the number of providers who will be participating in insurers' networks that are currently not billing third party insurance.

• *Program Integrity*—The Act directs the Secretary of HHS to define EHBs. Non-grandfathered plans in the individual and small group markets both inside and outside the Exchanges, Medicaid benchmark and benchmark equivalent plans, and basic health programs must cover these EHBs. The selected benchmark plan would serve as a reference plan, reflecting both the scope of services and limits offered by a ''typical employer plan'' in a state as required by the Act.

At this point in time, many states will know which mental health and substance abuse services are covered in their benchmark plans offered by QHPs and Medicaid programs. SMHA and SSAs should be focused on two main areas related to EHBs: monitoring what is covered and aligning Block Grants and state funds for what is not covered. These include: (1) Ensuring that QHPs and Medicaid programs are including EHBs as per the state bench mark; (2) Ensuring that individuals are aware of the covered mental health and substance abuse benefits; (3) Ensuring that people will utilize the benefits despite concerns that employers will learn of mental health and substance abuse diagnosis of their employees; and (4) Monitoring utilization of behavioral health benefits in light of utilization review, medical necessity, etc.

SAMHSA expects states to implement policies and procedures that are designed to ensure that Block Grant funds are used in accordance with the four priority categories identified above. Consequently, states may have to reevaluate their current management and oversight strategies to accommodate the new priorities. They may also be required to become more proactive in ensuring that state-funded providers are enrolled in the Medicaid program and have the ability to determine if clients are enrolled or eligible to enroll in Medicaid. Additionally, compliance review and audit protocols may need to be revised to provide for increased tests of client eligibility and enrollment.

• *Use of Evidence in Purchasing Decisions*—SAMHSA is interested in whether or how states are using evidence in their purchasing decisions, educating policymakers or supporting providers to offer high quality services. In addition, SAMHSA is interested in additional information that is needed by SMHAs and SSAs in their efforts to continue to shape their and other purchasers decisions regarding mental health and substance abuse services.

• *Quality*—Up to 25 data elements, including those in the table below will be available through the Behavioral Health Barometer which SAMHSA will prepare annually to share with states for purposes of informing the planning process. Using this information, states will select specific priority areas. States will receive feedback on an annual basis in terms of national, regional and state performance and will be expected to provide information on the additional measures they have identified outside of the core measures and state barometer. Reports on progress will serve to highlight the impact of the Block Grant funded services and thus allow SAMHSA to collaborate with the states and other HHS Operating Divisions in

providing technical assistance to improve behavioral health and related outcomes.

	Prevention	Substance abuse treatment	Mental health services
Health	Youth and Adult Heavy Alcohol Use—Past 30 Day.	Reduction/No Change In substance use past 30 days.	Level of Functioning.
Home	Parental Disapproval Of Drug Use	Stability in Housing	Stability in Housing.
Community	Environmental Risk/Exposure to Prevention Messages And/or Friends. Disapproval	Involvement in Self-Help	Improvement/Increase in quality/number of supportive relationships among SMI population.
Purpose	Pro-Social Connections—Community Connections.	Percent in TX employed, in school, etc.—TEDS.	Clients w/SMI or SED who are employed, or in school.

• *Trauma*—In order to better meet the needs of those they serve, states should take an active approach to addressing trauma. Trauma screening matched with trauma-specific therapies such as exposure therapy or trauma-focused cognitive behavioral approaches should be adopted to ensure that treatments meet the needs of those being served. States should also consider adopting a trauma informed care approach consistent with SAMHSA's trauma informed care definition and principles. This means providing care based on an understanding of the vulnerabilities or triggers of trauma survivors that traditional service delivery approaches may exacerbate, so that these services and programs can be more supportive and avoid re-traumatization.

• *Justice*—The SABG and MHBG may be especially valuable in supporting care coordination to promote pre-adjudication and pre-sentencing diversion, providing care during gaps in enrollment after incarceration, and supporting other efforts related to enrollment. Communities across the United States have instituted problem-solving courts, including those for defendants with mental and substance use disorders. These courts seek to prevent incarceration and facilitate community-based treatment for offenders, while at the same time protecting public safety. There are two types of problem-solving courts related to behavioral health: drug courts and mental health courts. However, there are a number of different types of problem-solving courts. In addition to drug courts and mental health courts, some jurisdictions, for example, operate courts for DWI/DUI, veterans, family, reentry, as well as courts such as gambling, domestic violence, truancy, etc. Specialized courts provide a forum in which the adversarial process can be relaxed and problem solving and treatment processes can be emphasized. States should place emphasis on screening, assessment, and services provided prior to adjudication and/or sentencing to divert persons with mental and/or substance use disorders from correctional settings. Secondarily, states should examine specific barriers such as lack of identification needed for enrollment, loss of eligibility resulting from incarceration, and care coordination for individuals with chronic health conditions, housing instability, and employment challenges. Secure custody rates decline when community agencies are present to advocate for alternatives for detention.

• *Parity Education*—SAMHSA encourages states to take proactive steps to improve consumer knowledge about parity. As one plan of action, states can develop communication plans to provide and address key issues. SAMHSA is in a unique position to provide content expertise to assist states, and is asking for input from states to address this position.

• *Primary and Behavioral Health Care Integration Activities*—Numerous provisions in the Afordable Health Care Act and elsewhere improve the coordination of care for patients through the creation of health homes, where teams of health professionals will be rewarded to coordinate care for patients with chronic conditions. States that had approved Medicaid State Plan Amendments (SPAs) received 90 percent Federal Medicaid Assistance Percentage (FMAP) for health home services for eight quarters. At this critical point in time, some states are ending their two years of enhanced FMAP and rolling back to their regular state FMAP for health home services. In addition, many states may be a year into the implementation of their dual eligible demonstration projects.

• *Health Disparities*—In the Block Grant application, states are asked to define the populations they intend to serve. Within these populations of focus are subpopulations that may have disparate access to, use of, or outcomes from provided services. These disparities may be the result of differences in insurance coverage, language, beliefs, norms, values, and/or socioeconomic factors specific to that subpopulation. For instance, Latino adults with SMI may be at heightened risk for metabolic disorder due to lack of appropriate in-language primary care services; Native American youth may have an increased incidence of underage binge drinking due to coping patterns related to historical trauma within the Native American community; and African American women may be at greater risk for contracting HIV/AIDS due lack of access to education on risky sexual behaviors in urban low-income communities, etc. While these factors might not be pervasive among the general population served by the Block Grant, they may be predominant among subpopulations or groups vulnerable to disparities. To address and ultimately reduce disparities, it is important for states to have a detailed understanding of who is being served and not being served within their communities, including in what languages services are provided, in order to implement appropriate outreach and engagement strategies for diverse populations. The types of services provided, retention in services and outcomes are critical measures of quality and outcomes of care for diverse groups. In order to address the potentially disparate impact for their Block Grant funded efforts, states will be asked to address access, use and outcomes for subpopulations, which can be defined by the following factors: race, ethnicity, language, gender (including transgender), tribal connection and sexual orientation (i.e., lesbian, gay, bisexual).

• *Recovery*—SAMHSA encourages states to take proactive steps to implement recovery support services. SAMHSA is in a unique position to provide content expertise to assist states, and is asking for input from states to address this position. SAMHSA has launched Bringing Recovery Supports to Scale Technical Assistance Center Strategy (BRSS TACS). BRSS TACS assists states and others to promote adoption of recovery-oriented supports, services, and systems for

people in recovery from substance use and/or mental health disorders.

• *Children and Adolescents Behavioral Health Services*—Since 1993, SAMHSA has funded the Children's Mental Health Initiative (CMHI) to build the System of Care approach in states and communities around the country. This has been an ongoing program with over 160 grants awarded to states and communities. Every state has received at least one CMHI grant. In 2007, SAMHSA awarded State Substance Abuse Coordinator grants to 16 states to build a state infrastructure for substance use disorders. This work has continued with a focus on financing and workforce development to support a recovery-oriented system of care that incorporates established evidenced-based treatment for youth with substance use disorders.

SAMHSA expects that states will build on this well-documented, effective system of care approach to serving children and youth with behavioral health needs. Given the multi-system involvement of these children and youth, the system of care approach provides the infrastructure to improve care coordination and outcomes, manage costs and better invest resources. The array of services and supports in the system of care approach includes non-residential (e.g., wraparound service planning, intensive care management, outpatient therapy, intensive home-based services, substance use disorder intensive out patient services, continuing care, mobile crisis response, etc.), supportive services (e.g., peer youth support, family peer support, respite services, mental health consultation, supported education and employment, etc.), and residential services (e.g., therapeutic foster care, crisis stabilization services, inpatient medical detoxification, etc.).

Although the statutory dates for submitting the Block Grant application, plan and annual report remain unchanged, SAMHSA requests that the MHBG and SABG applications be submitted on the same date. In addition, the dates for submitting the plans have changed to better comport with most states fiscal and planning years (July 1st through June 30th of the following year).

Application(s) for FY	Application due	Plan due	Planning period	Reports due
2014	4/1/13	Yes	7/1/13–6/30/15	12/1/13
2015	4/1/14	No*		12/1/14
2016	4/1/15	Yes	7/1/15–6/30/17	12/1/15
2017	4/01/16	No*		12/1/16

Estimates of Annualized Hour Burden

The estimated annualized burden for a uniform application is 37, 429 hours. Burden estimates are broken out in the following tables showing burden separately for Year 1 and Year 2. Year 1 includes the estimates of burden for the uniform application and annual reporting. Year 2 includes the estimates of burden for the application update and annual reporting. The reporting burden remains constant for both years.

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1

Application element	Number of respondents	Responses/ respondents	Burden/ response (hours)	Total burden
Application Burden:				
Yr One Plan (separate submissions)	30 (CMHS) 30 (SAPT)	1	282	16,920
Yr One Plan (combined submission	30	1	282	8,460
Application Sub-total	*60*			*25,380*
Reporting Burden:				
MHBG Report	59	1	186	10,974
URS Tables	59	1	35	2,065
SAPTBG Report	60 [1]	1	186	11,160
Table 5	15 [2]	1	4	60
Reporting Subtotal	*60*			*24,259*
Total	119			49,639

[1] Redlake Band of the Chippewa Indians from MN receives a grant.
[2] Only 15 States have a management information system to complete Table 5.

TABLE 2—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 2

Application element	Number of respondents	Responses/ respondents	Burden/ response (hours)	Total burden
Application Burden:				
Yr Two Plan	24	1	40	960
Application Sub-total	*24*			*960*
Reporting Burden:				
MHBG Report	59	1	186	10,974
URS Tables	59	1	35	2,065
SAPTBG Report	60	1	186	11,160

TABLE 2—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 2—Continued

Application element	Number of respondents	Responses/ respondents	Burden/ response (hours)	Total burden
Table 5	15	1	4	60
Reporting Subtotal	*60*			*24,259*
Total	*119*			25,219

The total annualized burden for the application and reporting is 37,429 hours (49,639 + 25,219 = 74,858/2 years = 37,429).

Link for the application: *www.samhsa.gov/grants/blockgrant.*

Send written comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *OR* email a copy to *blockgrants@samhsa.hhs.gov.* All written comments should be received within 60 days of the published date of this notice.

Cathy Friedman,

Public Health Analyst.

[FR Doc. 2012–17084 Filed 7–12–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5600–FA–08]

Announcement of Funding Awards; Fair Housing Initiatives Program Fiscal Year 2012

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Fair Housing Initiatives Program (FHIP) for Fiscal Year (FY) 2012. This announcement lists the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Division, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5230, Washington, DC 20410. Telephone number 202–402–7095 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) provides the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The Department published its Fair Housing Initiatives Program (FHIP) NOFA on February 16, 2012 announcing the availability of approximately $42,500,000 out of the Department's FY 2012 appropriation, to be utilized for FHIP projects and activities. Funding availability for discretionary grants included: the Private Enforcement Initiative (PEI) ($30,050,000), the Education and Outreach Initiative (EOI) ($5,880,000), and the Fair Housing Organizations Initiative (FHOI) ($5,250,000). This Notice announces grant awards of approximately $41,180,000.

For the FY 2012 NOFA, the Department reviewed, evaluated and scored the applications received based on the criteria in the FY 2012 NOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Dated: July 6, 2012.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A—FY 2012 Fair Housing Initiatives Program Awards

Applicant name	Contact	Region	Award amt.
Education and Outreach/Affirmatively Furthering Fair Housing Component			
Connecticut Fair Housing Center, Inc., 221 Main Street, Hartford, CT 06106	Erin Kemple, 860–247–4400	1	$125,000.00
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507.	2	125,000.00
Housing Opportunities Project for Excellence, Inc., 11501 NW 2nd Avenue, Miami, FL 33168.	Keenya Robertson, 305–759–7755.	4	125,000.00

Applicant name	Contact	Region	Award amt.
Inland Mediation Board, 10681 Foothill Blvd., Suite 101, Rancho Cucamonga, CA 91730.	Lynne Anderson, 909–984–2254.	9	125,000.00
Education and Outreach/General Component			
Connecticut Fair Housing Center, Inc., 221 Main Street, Hartford, CT 06106	Erin Kemple, 860–247–4400	1	125,000.00
Fair Housing Center of Greater Boston, 59 Temple Place, Suite 1105, Boston, MA 02111.	Whitney Sands, 617–399–0491	1	124,999.72
Fair Housing Justice Center, Inc., 5 Hanover Square, 17th Floor, New York, NY 10004.	Fred Freiberg, 212–400–8201	2	124,000.00
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507.	2	125,000.00
Housing Counseling Services, 2410 17th Street NW., Suite 100, Washington, DC 20019.	Marian Siegel, 202–667–7006	3	125,000.00
Piedmont Housing Alliance, 1215 East Market Street, Suite B, Charlottesville, VA 22902.	Karen Reifenberger, 434–817–2436.	3	62,757.00
Southwestern Pennsylvania Legal Services, Inc., 10 West Cherry Ave., Washington, PA 15301.	Robert Brenner, 724–225–6170.	3	125,000.00
United Neighborhood Centers of Northeastern Pennsylvania, 425 Alder Street, Scranton, PA 18505.	Michael Hanley, 570–346–0759.	3	96,904.00
Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Suite 200, West Palm Beach, FL 33401.	Robert Bertisch, 561–655–8944.	4	125,000.00
Fair Housing Center of West Michigan, 20 Hall Street SE., Grand Rapids, MI 49507	Nancy Haynes, 616–451–2980	5	46,904.28
Fair Housing Resource Center, 1100 Mentor Ave., P.O. Box 1578, Painesville, OH 44077.	Patricia Kidd, 440–392–0147	5	125,000.00
HOPE Fair Housing Center 2100 Manchester Road, Bldg. C–1620, Wheaton, IL 60187.	Shirley Stacy, 630–690–6500	5	124,834.00
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Suite 401, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	124,814.00
Fair Housing Council of Oregon, 506 SW. 6th Avenue, Suite 1111, Portland, OR 97204.	Moloy Good, 503–223–8197	10	125,000.00
Education and Outreach Initiative/Higher Education Component			
Fair Housing Center of Greater Boston, 59 Temple Place, Suite 1105, Boston, MA 02111.	Whitney Sands, 617–399–0491	1	99,999.97
University of Maryland, Baltimore, 620 W. Lexington Street, 4th Floor, Baltimore, MD 21201.	Leerin Shields, 410–706–5542	1	100,000.00
John Marshall Law School, 315 S. Plymouth Court, CBA 800, Chicago, IL 60604	Michael Seng, 312–987–2397	5	99,787.00
Education and Outreach Initiative/Lending Component			
Neighborhood Economic Development Advocacy Project, 176 Grand Street, Suite 300, New York, NY 10013.	Sarah Ludwig, 212–680–5100	2	125,000.00
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507.	2	125,000.00
Housing Counseling Services, 2410 17th Street NW., Suite 100, Washington, DC 20009.	Marian Siegel, 202–676–7006	3	125,000.00
Southwestern Pennsylvania Legal Services, Inc., 10 West Cherry Avenue, Washington, PA 15301.	Robert Brenner, 724–225–6170.	3	125,000.00
St. Martin Center, Inc., 1701 Parade Street, Erie, PA 16503	David Pesch, 814–452–6113	3	125,000.00
Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Suite 200, West Palm Beach, FL 33401.	Robert Bertisch, 561–655–8944.	4	125,000.00
Mid-Florida Housing Partnership Inc., 1834 Mason Avenue, Daytona Beach, FL 32114.	Francine Gordon, 386–274–4441.	4	125,000.00
Mobile Fair Housing Center, Inc., P.O. Box 161202, Mobile, AL 36616	Teresa Bettis, 251–479–1532	4	125,000.00
Fair Housing Opportunities, Inc., dba Fair Housing Center, 432 N. Superior, Toledo, OH 43604.	Michael Marsh, 419–243–6163	5	125,000.00
Housing Opportunities Made Equal of Greater Cincinnati, Inc., 2400 Reading Road, Suite 118, Cincinnati, OH 45202.	Elizabeth Brown, 513–721–4663.	5	124,889.14
John Marshall Law School, 315 S. Plymouth Court, CBA 800, Chicago, IL 60604	Michael Seng, 312–987–2397	5	97,133.00
Miami Valley Fair Housing Center, Inc., 21 East Babbitt Street, Dayton, OH 45405	Jim McCarthy, 937–223–6035	5	125,000.00
Minneapolis Urban League, 2100 Plymouth Avenue North, Minneapolis, MN 55411	Nicholas Jaeger, 612–302–3164.	5	29,988.91
Greater New Orleans Fair Housing Action Center, Inc., 404 South Jefferson Davis Parkway, New Orleans, LA 70119.	James Perry, 504–596–2100	6	125,000.00
Fair Housing Council of Riverside County, Inc., 3933 Mission Inn Avenue, Riverside, CA 92501.	Rose Mayes, 951–682–6581	9	238,413.00
Southwest Fair Housing Council, 2030 E. Broadway Blvd., Suite 101, Tucson, AZ 85719.	Richard Rhey Jr., 520–798–1568.	9	122,989.00
Northwest Fair Housing Alliance, 35 W. Main, Suite 250, Spokane, WA 99201	Marley Hochendoner, 509–209–2667.	10	124,999.95

Applicant name	Contact	Region	Award amt.
Education and Outreach Initiative—National Media Campaign Component			
National Fair Housing Alliance, 1101 Vermont Avenue NW., Suite 710, Washington, DC 20005.	Catherine Cloud, 202–898–1661.	3	1,499,912.00
Fair Housing Organizations Initiative—Continuing Development Component General			
Northern West Virginia Center For Independent Living, 601 East Brockway Avenue, Suites A & B, Morgantown, WV 26501.	Jan Derry, 304–296–6091	3	143,571.43
St. Martin Center, Inc., 1701 Parade Street, Erie, PA 16503	David Pesch, 814–452–6113 ...	3	325,000.00
Legal Aid of North Carolina, Inc., 224 S. Dawson Street, Raleigh, NC 27601	Jeffrey Dillman, 919–861–1884	4	325,000.00
Savannah-Chatham County Fair Housing Council, Inc., 7 Drayton Street, Suite 206, Savannah, GA 31401.	David Wayne Dawson, 912–651–3136.	4	177,375.00
North Texas Fair Housing Center, 8625 King George Drive, Suite 130, Dallas, TX 75235.	Frances Espinoza, 469–941–0383.	6	261,589.00
Fair Housing Council of Oregon, 506 SW. 6th Avenue, Suite 1111, Portland, OR 97204.	Moloy Good, 503–223–8197 ...	10	325,000.00
Fair Housing Organizations Initiative/Establishing New Organizations Component			
National Community Reinvestment Coalition, 727 15th Street NW., Suite 900, Washington, DC 20005.	David Berenbaum, 202–628–8866.	3	1,249,885.84
Fair Housing Organizations Initiative/Lending Component			
Brooklyn Legal Services Corp. A, 260 Broadway, Brooklyn, NY 11211	Gloria Ramon, 718–487–2328	2	325,000.00
Fair Housing Justice Center, Inc., 5 Hanover Square, 17th Floor, New York, NY 10004.	Fred Freiberg, 212–400–8201	2	324,999.00
LSNY-Bronx Corporation, dba Legal Services NYC-Bronx, 579 Courtlandt Avenue, Bronx, NY 10451.	Justin Haines, 718–928–2894	2	325,000.00
Lawyers' Committee for Civil Rights Under Law, 1401 New York Avenue NW., Suite 400, Washington, DC 20005.	Kathleen McEnerny, 202–662–8314.	3	324,323.00
Fair Housing Center for the Gulf, Gulf Coast Region of Mississippi, 640 Highway 90, Suite A, Waveland, MS 39576.	Charmel Gaulden, 228–396–4008.	4	325,000.00
Housing and Economic Rights Advocates, 1814 Franklin Street, Suite 1040, Oakland, CA 94612.	Maeve Brown, 510–271–8443	9	168,261.00
Inland Mediation Board, The City Center Building, 10681 Foothill Blvd., Suite 101, Rancho Cucamon, CA 91730.	Lynn Anderson, 909–984–2254	9	325,000.00
Fair Housing Council of Oregon, 506 SW 6th Avenue, Suite 1111, Portland, OR 97204.	Moloy Good, 503–223–8197 ...	10	325,000.00
Private Enforcement Initiative/Lending Component			
Community Legal Aid, Inc., 405 Main Street, Worcester, MA 01608	Jonathan Mannina, 508–752–3718.	1	183,500.00
MFY Legal Services, Inc., 299 Broadway, New York, NY 10007	Jeanette Zelhof, 212–417–3727.	2	325,000.00
South Brooklyn Legal Services, Inc., 105 Court Street, Brooklyn, NY 11201	Meghan Faux, 718–246–3276	2	325,000.00
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507.	2	212,066.00
National Fair Housing Alliance, 1101 Vermont Avenue NW., Washington, DC 20005	Catherine Cloud, 202–898–1661.	3	324,999.00
Community Legal Services of Mid-Florida, Inc., 128 Orange Avenue, Suite 300, Daytona Beach, FL 32119.	Suzanne Edmunds, 386–255–6573.	4	325,000.00
Housing Opportunities Project for Excellence, Inc., 11501 NW. 2nd Avenue, Miami, FL 33168.	Keenya Robertson, 305–759–7755.	4	325,000.00
Jacksonville Area Legal Aid, Inc., 126 West Adams Street, Jacksonville, FL 32202 ..	Kim Martyn, 904–356–8371	4	324,966.00
Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Suite 200, West Palm Beach, FL 33401.	Robert Bertisch, 561–655–8944.	4	325,000.00
Fair Housing Opportunities, Inc., dba Fair Housing Center, 432 N. Superior, Toledo, OH 43604.	Michael Marsh, 419–243–6163	5	325,000.00
Legal Aid Society of Minneapolis, Member of Mid-MN Legal Association, 430 First Avenue North, Suite 300, Minneapolis, MN 55401.	Lisa Cohen, 612–746–3770	5	325,000.00
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Suite 401, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	311,322.00
Miami Valley Fair Housing Center, Inc., 21 East Babbitt Street, Dayton, OH 45405 ..	Jim McCarthy, 937–223–6035	5	325,000.00
South Suburban Housing Center, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430.	John Petruszak, 708–957–4674.	5	303,000.00
Greater New Orleans Fair Housing Action Center, Inc., 404 South Jefferson Davis Parkway, New Orleans, LA 70119.	James Perry, 504–596–2100 ...	6	325,000.00
California Rural Legal Assistance, Inc., 631 Howard Street, Suite 300, San Francisco, CA 94105.	Ilene Jacobs, 530–742–0694 ...	9	325,000.00
Fair Housing of Marin, 615 B Street, San Rafael, CA 94901	Nancy Kenyon, 415–457–5025	9	277,452.00

Applicant name	Contact	Region	Award amt.
Southwest Fair Housing Council, 2030 E. Broadway Blvd., Suite 101, Tucson, AZ 85719.	Richard Rhey, 520–798–1568	9	312,695.00
Private Enforcement Initiative/Multi-Year Component			
Connecticut Fair Housing Center, Inc., 221 Main Street, Hartford, CT 06106	Erin Kemple, 860–247–4400	1	325,000.00
Fair Housing Center of Greater Boston, 59 Temple Place, Boston, MA 02111	Whitney Sands, 617–399–0491	1	325,000.00
Vermont Legal Aid, Inc., 264 North Winooski Avenue, Burlington, Vermont 05402	Rachel Batterson, 802–863–5620.	1	324,987.00
Fair Housing Council of Central New York, Inc., 327 W. Fayette Street, Syracuse, NY 13202.	Merrilee Witherell, 315–471–0420.	2	322,025.00
Fair Housing Justice Center, Inc., 5 Hanover Square, 17th Floor, New York, NY 10004.	Fred Freiberg, 212–400–8232	2	325,000.00
Housing Opportunities Made Equal Inc., 700 Main Street, 3rd Floor, Buffalo, NY 14202.	Scott Gehl, 716–854–1400	2	308,167.00
Legal Services NYC Staten Island, 36 Richmond Terrace, Staten Island, NY 10301	Nancy Goldhill, 718–233–6490	2	325,000.00
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507.	2	227,315.00
Baltimore Neighborhoods, Inc., 2217 St. Paul Street, Baltimore, MD 21218	Elijah Etheridge, 410–243–4468.	3	324,411.00
Community Legal Aid Society, Inc., 100 West 10th Street, Suite 801, Wilmington, DE 1980.	Nancy Goldhill, 718–233–6490	3	307,500.00
Fair Housing Council of Suburban Philadelphia, Inc., 455 Maryland Drive, Suite 190, Fort Washington, PA 19034.	James Berry, 267–419–8918	3	324,877.00
Fair Housing Partnership of Greater Pittsburgh, 2840 Liberty Avenue, Suite 205, Pittsburgh, PA 15222.	Peter Harvey, 412–391–2535	3	325,000.00
Fair Housing Right Center in Southeastern Pennsylvania, 105 W. Glenside Avenue, Suite E, Glenside, PA 19038.	Angela McIver, 215–576–7711	3	324,000.00
National Fair Housing Alliance, 1101 Vermont Avenue NW., Washington, DC 20005	Catherine Cloud, 202–898–1661.	3	325,000.00
Southwestern Pennsylvania Legal Services, Inc., 10 West Cherry Ave., Washington, PA 15301.	Robert Brenner, 724–225–6170.	3	325,000.00
Bay Area Legal Services, Inc., 829 W. Dr. MLK, Jr., Blvd., Suite 200, Tampa, FL 33603.	Richard Woltmann, 813–232–1222.	4	292,920.00
Central Alabama Fair Housing Center, 2867 Zelda Road, Montgomery, AL 36106	Faith Cooper, 334–263–4663	4	324,000.00
Community Legal Services of Mid-Florida, Inc., 128 Orange Avenue, Daytona Beach, FL 32119.	Suzanne Edmunds, 386–255–6573.	4	325,000.00
Fair Housing Center of the Greater Palm Beaches, Inc., 1300 W. Lantana Road, Suite 200, Lantana, FL 33462.	Vince Larkins, 561–533–8717	4	321,722.66
Fair Housing Continuum, Inc., 4760 N. Hwy. US1, Suite 203, Melbourne, FL 32935	David Baade, 321–757–3532	4	320,667.00
Jacksonville Area Legal Aid, Inc.,126 West Adams Street, Jacksonville, FL 32202	Kim Martyn, 904–356–8371	4	324,902.00
Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Suite 200, West Palm Beach, FL 33401.	Robert Bertisch, 561–655–8944.	4	313,246.00
Lexington Fair Housing Council, Inc., 207 E. Reynolds Road, Suite 130, Lexington, KY 40517.	Arthur Crosby, 859–971–8067	4	296,996.00
Metro Fair Housing Services, Inc., 1514 East Cleveland Avenue, Suite 118, East Point, GA 30344.	Foster Corbin, 404–765–3985	4	325,000.00
Mobile Fair Housing Center, Inc., P.O. Box 161202, Mobile, AL 36616	Teresa Bettis, 251–479–1532	4	319,795.33
Tennessee Fair Housing Council, Inc., 107 Music City Circle, Suite 318, Nashville, TN 37214.	Tracey McCartney, 615–874–2344.	4	325,000.00
West Tennessee Legal Services, Inc., 210 West Main Street, Jackson, TN 38301	John Xanthopoulos, 731–426–1311.	4	325,000.00
Fair Housing Center of Metropolitan Detroit, 220 Bagley Street, Suite 102, Detroit, MI 48226.	Clifford Schrupp, 313–963–1274.	5	299,525.00
Fair Housing Center of Southeastern Michigan, P.O. Box 7825, Ann Arbor, MI 48107.	Pamela Kisch, 734–994–3426	5	275,765.00
Fair Housing Center of West Michigan, 20 Hall Street SE., Grand Rapids, MI 49507	Nancy Haynes, 616–451–2980	5	325,000.00
Fair Housing Contact Services, Inc., 441 Wolf Ledges Parkway, Suite 200, Akron, OH 44311.	Tamela Skipper, 330–376–6191.	5	325,000.00
Fair Housing Opportunities, Inc., dba Fair Housing Center, 432 N. Superior, Toledo, OH 43604.	Michael Marsh, 419–243–6163	5	325,000.00
Fair Housing Resource Center, Inc., 1100 Mentor Avenue, Painesville, OH 44077	Patricia Kidd, 440–392–0147	5	325,000.00
HOPE Fair Housing Center, 2100 Manchester Road, C–1620, Wheaton, IL 60187	Shirley Stacy, 630–690–6500	5	324,020.00
John Marshall Law School, 315 Plymouth Court, CBA 800, Chicago, IL 60604	Michael Seng, 312–986–2397	5	279,951.33
Legal Services of Eastern Michigan, 436 S. Saginaw Street, Suite 101, Flint, MI 48502.	Teresa Trantham, 810–234–2621.	5	266,448.00
Metropolitan Milwaukee Fair Housing Council, Inc., 600 East Mason Street, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	322,629.00
Miami Valley Fair Housing Center, Inc., 21 East Babbitt Street, Dayton, OH 45405	Jim McCarthy, 937–223–6035	5	325,000.00
South Suburban Housing Center, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430.	John Petruszak, 708–957–4674.	5	324,775.00
Greater New Orleans Fair Housing Action Center, Inc., 404 South Jefferson Davis Parkway, New Orleans, LA 70119.	James Perry, 504–596–2100	6	325,000.00

Applicant name	Contact	Region	Award amt.
San Antonio Fair Housing Council, Inc., 4414 Centerview Drive, Suite 229, San Antonio, TX 78228.	Sandra Tamez, 210–733–3247	6	325,000.00
Family Housing Advisory Services, Inc., 2401 Lake Street, Omaha, NE 68111	Joseph Garcia, 402–934–6669	7	325,000.00
Montana Fair Housing, Inc., 519 East Front Street, Butte, MT 59701	Pamela Bean, 406–782–2573	8	167,900.00
Arizona Fair Housing Center, 615 N. 5th Avenue, Phoenix, AZ 85003	Edward Valenzuela, 602–548–1599.	9	317,651.00
California Rural Legal Assistance, Inc., 631 Howard Street, Suite 300, San Francisco, CA 94105.	Ilene Jacobs, 530–742–7235	9	325,000.00
Fair Housing Council of Central California, 333 W. Shaw Avenue, Suite 14, Fresno, CA 93704.	Marilyn Borelli, 559–244–2950	9	259,034.00
Fair Housing Council of Riverside County, Inc., 3933 Mission Inn Avenue, Riverside, CA 92501.	Rose Mayes, 951–682–6581	9	284,894.00
Greater Bakersfield Legal Assistance, Inc., 615 California Avenue, Bakersfield, CA 93304.	Estela Casas, 661–334–4660	9	302,069.00
Greater Napa Fair Housing Center, 603 Cabot Way, Napa, CA 94559	Nicole Collier, 707–224–9720	9	309,000.00
Legal Aid Society of Hawaii, 924 Bethel Street, Honolulu, HI 96813	Elise Von Dohlen, 808–527–8056.	9	325,000.00
Orange County Fair Housing, 201 S. Broadway, Santa Ana, CA 92701	David Levy, 714–569–0823	9	141,000.00
Silver State Fair Housing Council, 855 E. Forth Street, Suite E, Reno, NV 89512	Katherine Knister, 775–324–0990.	9	325,000.00
Southern California Housing Rights Center, 520 South Virgil Avenue, Suite 400, Los Angeles, CA 90020.	Chancela Al-Mansour, 213–387–8400.	9	324,980.00
Southwest Fair Housing Council, 2030 E. Broadway Blvd., Suite 101, Tucson, AZ 85719.	Richard Rhey, 520–798–1568	9	311,245.00
Fair Housing Center of Washington, 1517 South Fawcett, Suite 25, Tacoma, WA 983402.	Lauren Walker, 253–274–9523	10	325,000.00
Intermountain Fair Housing Council, Inc., 350 N. 9th Street, Suite M 200, Boise, ID 83702.	Richard Mabbutt, 208–383–0695.	10	324,630.00
Private Enforcement Initiative/Performance Base Component			
Housing Discrimination Project, 57 Suffolk Street, Holyoke, MA 01040	Meris Bergquist, 413–539–9796.	1	325,000.00
Pine Tree Legal Assistance, 88 Federal Street, Portland, ME 04101	Nan Heald, 207–774–4753	1	325,000.00
Fair Housing Council of Northern New Jersey, 131 Main Street, Suite 140, Hackensack, NJ 07601.	Lee Porter, 201–489–3552	2	325,000.00
South Brooklyn Legal Services, Inc., 105 Court Street, Brooklyn, NY 11201–5658	Meghan Fauz, 718–246–3276	2	325,000.00
Equal Rights Center, 11 Dupont Circle NW., Suite 450, Washington, DC 20036	Sean Maloney, 202–370–3209	3	325,000.00
Housing Opportunities Project for Excellence, Inc., 18441 NW 2nd Avenue, Suite 218, Miami Gardens, FL 33169.	Keenya Robertson, 305–759–7755.	4	325,000.00
Access Living of Metropolitan Chicago, 115 West Chicago Avenue, Chicago, IL 60654.	Jason Gilmore, 312–640–2185	5	325,000.00
Chicago Lawyers' Committee for Civil Rights Under Law, Inc., 100 North LaSalle Street, Suite 600, Chicago, IL 60602.	Jay Readey, 312–630–9744	5	325,000.00
Fair Housing Center of Southwest Michigan, 410 E. Michigan, Kalamazoo, MI 49007.	Robert Ellis, 269–276–9100	5	302,766.00
Housing Opportunities Made Equal of Greater Cincinnati, Inc., 2400 Reading Road, Suite 118, Cincinnati, OH 45202–1458.	Elizabeth Brown, 513–721–4663.	5	324,359.00
Housing Research & Advocacy Center, 3631 Perkins Ave., Suite 3A–2, Cleveland, OH 44114.	Hilary King, 216–361–9240	5	325,000.00
Interfaith Housing Center of the Northern Suburbs, 614 Lincoln Avenue, Winnetka, IL 60093.	Gail Schechter, 847–501–5760	5	235,687.00
Legal Aid Society of Minneapolis, 430 First Avenue North, Suite 300, Minneapolis, MN 55401.	Lisa Cohen, 612–746–3770	5	325,000.00
Legal Assistance of Western NY Inc., 1 West Main Street, Rochester, NY 14614	Louis Prieto, 585–292–5610	5	277,000.00
Austin Tenants Council Inc., 161 Cesar Chevaz Street, Austin, TX 78702	Katherine Stark, 512–474–7007.	6	324,723.00
Greater Houston Fair Housing Center, Inc., P.O. Box 292, Houston, TX 77001	Daniel Bustamante, 713–641–3247.	6	325,000.00
Metropolitan Fair Housing Council of Oklahoma, Inc., 1500 NE 4th Street, Suite 204, Oklahoma City, OK 73117.	Mary Dulan, 405–765–3985	6	324,808.00
Metropolitan St. Louis Equal Housing Opportunity Council, 1027 S. Vandeventer Avenue, 6th Floor, St. Louis, MO 63110.	Willie Jordan, 314–448–9063	7	272,614.00
Bay Area Legal Aid, 405 14th Street, Oakland, CA 94612	Jaclyn Pinero, 510–663–4755	9	325,000.00
Fair Housing of Marin, 615 B Street, San Rafael, CA 94901	Nancy Kenyon, 415–457–5025	9	324,997.00
Inland Mediation Board, The City Center Building, 10681 Foothill Blvd., Rancho Cucamor, CA 91730.	Lynne Anderson, 909–984–2254.	9	325,000.00
Fair Housing Council of Oregon, 506 SW 6th Avenue, Suite 1111, Portland, OR 97204.	Moloy Good, 503–223–8197	10	325,000.00
Northwest Fair Housing Alliance, 35 W. Main, Spokane, WA 99201	Marley Hochendoner, 509–209–2667.	10	325,000.00

[FR Doc. 2012–17131 Filed 7–12–12; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Coast Guard: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; Navy: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; (These are not toll-free numbers).

Dated: July 5, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 07/13/2012

Suitable/Available Properties

Building

Alaska

Mustang Moorings Bldg. 17003
1320 Fourth Ave.
Seward AK 99664
Landholding Agency: Coast Guard
Property Number: 88201220003
Status: Unutilized
Comments: off-site removal only; 2,205 sf.; storage/office/workshop; fair conditions; need repairs

Land

Hawaii

3.15 Acres
Joint Base Pearl Harbor Hickam
Pearl Harbor HI 96818
Landholding Agency: Navy
Property Number: 77201220012
Status: Unutilized
Comments: current use: Trinity Missionary Baptist Church; unavailable because property is still in use by the Navy

4.48 Acres
Joint Base Pearl Harbor Hickam
Pearl Harbor HI 96818
Landholding Agency: Navy
Property Number: 77201220013
Status: Unutilized
Comments: current use: Roman Catholic Church in the State of Hawaii; unavailable because property is still in use by the Navy

2.77 Acres
Joint Base Pearl Harbor Hickam
Pearl Harbor HI 96818
Landholding Agency: Navy
Property Number: 77201220014
Status: Unutilized
Comments: Current use: First Southern Baptist Church of Pearl Harbor; unavailable because property is still in use by the Navy

1.39 Acres
Joint Base Pearl Harbor Hickam
Pearl Harbor HI 96818
Landholding Agency: Navy
Property Number: 77201220015
Status: Unutilized
Comments: current use: Island Family Christian Church; unavailable because property is still in use by the Navy

[FR Doc. 2012–16900 Filed 7–12–12; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX12LC00BM6P2BB FY12/13]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0082).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for ''Bird Banding Lab (4 USGS forms).'' This notice provides the public and other Federal agencies an opportunity to comment on the paperwork burden of this form. This collection is scheduled to expire on November 30, 2012.

DATES: You must submit comments on or before September 11, 2012.

ADDRESSES: Please send your comments concerning the IC to the USGS to the Information Collection Clearance Officer, Shari Baloch, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); 703–648–7199 (fax); or *smbaloch@usgs.gov* (email). Use Information Collection Number 1028–0082 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Bruce Peterjohn, (301) 497–5646 (phone) or *bpeterjohn@usgs.gov* (email).

SUPPLEMENTARY INFORMATION:

Title: Bird Banding Laboratory.

OMB Control Number: 1028–0082.

Type of Request: Extension of a currently approved collection.

Abstract: The USGS Bird Banding Laboratory is responsible for monitoring the trapping and marking of wild migratory birds by persons holding Federal permits. The Bird Banding laboratory collects information using three forms: (1) The Application for Federal Bird Marking and Salvage Permit, (2) The Bird Banding Permit Renewal Form, (3) The Bird Banding Recovery Report, and one electronic database, *Bandit.*

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked.

Affected Public: General Public.

Respondent Obligation: Voluntary.

Frequency of Collection: On occasion.

Estimated Number and Description of Respondents: 152,500 individuals encountering a banded bird and volunteer bird banders.

Annual Burden Hours: 28,150 hours (300 hours for permit applications, 100 hours for renewals, 4,250 hours for banding recovery reports, and 23,500 hours for the *Bandit* software).

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved ''hour'' burden for this collection is 28,048 hours. We estimate the time to complete each form is: 30 minutes for the Permit Application form, 2 minutes for Bird Banding Permit renewal form, 5 minutes for Recovery Report form, and 4 hours for the *Bandit* software.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: July 2, 2012.

Anne Kinsinger,

Associate Director for Ecosystems, USGS.

[FR Doc. 2012–17088 Filed 7–12–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM910000 L13100000.EJ0000]

Notice of Availability of the Draft Order of the Secretary on Oil and Gas and Potash Development Within the Designated Potash Area, Eddy and Lea Counties, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the authority of the Mineral Leasing Act, as amended, the Bureau of Land Management (BLM) has prepared a draft Order of the Secretary of the Interior (Secretary's Order) to address oil, gas, and potash leasing and development within the Designated Potash Area in Eddy and Lea counties in New Mexico. The draft Secretary's Order would supersede the current Secretary's Order that addresses those issues. By this notice, the BLM announces the opening of a 30-day public comment period regarding the draft Secretary's Order. The revised guidelines in the draft Secretary's Order are designed to further promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Among other benefits, the revised guidelines are expected to enhance the safety of underground potash miners and allow for full development of oil and gas leaseholds with fewer environmental impacts.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the draft Secretary's Order within 30 days following the date this Notice of Availability is published in the **Federal Register**.

ADDRESSES: You may submit comments related to the draft Secretary's Order by any of the following methods:

- *Email: therrell@blm.gov*;
- *Fax:* 505–954–2115; or
- *Mail:* Bureau of Land Management, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508.

The draft Secretary's Order is available at the following Web site: *http://www.blm.gov/nm/st/en/info/potash.html.*

FOR FURTHER INFORMATION CONTACT: Tony Herrell, Deputy State Director, Mineral Resources; telephone 505–954–2222; address 301 Dinosaur Trail, Santa Fe, NM 87508; email: *therrell@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: An area near the town of Carlsbad in southeastern New Mexico has large deposits of potash, oil, and gas. Oil and gas have been produced from this area since the early twentieth century. Potash (potassium bearing salts primarily used for fertilizer) was discovered in this area in 1925 and has been mined since 1930.

The Secretarial Potash Order was first issued by the Department of the Interior (Department) in 1939 (4 FR 1012, February 25, 1939). That Order withdrew 43,000 acres of public land from oil and gas leasing in order to protect potash deposits. The Order was amended in 1951 (16 FR 10699, October 18, 1951) to allow for multiple mineral development in a larger area and established special lease terms for use in both potash leases and oil and gas leases. Such lease terms were designed to facilitate the protection of mineral resources and the safety of miners. The Order was also amended in 1965 (30 FR 6692, May 15, 1965), 1975 (40 FR 51486, November 5, 1975), and 1986 (51 FR 39425, October 28, 1986). A correction to the 1986 Order was issued in 1987 (52 FR 32171, August 26, 1987). The potash area designated by the corrected 1986 Order comprises approximately 497,000 acres, and the draft Order would not alter the boundaries of the area.

The potash deposits in this area occur from 800 feet to over 2,000 feet beneath the surface and are mined by both conventional and solution mining methods; conventional methods require miners to be underground. The oil and gas in the area is found in formations below the potash bearing formations, so oil and gas wells must extend through potash formations. If potash mining breached a well casing, or if a well casing near a potash mine failed for other reasons, gas could enter the mine workings, thus endangering the miners. Additionally, such a breach would raise the costs of potash mining due to the need for enhanced ventilation techniques and specialized equipment needed to mine in a gassy environment. Accordingly, given these safety risks, while potash and oil and gas are found in the same area, they cannot readily be produced at the same time. Thus, there has been a long history of conflict between the potash and the oil and gas industries.

This conflict has resulted in a great deal of litigation in this area regarding decisions made by the BLM on a variety of development applications. Nevertheless, over the past several years, the two industries have initiated efforts to work together. There have been productive meetings and discussions between many of the parties involved in these previous disputes. Additionally, there have been significant advances in the technology of oil and gas drilling that could be used to reduce the conflict between such drilling and the extraction of potash. Further, the economic outlook for both the oil and gas industry and the potash industry has recently improved. All of these factors have combined to encourage coordination between these two industries. The BLM has also worked with Sandia National Laboratories to investigate well logging technology, gas migration in the potash formations, and standards to use for estimating the mineability of potash and potash cutoff grades. These circumstances have led to this current review of the 1986 Secretary's Order.

The draft Secretary's Order differs from the 1986 Order in several important ways. First, the formatting is modified to be consistent with the Department's style requirements for Secretary's Orders. These requirements were changed in 1992. See 012 DM 1 in the Departmental Manual.

Next, the draft Secretary's Order is built on a foundation of ''co-development.'' This new term is used to describe concurrent development of potash and oil and gas from the Designated Potash Area through a cooperative effort between the industries under this draft Secretary's Order.

Next, the draft Secretary's Order authorizes the BLM to establish ''Development Areas.'' Development Areas are blocks of Federal oil and gas leases, to be identified by the BLM, that could be developed as a unit from one or more ''Drilling Islands.'' The draft Secretary's Order envisions that the oil and gas leases in a Development Area would be unitized under the regulations found at 43 CFR subpart 3180, and developed by a unit operator or operated under a communitization agreement as authorized under 43 CFR subpart 3105. This would lead to more orderly development of the oil and gas resources in the Development Area and minimize impacts to surface resources and potash resources.

The draft Secretary's Order also defines new terms for classifying lands with regard to their potash values. ''Barren Areas'' are defined as lands within the designated Potash Area where sufficient data is available to establish that the area lacks mineable potash resources. ''Unknown Areas'' are areas within the Designated Potash Area where there is an absence of data to classify the potash mineralization of the lands. While Barren Areas may be preferred locations for Drilling Islands, Unknown Areas may warrant protection from oil and gas drilling until such time as data is available to properly classify the potash mineralization.

It is envisioned that the majority of the Designated Potash Area will eventually be divided into Development Areas designed to minimize the impacts to potash mining while allowing for the development of oil and gas resources. It is intended that Development Areas will be developed with extended reach horizontal wells using the most current technology, consistent with applicable laws and regulations.

As described in the draft Secretary's Order, wells would be drilled from a Drilling Island established within the Development Area. In most cases, a single Drilling Island would be established for each Development Area. However, when circumstances dictate, BLM could establish additional Drilling Islands. Drilling Islands would be situated in such a manner that extended-reach horizontal wells could access oil and gas within the associated Development Areas. Under the draft Secretary's Order, in areas leased for potash or containing ''Measured Reserves'' (i.e., areas where potash is known to exist in sufficient thickness and quality to be mineable), the Development Areas would generally be larger, potentially requiring the most aggressive use of extended-reach horizontal wells. In other areas, Development Areas could be smaller, and the use of extended-reach horizontal wells would likely be less.

By further utilizing a drilling island concept for oil and gas development that was first introduced in the 1986 Secretary's Order, full development of oil and gas leaseholds would occur with less impact to the environment because of the reduction in the number of drill pads and associated roads, power lines, and other ancillary facilities required to develop the oil and gas resource. The safety of the underground potash miners

would also be enhanced by a reduction in the number and spacing of oil and gas drilling locations where wells penetrate the potash formation.

The draft Secretary's Order retains several important features of the 1986 Order, including the boundaries of the Designated Potash Area established in the 1986 Order, as corrected in 1987. The draft Secretary's Order also retains language of the 1986 Order for special terms and conditions for oil and gas leases and potash leases issued, readjusted, or reinstated in the Designated Potash Area. The draft Secretary's Order seeks to retain the wording of the 1986 Order to the extent practicable.

The provisions in this draft Secretary's Order are consistent with the Department's regulations, onshore orders, and the oil and gas lease form. The Department's existing regulations and onshore orders allow the BLM to impose conditions of approval on permits to drill and require protection of other mineral resources, other natural resources, environmental quality, life, health, safety, and property. See 43 CFR subparts 3162.1, 3164.1, and 3165.1. The oil and gas lease form (BLM form 3100–11) provides that the rights granted in the lease are subject to the Secretary's subsequent formal orders when not inconsistent with the lease rights. The lease form also provides that lessees will take reasonable measures that BLM deems necessary to minimize adverse impacts to other resources and to other land uses or users. The provisions in the draft Secretary's Order are also consistent with the regulations governing potash leasing, exploration, and development. See 43 CFR part 3500 and subpart 3190.

Before including your phone number, email address, or other personal identifying information with the submission of your comments, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. While you may ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 3164.1, 43 CFR 3590.2.

Jesse Juen,

New Mexico State Director.

[FR Doc. 2012–16909 Filed 7–12–12; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA01200 L16100000.DP000/ LXSS034G0000]

Notice of Availability of the Draft Resource Management Plan and Draft Environmental Impact Statement for the Rio Puerco Field Office, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Rio Puerco Field Office and by this notice is announcing the opening of the public comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/ Draft EIS within 90 days following the date the Environmental Protection Agency publishes this notice of the Draft RMP/Draft EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Rio Puerco Draft RMP/ Draft EIS by any of the following methods:

- *Web site: http://www.blm.gov/nm/riopuerco.*
- *Email: BLM_NM_RPFO_Comments@blm.gov.*
- *Fax:* 505–761–8911, attn.: Angel Martinez.
- *Mail:* 435 Montaño Road NE., Albuquerque, New Mexico 87107, attn.: Angel Martinez.

Copies of the Rio Puerco Draft RMP/ Draft EIS are available at the Rio Puerco Field Office, at the above address; the New Mexico State Office at 301 Dinosaur Trail, Santa Fe, New Mexico; and the Grants Field Station at 202 Smokey Circle, Grants, New Mexico.

FOR FURTHER INFORMATION CONTACT: For further information contact Angel Martinez, Planning and Environmental Coordinator; telephone 505–761–8918; address 435 Montaño Road NE., Albuquerque, New Mexico, 87107; email *a1martinez@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 service 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: In the Rio Puerco Draft RMP/Draft EIS, the BLM analyzes the environmental consequences of four alternative land-use plans under consideration for managing approximately 744,387 acres of surface estate and 3.4 million acres of subsurface mineral estate. These lands, administered by the BLM Rio Puerco Field Office, are located within Bernalillo, Cibola, McKinley, Sandoval, Torrance, and Valencia counties in central New Mexico.

This land-use plan would replace the current Rio Puerco RMP, which was approved in 1986. The RMP revision is needed to provide updated management decisions for a variety of uses and resources, including land-tenure adjustments, land-use authorizations, mineral resources, recreation, areas with special management designations, lands with wilderness characteristics, livestock grazing, transportation access, renewable energy, visual resources, wildland/urban interface, and others. The approved Rio Puerco RMP will apply only to the BLM-administered public lands and Federal mineral estate.

The four alternatives analyzed in detail in the Draft RMP/Draft EIS are as follows:

- Alternative A, No Action, or a continuation of existing management;
- Alternative B, which would emphasize resource conservation and protection;
- Alternative C, the BLM's Preferred Alternative, which would provide for a balance of resources uses with protections; and
- Alternative D, which would allow for a greater opportunity for resource use and development.

Among the special designations under consideration within the range of alternatives, Areas of Critical Environmental Concern (ACEC) are proposed to protect certain resource values. Pertinent information regarding these ACECs, including proposed designation acreages and resource-use limitations, is summarized below. Each alternative considers a combination of resource-use limitations for each ACEC. A more detailed summary of the proposed ACECs by alternative is available at the project Web site.

- *Bluewater Canyon ACEC* (currently 97 acres; Alternatives B–D would

expand to 941 acres). This ACEC would be managed for riparian habitat, wildlife, scenic values, and primitive recreation opportunities. Proposed resource-use limitations include: No Surface Occupancy (NSO) stipulations on mineral leases; prohibition on the sale of commercial or home-use forest products (under Alternative D, fuelwood collection would be allowed outside of riparian areas); Closed to off-road vehicles except for authorized use; restrictions on use of large mechanized firefighting equipment, chemical drops, intensive forestry management, and fire hazard reduction; closed to extraction of salable minerals; withdrawn from locatable mineral entry; managed as Visual Resource Management (VRM) Class II; restrictions on camping within the riparian zone; livestock grazing prohibited, or would be limited to prescribed grazing;

• *Bony Canyon ACEC* (not currently designated; Alternatives B and C would designate 1,150 acres; Alternative D would designate as a Research Natural Area). This ACEC would be managed for paleontological values. Proposed resource-use limitations include: Limited travel to authorized use only, or to existing primitive roads and trails; NSO stipulation for leasable fluid minerals; withdrawn from locatable mineral entry; livestock grazing prohibited, or limited to prescribed grazing.

• *Cabezon Peak ACEC* (currently 5,765 acres; Alternatives B and C would expand to 17,150 acres; Alternative D would expand to 6,984acres). This ACEC would be managed for scenic, cultural, geologic, and rare plant values. Proposed resource-use limitations include: Motorized travel limited to authorized use; livestock grazing prohibited or limited to prescriptive grazing; NSO, controlled surface use (CSU), and timing stipulations for leasable fluid minerals; closure to extraction of salable minerals; withdrawn from locatable mineral entry; management as VRM Class II.

• *Cañon Jarido ACEC* (currently designated as a Special Management Area (SMA); Alternatives B–C would designate 6,536 acres; Alternative D would designate 1,794 acres). This ACEC would be managed for scenic, wildlife, and cultural values. Proposed resource-use limitations include: Motorized vehicle use limited to existing primitive roads and trails with no motorized travel in riparian areas; NSO or CSU stipulations for leasable fluid minerals; closed to extraction of salable minerals; managed as VRM Class II; livestock grazing prohibited, or limited to prescribed grazing.

• *Cañon Tapia ACEC* (Alternatives A–C would maintain the ACEC at 990 acres; Alternative D would remove the ACEC designation and manage the area as part of a Special Recreation Management Area (SRMA)). The ACEC would be managed for cultural values. Proposed resource-use limitations would include: NSO or CSU stipulation for leasable fluid minerals; limit motorized travel to existing primitive roads and trails; livestock grazing prohibited or limited to prescribed grazing; closed to extraction of salable minerals; withdrawn from locatable mineral entry.

• *Cerro Verde ACEC* (There is currently no special designation for the area; Alternatives B–C would designate 5,292 acres; Alternative D would include the area as part of a SRMA). This ACEC would be managed for geologic and scenic values. Proposed resource-use limitations include: NSO or CSU stipulations for leasable fluid minerals; salable mineral extraction would be avoided or prohibited; withdrawn from locatable mineral entry; managed as VRM Class II; motorized travel limited to authorized use; livestock grazing would be prohibited, or would be limited to prescribed grazing.

• *Elk Springs ACEC* (Currently 10,334 acres; Alternatives B–D would expand to 10,324 acres). This ACEC would be managed for crucial winter deer and elk range, scenic, and unique geologic values. Proposed resource-use limitations include: No surface disturbance between November and May; motorized vehicle use limited to existing primitive roads and trails, and closed to motorized vehicle use from December to May; all or portions of the ACEC withdrawn from mineral entry; NSO or CSU stipulations for leasable minerals in all or portions of the ACEC; managed as VRM Class II; livestock grazing prohibited, or limited to prescribed grazing.

• *Espinosa Ridge ACEC (formerly Ball Ranch)* (Currently 1,478 acres; Alternative B would expand to 10,295 acres; Alternative C would expand to 7,687 acres; and Alternative D would maintain current acreage). This ACEC would be managed for paleontological, geologic, scenic, special status plants, riparian, and cultural values. Proposed resource-use limitations include: Withdrawn from locatable mineral entry; closed to mineral leasing, or leased with NSO or CSU stipulations; closed to extraction of salable minerals; managed as VRM Class II; motorized travel limited to existing primitive roads and trails; controlled access maintained; livestock grazing prohibited from all or a portion of the ACEC, or limited to prescriptive grazing; closed to casual collecting of paleontological resources.

• *Guadalupe Ruin and Community ACEC* (Currently 478 acres designated as a SMA; Alternatives B–D would designate the area as an ACEC). This ACEC would be managed for cultural and scenic values. Proposed resource-use limitations include: 40-acre fenced area closed to motorized vehicle use, with the rest of the area limited to existing primitive roads and trails; withdrawn from locatable mineral entry; closed to extraction of leasable fluid minerals; closed to extraction of salable minerals; livestock grazing prohibited or limited to prescribed grazing; managed as VRM Class II.

• *Ignacio Chavez Grant ACEC* (Currently designated as a SMA (43,026 acres) and a Wilderness Study Area (WSA) (33,182 acres)); Alternatives B–C would designate an ACEC to correspond with the SMA; Alternative D would not designate an ACEC, but would manage the area as part of a SRMA). This ACEC would be managed for scenic and wildlife values. Proposed resource-use limitations include: Travel would be limited to existing primitive roads and trails, with motorized seasonal closures of certain roads; NSO or CSU stipulations for leasable fluid minerals; closed to extraction of salable minerals; withdrawn from locatable mineral entry; managed as VRM Class II; livestock grazing prohibited, or limited to prescribed livestock grazing.

• *Jones Canyon ACEC* (Currently 639 acres; Alternatives B would expand the ACEC boundary to 959acres; Alternatives C & D would maintain the ACEC at 639 acres). This ACEC would be managed for cultural and scenic values. Potential resource-use limitations include: NSO or CSU stipulations for leasable fluid minerals; withdrawn from locatable mineral entry; extraction of salable minerals avoided or prohibited; managed as VRM Class II; motorized travel limited to existing primitive roads and trails; livestock grazing prohibited, or limited to prescribed livestock grazing.

• *Legacy Uranium Mines ACEC* (Not currently designated, Alternatives B–D would designate 50 acres). This ACEC would be managed for health and safety concerns. Proposed resource-use limitations include: NSO for leasable fluid minerals; closed to extraction of salable minerals; avoidance area for rights-of-way; motorized travel limited to authorized use; livestock grazing prohibited, or limited to prescribed grazing.

• *Ojito ACEC* (Currently 16,310acres; Alternative B would maintain current

boundaries; Alternative C would exclude the 6,454 acres in the Ojito Wilderness Area; Alternative D would remove the designation). This ACEC would be managed for geologic, paleontological, cultural, scenic, rare plants, and biological values. Proposed resource-use limitations include: Parts to all of the ACEC are withdrawn from locatable mineral entry; parts of the ACEC are closed to fluid mineral leasing; minerals extraction of salable minerals closed or avoided in parts of the ACEC; CSU stipulations on areas open to leasable minerals; close parts of the ACEC to all but authorized users; limit motorized travel to authorized use, or limit to existing primitive roads and trails; managed as VRM Class II; livestock grazing prohibited, or limited to prescriptive grazing; implement timing limitation stipulation around raptor nests.

• *Petaca Pinta ACEC* (Currently 13,723 acres are designated as an SMA; Alternatives B–D would correspond with SMA boundaries). This ACEC would be managed for wildlife and scenic values. Proposed resource-use limitations include: Motorized vehicle use limited to existing primitive roads and trails; closed to fluid mineral leasing; closed to extraction of salable minerals; withdrawn from locatable mineral entry; managed as VRM Class II; livestock grazing prohibited, or limited to prescribed grazing.

• *Pronoun Cave Complex ACEC* (Currently 1,181 acres designated as a SMA; Alternative B would expand the ACEC to 1,342 acres; Alternative C would maintain current boundaries; Alternative D would remove the special designation and manage as part of a SRMA). This ACEC would be managed for geologic and wildlife values. Proposed resource-use restrictions include: CSU stipulations for leasable fluid minerals; extraction of salable minerals avoided or prohibited; withdrawn from locatable mineral entry; closed to all travel except for authorized use, or limited to existing primitive roads and trails; caves would be closed to recreation, either year-round or during bats' winter hibernation period; livestock grazing would be prohibited, or limited to prescribed grazing.

• *San Luis Mesa Raptor Area ACEC* (Currently 10,483 acres; Alternatives B–C would expand to 10,483 acres; Alternative D would remove the ACEC designation and manage as part of a SRMA). This ACEC would be managed for wildlife values. Proposed resource-use limitations include: Human activities and surface disturbances restricted around raptor nest sites from February 1 to July 15; prohibit surface disturbance in portions of the ACEC; travel limited to existing primitive roads and trails; portions of the ACEC withdrawn from locatable mineral entry; CSU stipulation around prairie dog towns; timing limitations stipulations for protection of raptor habitat; NSO or CSU for leasable minerals; extraction of salable minerals prohibited or avoided; livestock grazing prohibited or limited to prescribed grazing.

• *San Miguel Dome ACEC* (Not currently designated; Alternatives B–C would designate 4,437 acres; Alternative D would not designate but would manage the area as part of a SRMA). This ACEC would be managed for geologic values and biological soil crusts. Proposed resource-use limitations include: Livestock grazing prohibited, or limited to prescribed grazing; motorized travel limited to existing primitive roads and trails; pedestrian access limited to designated hiking trails; NSO for leasable fluid minerals; extraction of salable minerals would be avoided or prohibited; withdrawn from locatable mineral entry.

• *Torreon Fossil Fauna ACEC* (Currently 6,488 acres is designated as a SMA and ACEC; Alternatives B–D maintain the ACEC designation). This ACEC would be managed for rare plants and paleontological resources. Proposed resource-use limitations include: CSU for leasable fluid minerals; motorized travel limited to existing primitive roads and trails.

The land-use planning process was initiated on February 29, 2008, through a Notice of Intent published in the **Federal Register** (73 FR 11142), notifying the public of a formal scoping period and soliciting public participation. Eight scoping meetings were held in April 2008 in Albuquerque, Bernalillo, Cuba, Grants, Gallup, Los Lunas, Moriarty, and Rio Rancho. Between March 2007 and February 2008, Rio Puerco Field Office managers and staff had discussions about the Rio Puerco Draft RMP/Draft EIS with 12 local American Indian tribal groups, including Acoma Pueblo, Eastern Navajo Agency Council, Isleta Pueblo, Jemez Pueblo, Laguna Pueblo, Navajo Nation, Ojo Encino Navajo Chapter, Sandia Pueblo, Santo Domingo Pueblo, Torreon Navajo Chapter, Torreon Red Dog group, Zia Pueblo, and Zuni Pueblo. A scoping presentation was given to the BLM Resource Advisory Council (RAC) in March 2008. The BLM also met with various other stakeholder and interest groups. In addition, two Economic Profile System workshops were held early in the process with local citizens and community leaders to develop a common understanding of the local economies and the ways in which land-use planning decisions might affect them. During the scoping period ending on September 30, 2008, the public provided the Rio Puerco Field Office with input on relevant issues to consider in the planning process. Additional information was collected during two internal Alternatives Development Workshops and one Cooperating Agency Workshop. Based on these issues, conflicts, information, and the BLM's goals and objectives, the Rio Puerco Field Office Interdisciplinary RMP Team and managers formulated four alternatives for consideration and analysis in the Draft RMP/Draft EIS. Following the close of the public review and comment period, any substantive public comments will be used to revise the Draft RMP/Draft EIS in preparation for its release to the public as the Proposed Resource Management Plan revision and Final Environmental Impact Statement (Proposed RMP/Final EIS). The BLM will respond to each substantive comment received during the public review and comment period by making appropriate revisions to the document, or explaining why the comment did not warrant a change. Notice of the availability of the Proposed RMP/Final EIS will be posted in the **Federal Register**. Please note that public comments and information submitted—including names, street addresses, and email addresses of persons who submit comments—will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4:30 p.m.), 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: 40 CFR 1506.6; 40 CFR 1506.10; 43 CFR 1610.2

Jesse Juen,

New Mexico State Director.

[FR Doc. 2012–17146 Filed 7–12–12; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT980300–L10400000–PH0000–24–1A]

Notice of Utah's Resource Advisory Council (RAC)/Recreation Resource Advisory Council (RRAC) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC)/Recreation Resource Advisory Council (RRAC) will meet as indicated below.

DATES: The Utah RAC will meet Tuesday, August 7, 2012, (1:00 p.m.–5:00 p.m.) and the RAC/RRAC will meet Wednesday, August 8, 2012, (7:30 a.m.–2:45 p.m.) in St. George, Utah.

ADDRESSES: The RAC/RRAC will meet at the Hilton Garden Inn (Indigo meeting room), 1731 South Convention Center Drive, St. George, Utah.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Utah.

Planned agenda topics include the status of RS 2477 road issues; updates and the RAC's input on the Cedar City/St. George Resource Management Plan (RMP); progress report on the implementation of the instruction memoranda and the impact to the grazing community on sage grouse; the RAC's feedback on the Lake Mountain urban interface conflict; updates, progress, challenges, and lessons learned on the Washington County lands bill; proposal to increase campground recreation fees in the Moab Field Office; and a field tour of the Northern Transportation Route around St. George.

August 8, from 7:30 a.m.–12:00 p.m., the RAC will be touring the Red Cliffs National Conservation Area (NCA) to look at the area where alternative alignments for the Northern Transportation Route have been proposed to BLM by Washington County to be evaluated in the RMP being developed for the NCAs. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public. Appropriate vehicles for bladed and two-tracked roads are recommended. Comfortable walking shoes, sunscreen, hats, sunglasses, and weather-appropriate dress are also encouraged. Participants will meet in the lobby of the Hilton Garden Inn at 7:15 a.m. for departure at 7:30 a.m. The tour will conclude at noon with travel back to the Hilton Garden Inn prior to 12:30 p.m. On August 8, a half-hour public comment period where the public may address the Council is scheduled to begin at 1:30 p.m. Written comments may be sent to the BLM address listed above.

Juan Palma,

State Director.

[FR Doc. 2012–17107 Filed 7–12–12; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–10685: 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 16, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 30, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 22, 2012.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

San Bernardino County

Auerbacher Home, 121 Sierra Vista Dr., Redlands, 12000442

San Diego County

Lafayette Hotel, 2223 El Cajon Blvd., San Diego, 12000443

KENTUCKY

Barren County

Bybee House, Address Restricted, Glasgow, 12000444

Bath County

Smith, ''Raccoon'' John, House, Address Restricted, Owingsville, 12000445

Boyd County

Catlettsburg, Kentucky, Chesapeake and Ohio Railway Depot, Jct. of Division & Panola Sts., Catlettsburg, 12000446

Fayette County

Spindletop Farm, 3414 Ironworks Pike, Lexington, 12000447

Springview Farm, 3076 Royster Rd., Lexington, 12000448

Jefferson County

Jacob, Jefferson, School, 6517 Jacob School Rd., Prospect, 12000449

McCracken County

Jefferson Street—Fountain Avenue Residential District (Boundary Increase) Generally bounded by Park, Madison, & Fountain Aves., & Harahan, Paducah, 12000451

MAINE

Hancock County

Grand, The, 163, 165, 167, 169, & 173 Main St., Ellsworth, 12000452

Piscataquis County

Monson Community Church, 19 Greenville Rd., Monson, 12000453

York County

Colonial Inn, 145 Shore Rd., Ogunquit, 12000454

MASSACHUSETTS

Essex County

Towne Farm, 55 Towne Rd., Boxford, 12000455

MICHIGAN

Hillsdale County

Deal, J.J. and Son, Carriage Factory, 117 West St., Jonesville, 12000456

St. Clair County

USCGC BRAMBLE (cutter), 2336 Military St., Port Huron, 12000457

Wayne County

Hamtramck Stadium, 3201 Dan St., Hamtramck, 12000458

MINNESOTA

Cass County

Brainerd and Northern Minnesota—Minnesota and International Railway Depot Jct of MN 371 & Barclay Ave., Pine River, 12000459

McLeod County

Merrill, Harry, House, 225 Washington St., W., Hutchinson, 12000460

MISSISSIPPI

Jackson County

Moss Point Historic District, Roughly bounded by Dantzler, Davis, Griffin, Main, Payne, & Weems Sts., Bellview, Ely, McInnis, Torres, & Welch Aves., Moss Point, 12000461

MISSOURI

Greene County

Route 66 Steak 'n Shake, (Route 66 in Missouri MPS) 1158 E. St. Louis St., Springfield, 12000462

OHIO

Hamilton County

Brown—Gorman Farm, 10052 Reading Rd., Evendale, 12000463

Trumbull County

Chalker High School (Boundary Increase), 4432 OH 305, Southington, 12000464

PUERTO RICO

San Juan Municipality

Distrito Historico del Viejo San Juan—Old San Juan Historic District (Boundary Increase), Roughly bounded by Avenidas Munoz Rivera & Ponce de Leon, Paseo de Covadonga and Calles J. A. Corretejer, Recinto Sur, San Juan, 12000465

TENNESSEE

Knox County

Ayres Hall, 1403 Circle Dr., Knoxville, 12000466

Tyson, Gen. Lawrence D., House, 1609 Melrose Ave., Knoxville, 12000467

UTAH

Salt Lake County

Tribune Building 137 S. Main, Salt Lake City, 82005108

VIRGINIA

Richmond Independent city

Manchester Industrial Historic District (Boundary Increase), Parts of Decatur, Everett, Hull, Maury & Stockton Sts., 700 Semmes Ave., 300 E. 2nd St., 300 blk. E. 5th & 6th Sts., Richmond (Independent City), 12000468

WEST VIRGINIA

Wood County

Monroe, Dr. W.W., House, 1703 Park Ave., Parkersburg, 12000469

WYOMING

Big Horn County

Southsider Shelter, Address Restricted, Tensleep, 12000470

A request for removal has been made for the following property:

KENTUCKY

Pulaski County

City Hall, (Pulaski County MRA) 400 E. Mt, Vernon St., Somerset, 84001949

[FR Doc. 2012–17064 Filed 7–12–12; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Notice of Availability of the Proposed Final Five Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2012–2017

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of Proposed Final Program.

SUMMARY: BOEM announces the availability of the Proposed Final Five Year OCS Oil and Gas Leasing Program for 2012–2017 (PFP). This is the third and last proposal that is part of the multi-step process required by law before the Secretary of the Interior may approve a new Five Year Program. BOEM is publishing a Notice of Availability of the Five Year Final Programmatic Environmental Impact Statement concurrently with this notice. Pursuant to section 18 of the OCS Lands Act, this PFP was submitted to the President and Congress. After a period of at least 60 days from the date it was submitted to the President and Congress, the Secretary may approve the program, at which time it will become effective.

FOR FURTHER INFORMATION CONTACT: Donna Dixon, Five Year Program Manager at (703) 787–1215.

SUPPLEMENTARY INFORMATION: This is the third and final proposal in the required statutory preparation process for a new program to succeed the current program, which expires on June 30, 2012. The first proposal—the Draft Proposed Program—was issued in January 2009, for a 60-day comment period that was extended by an additional 180 days and closed on September 21, 2009. The second proposal—the Proposed Program (PP)—was issued in November 2011 with a 90-day comment period.

The PFP document may be downloaded from the BOEM Web site at *www.boem.gov.* Hard copies may be obtained by contacting the Five Year Program Office at (703) 787–1215. The use of the acronym ''BOEM'' includes BOEM's predecessor agencies, the Bureau of Ocean Energy Management, Regulation and Enforcement and the Minerals Management Service, as appropriate.

Summary of the Proposed Final Program

The PFP document further analyzes the six program areas that were proposed and analyzed in the November 2011 PP. The PFP schedules a total of 15 OCS lease sales in 6 areas (3 areas off Alaska and 3 areas in the Gulf of Mexico (GOM)). Maps A and B show the areas proposed for leasing. Table B (from the PFP document) lists the location and timing of the proposed lease sales in areas under consideration for leasing.

In the Central and Western GOM Planning Areas, which remain the two areas of highest resource potential and interest, the PFP schedules annual areawide lease sales of all unleased legally available acreage, starting in 2012 in the Western GOM and in 2013 in the Central GOM. There are two lease sales scheduled in the portion of the Eastern GOM Planning Area that is not under congressional moratorium pursuant to the Gulf of Mexico Energy Security Act of 2006 (GOMESA). The PFP area includes the 2008 Sale 224 Area and a sliver to the southeast of that area. There also is a portion of the Central Gulf within 100 miles of Florida that is unavailable pursuant to GOMESA.

In the Alaska Region, the Five Year Program proposes one sale in the Chukchi Sea in 2016, excluding a 25-mile buffer area along the coast, as presented in the PP. In addition to the 25-mile buffer, the Secretary has determined that an additional area north of Barrow shall be removed from consideration. This additional deferral area is located north of Barrow and covers 208 OCS lease blocks beyond the northern edge of the 25-mile exclusion area. In the Beaufort Sea, one sale is scheduled, excluding the two whaling deferral areas from leasing consideration, as was done in the PP. The Beaufort Sea sale date has been scheduled in 2017, in recognition of the significant overlapping of subsistence use, resource distribution, and species habitat; and to allow more time to analyze and implement our focused leasing strategy in this area.

In light of the significant resource potential that exists in the Alaskan Arctic, the substantial environmental challenges, as well as the social and ecological concerns that are present, BOEM's regionally tailored strategy for

any future offshore oil and gas leasing in the Arctic is markedly different from the traditional areawide leasing model applied in the GOM, in which all unleased legally available acreage in the area is typically offered for sale. While the Five Year Program includes much of the planning areas as program areas for leasing consideration, BOEM is developing a process in which the Bureau will continue to use incoming scientific information and stakeholder feedback to proactively determine, in advance of any potential sale, which specific areas offer the greatest resource potential while minimizing potential conflicts with environmental and subsistence considerations.

The Cook Inlet Planning Area is included on the schedule as a special interest sale. On March 27, 2012, BOEM issued a Request for Interest. In light of responses to the Request, BOEM decided to proceed with the pre-sale process for the Cook Inlet and to place the date for a potential lease sale in 2016 to allow time to complete the necessary steps under the OCS Lands Act, develop additional resource and environmental information, and conduct an Environmental Impact Statement under the National Environmental Policy Act.

Section 18 of the OCS Lands Act requires the receipt of fair market value for OCS oil and natural gas leases and the rights they convey. A series of agency decisions related to the timing of lease sales, the leasing framework, sale terms, and bid adequacy will provide the foundation for ensuring receipt of fair market value. Under the PFP, BOEM intends to use a two-phase post-sale bid evaluation process that has been in effect since 1983, while studying and evaluating refinements and alternative approaches throughout the 2012–2017 Five Year Program. The flexibility incorporated into the PFP allows BOEM to evaluate alternatives with respect to delaying or canceling a sale area, choosing a leasing framework, and setting the fiscal terms and conditions by individual lease sale, based on a current assessment of market and resource conditions.

TABLE B—PROPOSED FINAL PROGRAM FOR 2012–2017—LEASE SALE SCHEDULE

Sale No.	Area	Year
229	Western Gulf of Mexico	2012
227	Central Gulf of Mexico	2013
233	Western Gulf of Mexico	2013
225	Eastern Gulf of Mexico	2014
231	Central Gulf of Mexico	2014
238	Western Gulf of Mexico	2014
235	Central Gulf of Mexico	2015
246	Western Gulf of Mexico	2015
226	Eastern Gulf of Mexico	2016
241	Central Gulf of Mexico	2016
237	Chukchi Sea	2016
248	Western Gulf of Mexico	2016
244	Cook Inlet	2016
247	Central Gulf of Mexico	2017
242	Beaufort Sea	2017

Dated: June 28, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

BILLING CODE 4310–MR–P

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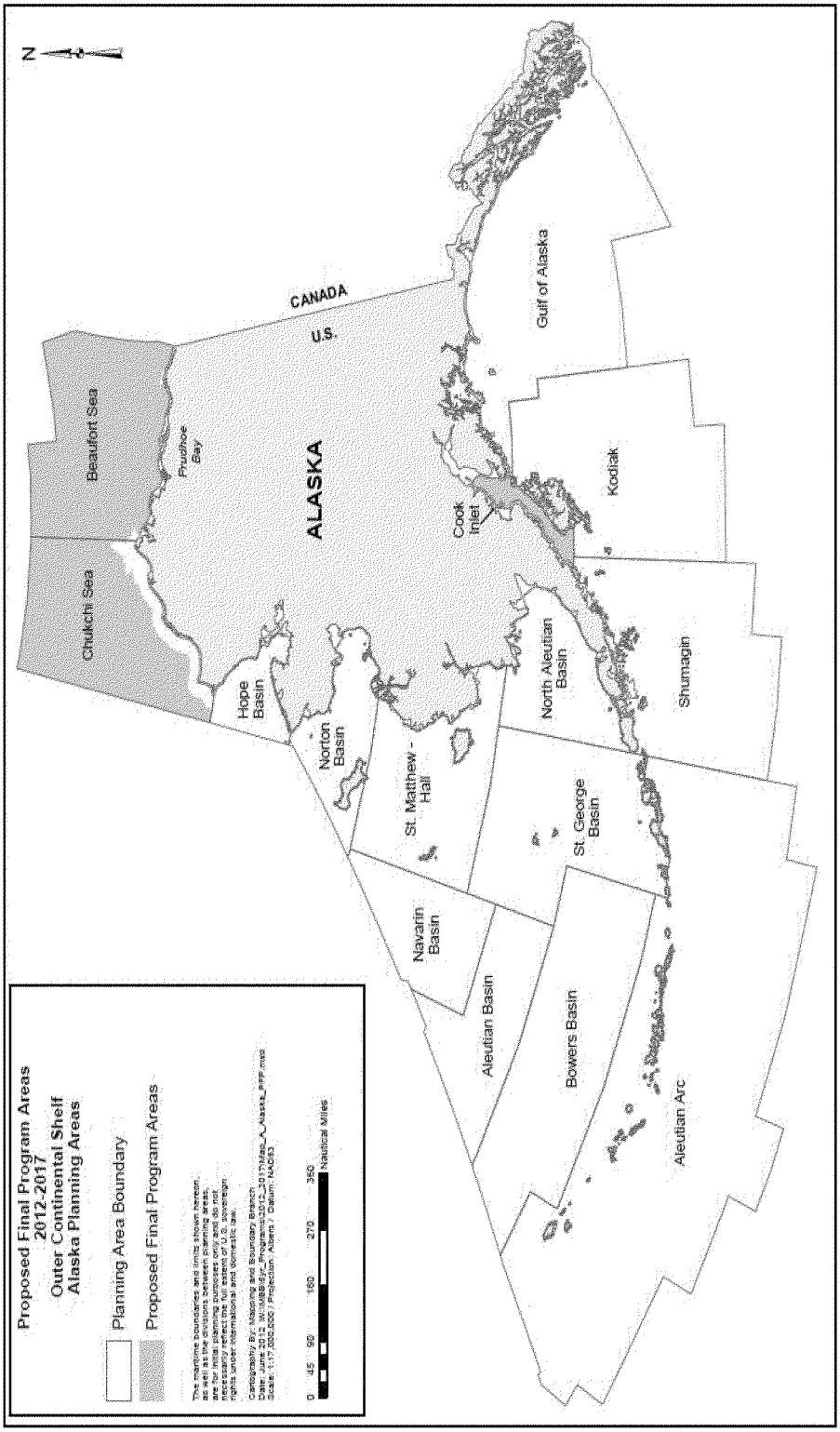
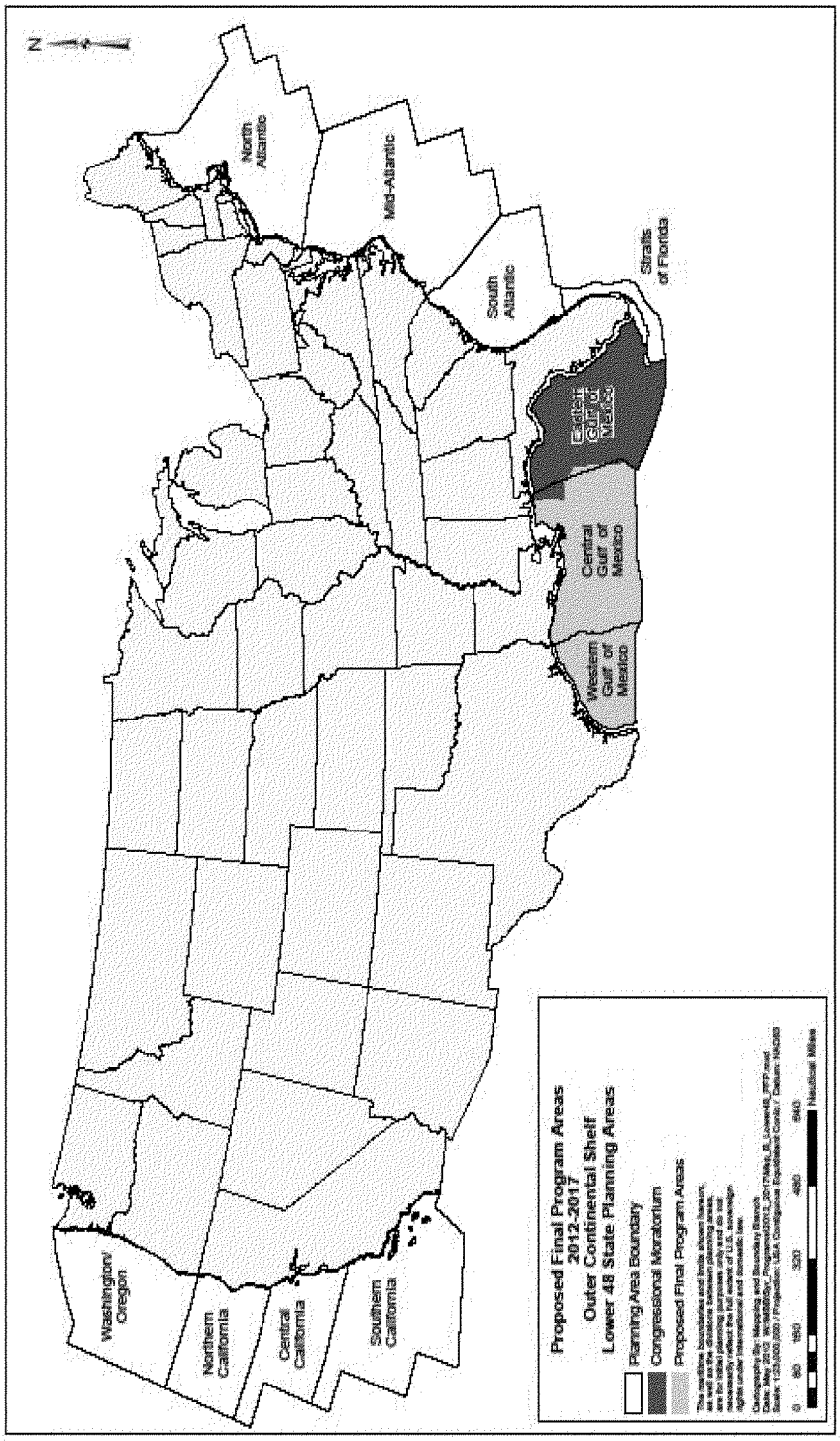


ap A—Alaska Proposed Final Program Areas



Map B—Lower 48 Proposed Final Program Areas

[FR Doc. 2012–17048 Filed 7–12–12; 8:45 am]

BILLING CODE 4310–MR–C

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–019]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: July 19, 2012 at 11:00 a.m.

PLACE: Room 100, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–1202 and 1203 (Preliminary)(Xanthan Gum from Austria and China). The Commission is

currently scheduled to transmit its determinations to the Secretary of Commerce on or before July 20, 2012; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before July 27, 2012.

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: July 9, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–17275 Filed 7–11–12; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on July 6, 2012, a proposed Complaint was filed and a proposed Consent Decree lodged in the case of *United States and the State of Missouri* v. *Kellwood Company,* Civil Action No. 12–1216, in the United States District Court for the Eastern District of Missouri.

The United States and the State filed a Complaint alleging that Defendant Kellwood Company is liable pursuant to Sections 106 and 107 of CERCLA in connection with Operable Units 2 and 6 of the Riverfront Superfund Site (''Site'') located in and around New Haven, Missouri. EPA issued a Record of Decision on May 13, 2011 selecting a remedy to address tetrachloroethene (''PCE'') contamination at Operable Units 2 and 6 of the Site. The proposed Consent Decree requires Kellwood Company to perform the remedial action for Operable Units 2 and 6 in accordance with the Record of Decision and an attached Statement of Work. The proposed Consent Decree also requires Kellwood Company to reimburse all of EPA's past costs and the future costs to be incurred by EPA and the State for Operable Units 2 and 6.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Missouri* v. *Kellwood Company,* D.J. Ref. No. 90–11–2–08795/1.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $41.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 2012–17054 Filed 7–12–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection on Employment and Training (ET) Handbook 361, Unemployment Insurance (UI) Data Validation (DV), Extension With Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data for the UI DV program. Collection authority for this program expires July 31, 2014.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 11, 2012.

ADDRESSES: Submit written comments to Burman Skrable, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3197 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *skrable.burman@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(6) of the Social Security Act specifies that the Secretary of Labor will not certify State UI programs to receive administrative grants unless the State's law includes provisions for—

> making of such reports * * * as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The Department considers data validation one of those ''provisions * * * necessary to assure the correctness and verification'' of the reports it requires.

The Government Performance and Results Act of 1993 (GPRA) requires Federal agencies to develop annual and strategic performance plans that establish performance goals, have concrete indicators of the extent that goals are achieved, and set performance targets. Each year, the agency is to issue a report that ''evaluate[s] the performance plan for the current fiscal year relative to the performance achieved toward the performance goals in the fiscal year covered by the report.'' Section 1116 (d)(2) of OMB Circular A–11, which implements the GPRA process, cites the Reports Consolidation Act of 2000 to emphasize the need for data validation by requiring that the agency's annual performance report

''contain an assessment of the completeness and reliability of the performance data included in it [that] * * * describes any material inadequacies in the completeness and reliability of the data.'' (OMB Circular A–11, Section 230.2 (f)). The Department emphasizes the importance of complete and accurate information for program monitoring and improving program performance.

The UI DV program employs a refined and automated approach to review 322 elements reported on 13 benefits reports and one tax report. The Department uses many of these elements for key performance measures as well as for workload items.

The validation process assesses the validity (accuracy) of the counts of transactions or measurements of status as follows. In the validation process, guided by a detailed handbook, the state first constructs extract files containing all pertinent individual transactions for the desired report period to be validated. These transactions are grouped into 15 benefits and five tax populations. Each transaction record contains the necessary characteristics or dimensions that enable it to be summed into an independent recount of what the state has already reported. The Department provides state agencies with software that edits the extract file (to identify and remove duplicate transactions and improperly built records, for example), then aggregates the transactions to produce an independent reconstruction or ''validation count'' of the reported figure. The reported count is considered valid by this ''quantity'' validation test if it is within ±2% of the validation count (±1% for a GPRA-related element).

The software also draws samples of most transaction types from the extract files. Guided by a state-specific handbook, the validators review these sample records against documentation in the state's management information system to determine whether the transactions in the extract file are supported by system documentation. This qualitative check determines whether the validation count can be trusted as accurate. The benefits extract files are considered to pass this ''quality'' review if random samples indicate that no more than 5% of the records contain errors; tax files are subjected to different but related tests. A reported count is considered valid only if it differs from a reconstructed (validation) count by no more than the appropriate criterion of ±2% or ±1%, and that validation count comes from an extract file that has satisfied all quality tests.

For Federal fiscal years 2011 and beyond, all states will be required to conduct a complete validation every three years. In three cases the three-year rule does not apply, and a revalidation must occur within one year: (1) Groups of reported counts that are summed for purposes of making a Pass/Fail determination and do not pass validation by being within ±2% of the reconstructed counts or the extract file does not pass all quality tests; (2) the validation applies to the two benefits populations and one tax population used for GPRA measures; and (3) reports are produced by new reporting software. Every year states must also certify that Module 3 of the Benefits and Tax handbooks are up to date.

In January 2012 through UIPL 08–12 the Department issued changes that added 100 cells to the ETA 227 report; most of these cells will be validated through the UI DV program. The ETA 227 report is now validated through three of the 15 benefit populations. Accommodating the new report cells requires: (1) Adding a sixteenth benefit population; (2) making one-time changes to the three populations that validate the old 227 report; and (3) adding 13 items (called Steps or Substeps) to Module 3 of the Benefits handbook, which relates State definitions and data system locations for Federal reporting requirements. These changes will impose both one-time and continuing burdens on state validators.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with revisions.

Title: Unemployment Insurance Data Validation Benefits and Tax.

OMB Number: 1205–0431.

Affected Public: State Workforce Agencies.

Form(s): ET Handbook 361.

Total Annual Respondents: 53.

Annual Frequency: At least five validation items per state (two benefits populations and one tax population) plus reviewing and certifying that Benefits and Tax Module items are up to date.

Total Annual Estimated Responses: 265 (53 states × 5 populations).

Average Time per Response: 573 Hours.

Estimated Total Annual Burden Hours: 30,369 Hours.

Total Annual Burden Cost for Respondents: $1,244,825.31.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: Signed on this 5th day of July 2012.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2012–17068 Filed 7–12–12; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Submission for OMB Review, Comment Request, Proposed Collection: General Clearance for Guidelines, Applications, and Reporting Forms

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and Humanities.

ACTION: Submission for OMB Review, Comment Request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202–653–4614. This review helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before August 13, 2012.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Kim A. Miller, Management Analyst, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Telephone: 202–653–4762; Fax: 202–653–4600; or email: *kmiller@imls.gov;* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. The mission of IMLS is to inspire libraries and museums to advance innovation, lifelong learning, and cultural and civic engagement. We provide leadership through research, policy development, and grant making. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. (20 U.S.C. 9101 *et seq.*).

Current Actions: This notice proposes general clearance of the agency's guideline application and report forms. The 60-day Notice for the ''Notice of Continuance for General Clearance for Guidelines, Applications, and Reporting Forms'' was published in the **Federal Register** on May 10, 2012 (FR vol. 77, No. 91, pgs. 27486). No comments were received.

Agency: Institute of Museum and Library Services.

Title: IMLS Guidelines, Applications and Reporting Forms.

OMB Number: 3137–0029, 3137–0071.

Agency Number: 3137.

Frequency: Annually, Semi-annually.

Affected Public: State Library Administrative Agencies, museums, libraries, institutions of higher education, library and museum professional associations, and museum and library professionals, Indian tribes (including Alaska native villages, regional corporations, or village corporations), and organizations that primarily serve and represent Native Hawaiians.

Number of Respondents: 7,961.

Estimated Time per Respondent: .08–90 hours.

Total Burden Hours: 70,092.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs: $1,921,209.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: July 10, 2012.

Kim A. Miller,

Management Analyst, Office of Policy, Planning, Research, and Communication.

[FR Doc. 2012–17169 Filed 7–12–12; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425; NRC–2012–0169]

Southern Nuclear Operating Company, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern Nuclear Operating Company, Inc. (the licensee) to withdraw its December 19, 2011, application for proposed amendment to Facility Operating License No. NPF–81 for the Vogtle Electric Generating Plant, Unit 2, located in Burke County, Georgia.

The proposed amendment would have revised the Technical Specifications related to the Engineered Safety Features Room Cooler and Safety-Related Chiller System, Allowed Completion Time for Condition A.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 7, 2012 (77 FR 6149). However, by letter dated June 19, 2012, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 19, 2011, and the licensee's letter dated June 19, 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 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* 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 5th day of July 2012.

For the Nuclear Regulatory Commission.

Patrick G. Boyle,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–17121 Filed 7–12–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; NRC–2012–0168]

Entergy Nuclear Indian Point Unit 2, LLC, Entergy Nuclear Indian Point Unit 3, LLC, Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and changes to the Technical Specifications (TSs) for Facility Operating License Nos. DPR–26 and DPR–64, issued to Entergy Nuclear Operations, Inc. (Entergy or the licensee) for operation of the Indian Point Nuclear Generating Units 2 and 3 (IP2 and IP3) located in Westchester County, New York, in accordance with Title 10 of the *Code of Federal*

Regulations (10 CFR) 50.90. The proposed changes request NRC approval for the transfer of spent fuel from the IP3 spent fuel pool (SFP) to the IP2 SFP using a newly-designed shielded transfer canister (STC), for further transfer to the on-site Independent Spent Fuel Storage Installation (ISFSI). Therefore, as required by 10 CFR 51.21, the NRC staff performed an environmental assessment (EA). The NRC staff did not identify any significant environmental impacts associated with the proposed action based on its evaluation of the information provided in the licensee's application and other available information. Therefore, the NRC staff is issuing a finding of no significant impact (FONSI) for the proposed action.

Environmental Assessment

Plant Site and Environs

IP2 and IP3 are located on approximately 239 acres (97 hectares) of land in the Village of Buchanan in upper Westchester County, New York. The facility is on the eastern bank of the Hudson River. Both IP2 and IP3 use Westinghouse pressurized-water reactors and nuclear steam supply systems. For each unit, cooling is provided by a once-through cooling water intake that supplies cooling water from the Hudson River. Indian Point Nuclear Generating Unit No. 1 (IP1), now permanently shut down, shares the site with IP2 and IP3. IP1 was shut down in 1974, and is in a safe storage condition awaiting final decommissioning.

Identification of the Proposed Action

The proposed changes request NRC approval for the transfer of spent fuel from the IP3 SFP to the IP2 SFP using a newly-designed STC, for further transfer to the on-site ISFSI, which uses the Holtec HI–STORM 100 dry cask storage system that has been previously certified for dry spent fuel storage under 10 CFR part 72. Entergy has no plans to make extensive physical modifications to existing plant buildings or property for the proposed action. The proposed action is detailed in the licensee's application dated July 8, 2009, Agencywide Documents Access and Management System (ADAMS) Accession No. ML091940176, as supplemented by letters dated September 28, 2009; ADAMS Accession No. ML092950437; October 26, 2009, ADAMS Accession No. ML093020080; October 5, 2010, ADAMS Accession No. ML102910511; October 28, 2010, ADAMS Accession Nos. ML103080112 and ML103080113; July 28, 2011, ADAMS Accession No. ML11220A079; August 23, 2011, ADAMS Accession Nos. ML11243A174, ML11243A175; and ML11243A220; October 28, 2011, ADAMS Accession No. ML11327A045 and ML11327A046; December 15, 2011, ADAMS Accession No. ML12013A259; January 11, 2012, ADAMS Accession No. ML120400604; March 2, 2012, ADAMS Accession No. ML12074A027, April 23, 2012, ADAMS Accession No. ML12129A457, and May 7, 2012, ADAMS Accession No. ML121370318. The licensee's application and supplemental submissions are accessible electronically from the NRC's Web site, *www.nrc.gov.*

The Need for the Proposed Action

Entergy requested the proposed action because transferring the IP3 spent fuel from the IP3 SFP directly into dry storage casks is not possible due to the limitations of the 40-ton cask handling crane in the IP3 fuel storage building (FSB) where the SFP is located. A cask handling crane capacity of at least 100 tons is required to lift and handle the loaded HI–TRAC transfer cask licensed as part of the HI–STORM 100 System. Entergy had previously added a single-failure-proof gantry crane with this capacity to the IP2 FSB, by excavating to bedrock and supporting the crane foundation on bedrock. An upgrade to the IP3 cask handling crane capacity to 100 tons or more was evaluated and found to be not feasible and as such results in the need for inter-unit fuel transfer. The IP3 SFP is approaching the limit of its storage capacity. Spent fuel must be removed from the IP3 SFP to restore and maintain the ability to unload the entire IP3 reactor core into the IP3 SFP for the remainder of its service life in order to perform maintenance on the reactor vessel and associated systems.

Environmental Impacts of the Proposed Action

Non-Radiological Impacts

Land Use and Aesthetic Impacts

There are no potential land use and aesthetic impacts from the proposed action. No new construction of buildings is proposed. The work activities would occur within existing structures. Existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms would be used during implementation of the proposed action. Land use conditions would not change at the Indian Point site. Therefore, there would be no significant impact from the proposed action.

Air Quality Impacts

Some minor and short duration air quality impacts would occur during implementation of the fuel transfer at the site. The main source of air emissions would come from the vehicles driven by plant workers and contractors. However, air emissions would be less than is experienced during the routine refueling outages once each year. Therefore, there would be no significant impact on air quality in the region during and following implementation of the proposed action.

Surface Water Impacts

There are no potential surface water impacts from the proposed action. No new use of surface water or effluent discharges into surface water will be made as part of the proposed action. Therefore, there would be no significant impact to surface water resources during implementation of the proposed action.

Groundwater Impacts

There are no potential groundwater impacts from the proposed action. No new use of groundwater or effluent discharges into groundwater will be made as part of the proposed action. Therefore, there would be no significant impact to groundwater resources during implementation of the proposed action.

Aquatic Resources Impacts

There are no potential impacts to aquatic resources from the proposed action. No new effluent discharges into the aquatic environment will be made as part of the proposed action. Therefore, there would be no significant impact to aquatic resources during implementation of the proposed action.

Terrestrial Resources Impacts

There are no potential impacts to terrestrial resources from the proposed action. No new land areas will be disturbed and no new effluent discharges will be made as part of the proposed action. Therefore, there would be no significant impact to terrestrial resources during implementation of the proposed action.

Threatened and Endangered Species Impacts

There are no potential impacts to threatened and endangered species from the proposed action. No new withdrawals from the Hudson River or any new effluent discharges into the aquatic environment will be made as part of the proposed action. Therefore, there would be no significant impact to threatened and endangered species during implementation of the proposed action.

Historic and Archaeological Resources Impacts

There are no potential impacts to historic and archaeological resources from the proposed action because no new construction on the site or vicinity of the site is proposed. The work activities would occur within existing structures. Existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms would be used during implementation of the proposed action. Therefore, there would be no significant impact to historic and archaeological resources from the proposed action.

Socioeconomic Impacts

Potential socioeconomic impacts from the proposed action include a temporary increase in the size of the workforce at the Indian Point site. The expected increase is much smaller than the additional workforce experienced during a refueling outage. Therefore, due to the small and temporary increase in the number of workers needed to support the proposed action, there are no significant socioeconomic impacts associated with the proposed action.

Environmental Justice Impacts

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from activities associated with the proposed action at the Indian Point site. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general population residing in the vicinity of the Indian Point site, and all are exposed to the same health and environmental effects generated from activities at the Indian Point site. Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the proposed action would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the Indian Point site.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents and Solid Waste

Indian Point uses waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and Environmental Protection Agency radiation safety standards. The proposed action will not significantly change the types or amounts of radioactive gaseous and liquid waste. At the site, the volume of solid radioactive waste is expected to show a small increase because of the use of protective clothing for the workers, the disposal of used seals from the STC and HI–TRAC lids, and decontamination work performed on equipment and work areas. However, the additional volume would not have a significant effect on the plant's ability to handle and process the waste. Based on the above, there are no significant radioactive waste impacts associated with the proposed action.

Occupational Radiation Dose

To protect plant workers, the licensee's radiation protection program monitors radiation levels throughout the plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR part 20. Entergy evaluated the potential occupational exposures that would result from the operational sequence to transfer spent fuel assemblies from the IP3 SFP to the IP2 SFP. The evaluation concluded that the radiation dose to workers would be within the dose limits specified in 10 CFR 20.1201. The NRC staff reviewed the dose estimates for the transfer operations in its safety evaluation for the proposed action and concluded that the dose estimates for the operations activities are reasonable. Based on the above, there are no significant occupational dose impacts associated with the proposed action.

Offsite Doses to Members of the Public

The licensee will maintain radiological controls in accordance with its radiation protection program throughout the spent fuel transfer operations. The licensee's evaluation of the potential dose to a member of the public at the boundary of the plant's controlled area during the proposed action shows that offsite doses would be within the public dose limit in 10 CFR 20.1301. Based on the above, the offsite radiation dose to members of the public would continue to be within NRC regulatory limits and, therefore, would not be significant.

Accident Doses to Members of the Public

Various accidents were postulated, such as a dropped fuel assembly, extended time delays during transfer operations, a dropped shielded cask full of spent fuel, a fire involving the cask transporter, a tornado during transfer operations, and a tipover of the shielded cask full of spent fuel. These accidents were analyzed by the licensee and the analyses were reviewed by NRC staff to assure that there is no undue hazard to the health and safety of the public. The licensee calculated the dose to a member of the public at the boundary of the plant's controlled area for accident conditions involving the spent fuel transfer operations. The licensee's analyses demonstrate that the dose to members of the public will be within the public dose limits in 10 CFR 20.1301. The NRC staff, in its safety evaluation, found the licensee's evaluation to be reasonable. Based on the above, the offsite radiation dose to members of the public in the event of a fuel transfer accident would continue to be within NRC regulatory limits and, therefore, would not be significant.

Alternatives to the Proposed Action

As an alternative to the proposed action the licensee considered using a spent fuel cask which was already licensed as a transportation package under 10 CFR part 71. The licensee identified one cask which could be lifted by the existing IP3 crane, but it only had the capacity for a single fuel assembly. This would severely limit the rate of fuel transfer and would also increase the total radiation exposure to the workers involved with fuel movement. Using that cask would entail similar operations as using the STC, which holds up to 12 fuel assemblies, but the result would be almost 12 times as many trips from the IP3 FSB to the IP2 FSB.

The NRC staff also considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the proposed action were not approved for IP2 and IP3, Entergy would have to consider installing an IP3 spent fuel cask handing crane with at least a 100-ton capacity to lift and handle its standard HI–TRAC fuel transfer cask. Such an action would require major upgrades to plant equipment and modifications to plant structures, as well as radiation doses to workers in the IP3 FSB during the construction process.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for IP2, dated September 30, 1972, ADAMS Accession Nos. ML072390276 and ML072390278, or the Final Environmental Statement for IP3, dated February 28, 1975,

ADAMS Accession Nos. ML072390284 and ML072390286.

Agencies and Persons Consulted

In accordance with its stated policy, on February 17, 2012, the NRC staff consulted with the designated New York State official regarding the environmental impacts of the proposed action. The State official had no comments on the environmental impacts.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC staff concludes that granting the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has determined it is not necessary to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated July 8, 2009, Agencywide Documents Access and Management System (ADAMS) Accession No. ML091940176, as supplemented by letters dated September 28, 2009, ADAMS Accession No. ML092950437; October 26, 2009, ADAMS Accession No. ML093020080; October 5, 2010, ADAMS Accession No. ML102910511; October 28, 2010, ADAMS Accession Nos. ML103080112 and ML103080113; July 28, 2011, ADAMS Accession No. ML11220A079; August 23, 2011, ADAMS Accession Nos. ML11243A174, ML11243A175; and ML11243A220; October 28, 2011, ADAMS Accession No. ML11327A045 and ML11327A046; December 15, 2011, ADAMS Accession No. ML12013A259; January 11, 2012, ADAMS Accession No. ML120400604; March 2, 2012, ADAMS Accession No. ML12074A027, April 23, 2012, ADAMS Accession No. ML12129A457, and May 7, 2012, ADAMS Accession No. ML121370318. Publicly available versions of the 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 Electronic 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 send an email to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: John Boska, Office of Nuclear Reactor Regulation, Mail Stop 0–8C2, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–2901, or by email at *John.Boska@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of July 2012.

For the Nuclear Regulatory Commission.

John P. Boska,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–17110 Filed 7–12–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0170]

Aging Management Associated With Wall Thinning Due to Erosion Mechanisms

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) requests public comment on Draft License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2012–01, ''Wall Thinning Due to Erosion Mechanisms.'' The draft LR–ISG proposes to revise an NRC staff-recommended aging management program (AMP) in NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report,'' and the NRC staff's aging management review procedure and acceptance criteria contained in NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR) to address wall thinning due to various erosion mechanisms for piping and components within the scope of the Requirements for Renewal of Operating Licenses for Nuclear Power Plants. This LR–ISG provides changes to the recommendations in GALL Report, Revision 2, AMP XI.M17, ''Flow-Accelerated Corrosion,'' based on the staff's review of several license renewal applications' flow-accelerated corrosion AMPs and stakeholder input.

DATES: Submit comments by August 27, 2012. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

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–2012–0170. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0170. 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.

FOR FURTHER INFORMATION CONTACT: Mr. James Gavula, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 630–829–9755; email: *James.Gavula@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0170 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0170.
- *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 draft

LR–ISG–2012–01 is available electronically under ADAMS Accession No. ML12114A211. The GALL Report and SRP–LR are available under ADAMS Accession Nos. ML103490041 and ML103490036, respectively.

• *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.

• *NRC's Interim Staff Guidance Web Site:* The LR–ISG documents are also available online under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int*.

B. Submitting Comments

Please include Docket ID NRC–2012–0170 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 that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely 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 that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely 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

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents, such as the GALL Report and SRP–LR. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document before it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISGs in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC staff has developed draft LR–ISG–2012–01 to: (a) Revise the definition of ''wall thinning'' to include erosion mechanisms; (b) revise the definition of ''flow-accelerated corrosion'' and ''erosion'' to align them with the definitions commonly used in industry; (c) allow applicants that have identified wall thinning due to erosion mechanisms to monitor wall thinning caused by erosion mechanisms to be included in the aging management program for flow-accelerated corrosion by (i) ensuring extent of condition reviews determine if other components are susceptible to similar degradation, and (ii) verifying that corrective actions have either eliminated the erosion mechanism precluding the need for ongoing aging management activities or included periodic wall thickness measurements in an aging management program; and (d) make miscellaneous and editorial changes.

III. Proposed Action

By this action, the NRC is requesting public comments on draft LR–ISG–2012–01. This LR–ISG proposes certain revisions to NRC guidance on implementation of the requirements in 10 CFR Part 54. The NRC staff will make a final determination regarding issuance of the LR–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 5th day of July 2012.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–17117 Filed 7–12–12; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from March 1, 2012, to March 31, 2012.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes annually a consolidated listing of all Schedule A, B and C appointing authorities current as of June 30 as a notice in the **Federal Register**.

Schedule A

The following Schedule A authority is amended to read as follows.

10. Department of Justice (Sch. A, § 213.3110).

(a) General.

(7) Positions necessary throughout DOJ, for the excepted service transfer of NDIC employees hired under Schedule A, § 213.3110(d). Authority expires September 30, 2012.

(d) (Reserved, moved to Justice).

Schedule B

The Schedule B authority is amended to read as follows:

11. Department of Homeland Security (Sch. B, § 213.3211).

(a) Coast Guard.

Up to 35 permanent positions at the GS–9 through GS–15 grade levels and 1 senior level (SL) position classified above GS–15 pursuant to section 5108 of title 5, United States Code, that does not meet the definition of an SES position at section 3132 of title 5. This authority may be used to fill GS–080 (Security) and GS–132 (Intelligence) positions. No appointments may be made under this authority after April 30, 2012.

Schedule C

The following Schedule C appointing authorities were approved during March 2012.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Office of the Secretary	Confidential Assistant	DA120041	03/23/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Commerce	Office of the Chief of Staff	Director of Scheduling	DC120077	03/15/2012
	Assistant Secretary and Director General of United States and Foreign Commercial Service.	Special Advisor	DC120083	03/23/2012
	Office of the Under Secretary	Special Advisor	DC120084	03/23/2012
Department of Defense	Office of the Secretary	Director, Travel Operations	DD120032	03/07/2012
	Washington Headquarters Services.	Defense Fellow	DD120037	03/09/2012
	Office of the Director (Cost Assessment and Program Evaluation).	Special Assistant for Special Projects.	DD120038	03/30/2012
Department of The Navy	Office of the Secretary	Special Advisor	DN120012	03/08/2012
Department of Education	Office for Civil Rights	Confidential Assistant	DB120030	03/30/2012
	Office of the Secretary	Confidential Assistant	DB120040	03/30/2012
	Office of the Secretary	Confidential Assistant	DB120041	03/30/2012
Department of Energy	Office of the Deputy Secretary	Special Assistant	DE120053	03/15/2012
	Office of the Secretary	Deputy White House Liaison	DE120054	03/20/2012
	Office of the Secretary	Special Assistant	DE120058	03/22/2012
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Specialist	DE120056	03/29/2012
	Office of Electricity Delivery and Energy Reliability.	Special Assistant	DE120057	03/29/2012
	Assistant Secretary for Energy Efficiency and Renewable Energy.	Senior Advisor	DE120068	03/29/2012
	Office of the Secretary	Special Advisor	DE120067	03/30/2012
Environmental Protection Agency	Office of the Administrator	Deputy Press Secretary	EP120016	03/02/2012
Federal Communications Commission.	Office of Strategic Planning and Policy Analysis.	Advisor	FC120007	03/20/2012
General Services Administration	Office of the Administrator	Communications Director	GS120012	03/30/2012
Department of Health And Human Services.	Office of the Assistant Secretary for Public Affairs.	Special Assistant	DH120059	03/19/2012
Department of Homeland Security	Office of the Assistant Secretary for Intergovernmental Affairs.	Local Affairs Coordinator	DM120073	03/13/2012
	Office of the Chief of Staff	Deputy White House Liaison	DM120075	03/13/2012
	Federal Emergency Management Agency.	Director of Public Affairs	DM120076	03/13/2012
	U.S. Customs and Border Protection.	Advisor	DM120078	03/15/2012
	Office of the Assistant Secretary for Policy.	Advisor for International Affairs and Chief Diplomatic Officer.	DM120079	03/15/2012
	U.S. Customs and Border Protection.	Senior Advisor	DM120085	03/23/2012
	Office of the Assistant Secretary for Public Affairs.	Assistant Press Secretary	DM120084	03/29/2012
	Office of the Under Secretary for National Protection and Programs Directorate.	Senior Advisor for Public Affairs	DM120086	03/29/2012
	Federal Emergency Management Agency.	Associate Director of Public Affairs/Press Secretary.	DM120089	03/30/2012
Department of Housing and Urban Development.	Office of the Secretary	Financial Analyst for Housing Finance.	DU120025	03/28/2012
Department of the Interior	Secretary's Immediate Office	Special Assistant	DI120028	03/12/2012
Department of Justice	Office on Violence Against Women	Special Assistant	DJ120030	03/02/2012
	Office of Public Affairs	Senior Public Affairs Specialist	DJ120031	03/08/2012
Department of Labor	Office of the Secretary	Special Assistant	DL120035	03/08/2012
	Employee Benefits Security Administration.	Senior Advisor	DL120036	03/09/2012
	Office of Public Affairs	Special Assistant	DL120037	03/15/2012
	Wage and Hour Division	Chief of Staff	DL120039	03/23/2012
Office of Management and Budget	Natural Resource Programs	Confidential Assistant	BO120019	03/29/2012
	Health Division	Confidential Assistant	BO120021	03/30/2012
Office of Personnel Management	Planning and Policy Analysis	Deputy Performance Improvement Officer.	PM120013	03/07/2012
President's Commission on White House Fellowships.	President's Commission on White House Fellowships.	Special Assistant	WH120002	03/05/2012
Small Business Administration	Office of Communications and Public Liaison.	Senior Speechwriter	SB120016	03/07/2012
	Office of Communications and Public Liaison.	Press Secretary	SB120017	03/19/2012
	Office of the Administrator	Special Advisor	SB120019	03/29/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Communications and Public Liaison.	Deputy Press Secretary	SB120020	03/29/2012
Department of State	Office of the Chief of Protocol	Protocol Officer	DS120061	03/30/2012
Department of the Treasury	Under Secretary for International Affairs.	Managing Director, China Operations.	DY120068	03/22/2012

The following Schedule C appointing authorities were revoked during March 2012.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Rural Housing Service	Special Assistant	DA120016	3/18/2012
Department of Commerce	Office of the Director	Associate Director for Business Development.	DC100041	3/9/2012
	National Oceanic and Atmospheric Administration.	Policy Advisor for the Under Secretary.	DC110056	3/9/2012
	Office of Legislative and Intergovernmental Affairs.	Legislative Assistant	DC100072	3/10/2012
Department of Energy	Assistant Secretary for Congressional and Intergovernmental Affairs.	Deputy Assistant Secretary for Senate Affairs.	DE100106	3/10/2012
Department of Homeland Security	Office of the Chief of Staff	Deputy White House Liaison	DM110161	3/10/2012
Department of the Navy	Office of the Secretary	Special Assistant	DN110008	3/11/2012
Federal Energy Regulatory Commission.	Office of External Affairs	Deputy Director, Office of External Affairs.	DR100017	3/18/2012
President's Commission on White House Fellowships.	President's Commission on White House Fellowships.	Special Assistant	WH110001	3/10/2012

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–17128 Filed 7–12–12; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 30e–2; SEC File No. 270–437; OMB Control No. 3235–0494.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), (''Paperwork Reduction Act'') the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 30e–2 (17 CFR 270.30e–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') requires registered unit investment trusts (''UITs'') that invest substantially all of their assets in shares of a management investment company (''fund'') to send their unitholders annual and semiannual reports containing financial information on the underlying company. Specifically, rule 30e–2 requires that the report contain all the applicable information and financial statements or their equivalent, required by rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1) to be included in reports of the underlying fund for the same fiscal period. Rule 30e–1 requires that the underlying fund's report contain, among other things, the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. The purpose of this requirement is to apprise current shareholders of the operational and financial condition of the UIT. Absent the requirement to disclose all material information in reports, investors would be unable to obtain accurate information upon which to base investment decisions and consumer confidence in the securities industry might be adversely affected. Requiring the submission of these reports to the Commission permits us to verify compliance with securities law requirements.

Rule 30e–2, however, permits, under certain conditions, delivery of a single shareholder report to investors who share an address (''householding''). Specifically, rule 30e–2 permits householding of annual and semi-annual reports by UITs to satisfy the delivery requirements of rule 30e–2 if, in addition to the other conditions set forth in the rule, the UIT has obtained from each applicable investor written or implied consent to the householding of shareholder reports at such address. The rule requires UITs that wish to household shareholder reports with implied consent to send a notice to each applicable investor stating that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, UITs relying on the rule for householding must explain to investors who have provided written or implied consent how they can revoke their consent. The purpose of the notice and annual explanation requirements associated with the householding provisions of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

The Commission estimates that the annual burden associated with rule 30e–

2 is 121 hours per respondent, including an estimated 20 hours associated with the notice requirement for householding and an estimated 1 hour associated with the explanation of the right to revoke consent to householding. The Commission estimates that there are currently approximately 760 UITs. Therefore, the Commission estimates that the total hour burden is approximately 91,960 hours. In addition to the burden hours, the Commission estimates that the annual cost of contracting for outside services associated with rule 30e–2 is $20,000 per respondent, for a total cost of approximately $15,200,000.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 30e–2 is mandatory. The information provided under rule 30e–2 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17072 Filed 7–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(4)–3; SEC File No. 270–218; OMB Control No. 3235–0242.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information discussed below.

Rule 206(4)–3 (17 CFR 275.206(4)–3) under the Investment Advisers Act of 1940, which is entitled ''Cash Payments for Client Solicitations,'' provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized advisory services to the prospective client, the solicitor must, at the time of the solicitation or referral, indicate to the prospective client that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized advisory services to the prospective client, the solicitor must, at the time of the solicitation or referral, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. Amendments to rule 206(4)–3, adopted in 2010 in connection with rule 206(4)–5, specify that solicitation activities involving a government entity, as defined in rule 206(4)–5, are subject to the additional limitations of rule 206(4)–5. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so the prospective clients may consider the solicitor's potential bias, and to protect clients against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all Commission registered investment advisers. The Commission believes that approximately 4,159 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 29,279 total burden hours ($7.04 \times 4{,}159$) for all advisers.

The disclosure requirements of rule 206(4)–3 do not require recordkeeping or record retention. The collections of information requirements under the rules are mandatory. Information subject to the disclosure requirements of rule 206(4)–3 is not submitted to the Commission. The disclosures pursuant to the rule are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17073 Filed 7–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–4; SEC File No. 270–282; OMB Control No. 3235–0318.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The collection of information is entitled: ''Form N–4 (17 CFR 239.17b) under the Securities Act of 1933 and (17 CFR 274.11c) under the Investment Company Act of 1940, registration statement of separate accounts organized as unit investment trust.''

Form N–4 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register as investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and/or to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Section 5 of the Securities Act (15 U.S.C. 77e) requires the filing of a registration statement prior to the offer of securities to the public and that the registration statement be effective before any securities are sold, and Section 8 of the Investment Company Act (15 U.S.C. 80a–8) provides for the registration of investment companies. Pursuant to Form N–4, separate accounts organized as unit investment trusts that offer variable annuity contracts provide investors with a prospectus and a statement of additional information covering essential information about a separate account. Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to or at the time of sale or delivery of securities.

The purpose of Form N–4 is to meet the filing and disclosure requirements of the Securities Act and the Investment Company Act and to enable filers to provide investors with information necessary to evaluate an investment in a security. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The estimated annual number of filings on Form N–4 is 124 initial registration statements and 1,127 post-effective amendments. The estimated average number of portfolios per filing is one, both for initial registration statements and post-effective amendments on Form N–4. Accordingly, the estimated number of portfolios referenced in initial Form N–4 filings annually is 124 and the estimated number of portfolios referenced in post-effective amendment filings on Form N–4 annually is 1,127. The estimate of the annual hour burden for Form N–4 is approximately 278.5 hours per initial registration statement and 197.25 hours per post-effective amendment, for a total of 256,834.75 hours ((124 initial registration statements × 278.5 hours) + (1,127 post-effective amendments × 197.25 hours)).

The current estimated annual cost burden for preparing an initial Form N–4 filing is $22,319 per portfolio and the current estimated annual cost burden for preparing a post-effective amendment filing on Form N–4 is $21,155 per portfolio. The Commission estimates that, on an annual basis, 124 portfolios will be referenced in initial Form N–4 filings and 1,127 portfolios will be referenced in post-effective amendment filings on Form N–4. Thus, the estimated total annual cost burden allocated to Form N 4 would be $26,609,241 ((124 × $22,319) + (1,127 × $21,155)).

Providing the information required by Form N–4 is mandatory. Responses will not be kept confidential. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17075 Filed 7–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–6; SEC File No. 270–446 ; OMB Control No. 3235–0503.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form N–6 (17 CFR 239.17c and 274.11d) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) registration statement of separate accounts organized as unit investment trusts that offer variable life insurance policies.'' Form N–6 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable life insurance contracts to register as investment companies under the Investment Company Act of 1940 and/or to register their securities under the Securities Act of 1933. The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Form N–6 also requires separate accounts organized as unit investment trusts that offer variable life insurance policies to provide investors with a prospectus and a statement of additional information (''SAI'') covering essential information about the separate account when it makes an initial or additional offering of its securities.

The Commission estimates that approximately 436 registration statements (429 post-effective amendments plus 7 initial registration statements) are filed on Form N–6 annually. The estimated hour burden per portfolio for preparing and filing an initial registration statement on Form N–6 is 770.25 hours. The estimated annual hour burden for preparing and filing initial registration statements is 5,391.75 hours (7 initial registration statements annually times 770.25 hours per registration statement). The Commission estimates that the hour burden for preparing and filing a post-effective amendment on Form N–6 is 67.5 hours. The total annual hour burden for preparing and filing post-effective amendments is 28,957.5 hours (429 post-effective amendments annually times 67.5 hours per amendment). The frequency of response is annual. The total annual hour burden for Form N–6, therefore, is estimated to be 34,349.25 hours (5,391.75 hours for initial registration statements plus 28,957.5 hours for post-effective amendments).

The Commission estimates that the cost burden for preparing an initial

Form N–6 filing is $23,440 per portfolio and the current cost burden for preparing a post-effective amendment to a previously effective registration statement is $8,523 per portfolio. The Commission estimates that, on an annual basis, 7 portfolios will be referenced in an initial Form N–6 and 429 portfolios will be referenced in a post-effective amendment of Form N–6. Thus, the total cost burden allocated to Form N–6 would be $3,820,447.

The information collection requirements imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17076 Filed 7–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 1–E, Regulation E; SEC File No. 270–221; OMB Control No. 3235–0232.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form 1–E (17 CFR 239.200) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') is the form that a small business investment company (''SBIC'') or business development company (''BDC'') uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Rule 605 of Regulation E (17 CFR 230.605) under the Securities Act requires an SBIC or BDC claiming such an exemption to file an offering circular with the Commission that must also be provided to persons to whom an offer is made. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdictions in which the issuer intends to offer the securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the rule 605 offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. It is estimated that one issuer files approximately two notifications, together with attached offering circulars, on Form 1–E with the Commission annually. The Commission estimates that the total burden hours for preparing these notifications would be 200 hours in the aggregate. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Compliance with the information collection requirements of the rules is necessary to obtain the benefit of relying on the rules. The information provided on Form 1–E and in the offering circular will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17074 Filed 7–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–6; SEC File No. 270–392; OMB Control No. 3235–0447.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–6 (17 CFR 270.17f–6) under the Investment Company Act of 1940 (15 U.S.C. 80a) permits registered investment companies (''funds'') to maintain assets (*i.e.,* margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges. Before the rule was adopted, funds generally were required to maintain such assets in special accounts with a custodian bank.

The rule requires a written contract that contains certain provisions designed to ensure important safeguards

and other benefits relating to the custody of fund assets by FCMs. To protect fund assets, the contract must require that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act (''CEA'') and the rules under that statute. The contract also must contain a requirement that FCMs obtain an acknowledgment from any clearing organization that the fund's assets are held on behalf of the FCM's customers according to CEA provisions.

Because rule 17f–6 does not impose any ongoing obligations on funds or FCMs, Commission staff estimates there are no costs related to *existing* contracts between funds and FCMs. This estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered ''collections of information,'' the burden hours for compliance are already included in other PRA submissions.[1]

Thus, Commission staff estimates that any burden of the rule would be borne by funds and FCMs entering into *new* contracts pursuant to the rule. Commission staff estimates that approximately 761 fund complexes and 1997 funds currently effect commodities transactions and could deposit margin with FCMs in connection with those transactions pursuant to rule 17f–6.[2] Staff further estimates that of this number, 76 fund complexes and 200 funds enter into new contracts with FCMs each year.[3]

Based on conversations with fund representatives, Commission staff understands that fund complexes typically enter into contracts with FCMs on behalf of all funds in the fund complex that engage in commodities transactions. Funds covered by the contract are typically listed in an attachment, which may be amended to encompass new funds. Commission staff estimates that the burden for a fund complex to enter into a contract with an FCM that contains the contract requirements of rule 17f–6 is one hour, and further estimates that the burden to add a fund to an existing contract between a fund complex and an FCM is 6 minutes.

Accordingly, Commission staff estimates that funds and FCMs spend 96 burden hours annually complying with the information collection requirements of rule 17f–6.[4] At $378 per hour of professional (attorney) time, Commission staff estimates that the annual dollar cost for the 96 hours is $36,288.[5] These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17071 Filed 7–12–12; 8:45 am]

BILLING CODE 8011–01–P

[1] The rule requires a contract with the FCM to contain two provisions requiring the FCM to comply with existing requirements under the CEA and rules adopted under that Act. Thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the CFTC for its rules.

[2] This estimate is based on the number of funds that reported on Form N–SAR from July 1, 2011–December 31, 2011, in response to items (b) through (i) of question 70, the ability to engage in futures and commodity option transactions.

[3] These estimates are based on the assumption that 10% of fund complexes and funds enter into new FCM contracts each year. This assumption encompasses fund complexes and funds that enter into FCM contracts for the first time, as well as fund complexes and fund that change the FCM with whom they maintain margin accounts for commodities transactions.

[4] This estimate is based upon the following calculation: (76 fund complexes × 1 hour) + (200 funds × 0.1 hours) = 96 hours.

[5] The $378 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2011,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30130; File No. 812–13957]

IndexIQ Advisors LLC and IndexIQ Active ETF Trust; Notice of Application

July 9, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants, including an actively-managed open-end exchange traded fund, request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: IndexIQ Advisors LLC (''Manager'') and IndexIQ Active ETF Trust (''Trust'').

FILING DATES: The application was filed on September 9, 2011, and amended on March 6, 2012, March 27, 2012, and May 15, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 2, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o IndexIQ Advisors LLC, 800 Westchester Avenue, Suite N–611, Rye Brook, New York 10573.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and will be registered under the Act as an open-end management investment company. The Trust plans to offer series (''Funds'') that will operate as actively-managed exchange-traded funds (''ETFs'') in reliance on an exemptive order,[1] each with its own investment objective, policies and restrictions.

2. IndexIQ Advisors LLC, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Manager will serve as the investment adviser to each Fund. The Manager will have an investment advisory agreement with each Fund (an ''Investment Advisory Agreement'') approved by the board of trustees of the Trust (the ''Board''),[2] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (the ''Independent Board Members''), and the shareholders of each Fund.[3]

3. Under the Investment Advisory Agreement, the Manager will be responsible for providing a program of continuous investment management to each Fund in accordance with the investment objective, policies and limitations of the Fund. The Investment Advisory Agreement permits the Manager to enter into separate advisory agreements (''Sub-Advisory Agreements'') with sub-advisers (''Sub-Advisers''). The specific investment decisions for each Fund are made by the Manager based on purchase and sale recommendations from one or more Sub-Advisers selected by the Manager to focus on all or a portion of the assets of the Fund or, at the discretion of the Manager, by the Sub-Advisers themselves with respect to the portion of any Fund portfolio allocated to them, subject to the general supervision by the Manager and the Board. The Manager will select Sub-Advisers based on an evaluation of the Sub-Adviser's performance, the Sub-Adviser's fees and services in relation to other investment advisers performing similar services, the nature of the advice provided by the Sub-Adviser and the Sub-Adviser's reputation in the investment community. Sub-Advisers will be subject to approval by the Board, including a majority of the Independent Board Members. The Manager will monitor and evaluate the performance of Sub-Advisers and recommend to the Board their hiring, termination and replacement. The Manager will compensate each Sub-Adviser out of the advisory fees paid to the Manager by the Fund.

4. Applicants request an order to permit the Manager, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser who is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund, the Trust or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Funds (''Affiliated Sub-Adviser'').

5. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose fees paid by the Manager to the Sub-Advisers. An exemption is requested to permit a Fund to disclose (both as a dollar amount and as a percentage of the Fund's net assets): (a) the aggregate fees paid to the Manager and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, ''Aggregate Fee Disclosure''). Any Fund that employs an Affiliated Sub-Adviser will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

6. Applicants state that the requested relief is unusual insofar as the requested order seeks relief for an ETF. Applicants note, however, that the requested relief is substantially identical to multimanager relief already granted by the Commission for other ETFs. Applicants believe that operations of the Funds under the requested order address the concerns historically considered by the Commission when granting identical relief to mutual funds. Applicants believe that similar to shareholders of a mutual fund who may ''vote with their feet'' by redeeming their individual shares at net asset value (''NAV'') if they do not approve of a change in sub-adviser or sub-advisory agreement, Fund shareholders will be able to sell shares in the secondary market at negotiated prices that closely track the relevant Fund's NAV if they do not approve of a change. Applicants state that the Funds will rely on the same delivery mechanisms currently used by certain mutual funds to ensure that shareholders who purchase shares in the secondary market receive a prospectus and all of the information that would have been provided with a proxy statement, except for the modifications discussed below, under the Modified Notice and Access Procedures. Applicants note that the requested relief is not broader in scope than the relief previously granted to mutual funds.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

[1] *See* Application for IndexIQ Advisors LLC, *et al.,* filed with the Commission on September 9, 2011, as amended (File No. 812–13956).

[2] The term ''Board'' also includes the board of trustees or directors of future Funds.

[3] Applicants also request relief with respect to future Funds and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by IndexIQ Advisors LLC or an entity person controlling, controlled by, or under common control with IndexIQ Advisors LLC (any such entity, included in the term ''Manager''); (b) uses the management structure described in the application (''Multi-Manager Structure''); and (c) complies with the terms and conditions contained in the application (included in the term ''Funds''). The Trust is the only existing investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name of the Manager, including the legal name of the Manager and/or any ''doing business as'' or business unit names used by the Manager, will precede the name of the Sub-Adviser.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants seek the same relief previously granted to mutual funds, and believe that the requested relief is equally appropriate for ETFs. Applicants state that the requested relief meets the necessary standards for the reasons discussed below.

6. Applicants assert that the shareholders rely on the Manager to select and monitor the Sub-Advisers best suited to achieve a Fund's investment objectives. Applicants contend that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Investment Advisory Agreements and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

7. If a new Sub-Adviser is retained in reliance on the requested order, the Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Advisor is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[4] and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, the applicable Board would comply with the requirements of sections 15(a) and 15(c) of the 1940 Act before entering into or amending Sub-Advisory Agreements.

8. Applicants assert that many Sub-Advisers use a ''posted'' rate schedule to set their fees. Applicants state that, while Sub-Advisers are willing to negotiate fees lower than those posted in the schedule, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Sub-Advisers to negotiate lower subadvisory fees with the Manager.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering the Fund's shares to the public.

2. The prospectus for each Fund relying on the requested order will disclose the existence, substance and effect of the order. Each Fund relying on the requested order will hold itself out to the public as utilizing the Multi-Manager Structure. The prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and to recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Board Members and the nomination of new or additional Independent Board Members will be at the discretion of the then-existing Independent Board Members.

6. Whenever a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general management services to each Fund that is sub-advised, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to provide purchase and sale recommendations to the Manager or investment advice to all or a part of the Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the Sub-Advisers' performance; and (e) implement procedures reasonably designed to ensure compliance by the Sub-Advisers with the Fund's investment objective, policies and restrictions.

8. No director, trustee or officer of the Trust or a Fund, or director, manager or officer of the Manager, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser except for: (a) ownership of interests in the Manager or

[4] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

any entity that controls, is controlled by, or is under common control with the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, has been and will continue to be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

11. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

12. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

13. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the profitability of the Manager.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17070 Filed 7–12–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67376; File No. SR–NASDAQ–2012–078]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

July 9, 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 June 27, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). The purpose of this proposal is to extend the existing pilot program for three months, from July 1, 2012 to September 30, 2012.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [April] *July* 1, 2012, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)–(2) No change.

(b)–(c) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III 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

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.[3]

NLS consists of two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ'' data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the ''NASDAQ Last Sale for NYSE/Amex'' data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ previously stated that it would file a proposed rule change to make the NLS pilot fees permanent. NASDAQ has also informed Commission staff that it is consulting with FINRA to develop a proposed rule change by FINRA to allow inclusion of FINRA/NASDAQ TRF data in NLS on a permanent basis. Based on the progress of these discussions, NASDAQ expects that it and FINRA will both submit filings to make NLS permanent during 2012.

processors (''SIPs'') that provide ''core'' data consolidate last sale information from all exchanges and trade reporting facilities (''TRFs''). Thus, NLS replicates a subset of the information provided by the SIPs.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a ''Unique Visitor'' model for internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

NASDAQ also established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the internet and television.

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)(4) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its NASDAQ Last Sale market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[7]

The Court in *NetCoalition,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[8] Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSEArca depth-of-book data product at issue in *NetCoalition.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

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. NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] *NetCoalition,* at 535.

[8] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[9] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for

[9] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSEAmex, NYSEArca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide data at no charge in order to attract order flow, and use market data revenue rebates from the resulting executions to maintain low execution charges for their users. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS Trading. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSEArca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while the internet portal Yahoo! continues to disseminate only the BATS last sale product, Google disseminates only NASDAQ's product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a

platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006–060/nasdaq2006060.shtml.* In addition, in response to prior filings to extend the NLS pilot,[10] the Securities Industry and Financial Markets Association (''SIFMA'') and NetCoalition filed comment letters contending that the SEC should suspend and institute disapproval proceedings with respect to the filing. Last year, SIFMA and NetCoalition filed a petition seeking review by the United States Court of Appeals for the District of Columbia Circuit with respect to the NLS pricing pilots in effect from July 1, 2011 through September 30, 2011 and from October 1, 2011 through December 31, 2011. These appeals have been stayed pending resolution of the consolidated case *NetCoalition* v. *SEC,* Nos. 10–1421, 10–1422, 11–1001, and 11–1065 (''*NetCoalition II*'').

The letters submitted by SIFMA and NetCoalition incorrectly assert that the original *NetCoalition* case stands for the proposition that the Commission must review cost data to substantiate a determination that competitive forces constrain the price of market data. In fact, the court held the opposite:

> The petitioners believe that the SEC's market-based approach is prohibited under the Exchange Act because the Congress intended ''fair and reasonable'' to be determined using a cost-based approach. The SEC counters that, because it has statutorily-granted flexibility in evaluating market data fees, its market-based approach is fully consistent with the Exchange Act. We agree with the SEC.[11]

SIFMA and NetCoalition further contend the prior filing lacked evidence supporting a conclusion that the market for NLS is competitive, asserting that arguments about competition for order flow and substitutability were rejected in NetCoalition. While the court did determine that the record before it was not sufficient to allow it to endorse those theories on the facts of that case, the court did not itself make any conclusive findings about the actual presence or absence of competition or the accuracy of these theories: rather, it simply made a finding about the state of the SEC's record. Moreover, analysis about competition in the market for depth-of-book data is only tangentially relevant to the market for last sale data. As discussed above and in the prior filing, perfect and partial substitutes for NLS exist in the form of real-time core market data, free delayed core market data, and the last sale products of competing venues, additional competitive entry is possible, and evidence of competition is readily apparent in the pricing behavior of the venues offering last sale products and the consumption patterns of their customers. Thus, although NASDAQ believes that the competitive nature of the market for all market data, including depth-of-book data, will ultimately be established, SIFMA and NetCoalition's letters not only mischaracterize the NetCoalition decision, they also fail to address the characteristics of the product at issue and the evidence already presented.

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.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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

[10] Securities Exchange Act Release No. 65488 (October 5, 2011), 76 FR 63334 (October 21, 2011) (SR–NASDAQ–2011–132); Securities Exchange Act Release No. 64856 (July 12, 2011), 76 FR 41845 (July 15, 2011) (SR–NASDAQ–2011–092); Securities Exchange Act Release No. 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR–NASDAQ–2011–044).

[11] *NetCoalition,* 615 F3d. at 534. While the court noted that cost data could sometimes be relevant in determining the reasonableness of fees, it acknowledged that submission of cost data may be inappropriate where there are ''difficulties in calculating the direct costs * * * of market data,'' *Id.* at 539. That is the case here, due to the fact that the fixed costs of market data production are inseparable from the fixed costs of providing a trading platform, and the marginal costs of market data production are minimal or even zero. Because the costs of providing execution services and market data are not unique to either of the provided services, there is no meaningful way to allocate these costs among the two ''joint products''—and any attempt to do so would result in inherently arbitrary cost allocations.

The court explicitly acknowledged that the ''joint product'' theory set forth by NASDAQ's economic experts in *NetCoalition* (and also described in this filing) could explain the competitive dynamic of the market and explain why consideration of cost data would be unavailing. The court found, however, that the Commission could not rely on the theory because it was not in the Commission's record. *Id.* at 541 n.16. For the purpose of providing a complete explanation of the theory, NASDAQ is further submitting as Exhibit 3 to this filing a study that was submitted to the Commission in SR–NASDAQ–2011–010. *See* Statement of Janusz Ordover and Gustavo Bamberger at 2–17 (December 29, 2010).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

Number SR–NASDAQ–2012–078 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–2012–078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–078 and should be submitted on or before August 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17096 Filed 7–12–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67296; File No. SR–C2–2012–019]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8.2 Regarding Market-Maker Registration Cost

June 28, 2012.

Correction

In notice document 2012–16375, appearing on pages 39757–39758, in the issue of Thursday, July 5, 2012, make the following correction:

1. On page 39758, in the third column, on the thirty-fourth line, ''June 26, 2012'' should read ''July 26, 2012''.

[FR Doc. C1–2012–16375 Filed 7–12–12; 8:45 am]

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Interagency Task Force meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the fourth public meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

DATES: Friday, August 10, 2012, from 9 a.m. to 12 Noon in the Eisenhower Conference Room, Side A, located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOB's) and service-disabled veterans (SDVOSB'S). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to ''six focus areas'': (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and (6) Making other improvements to support veteran's business development by the Federal government.

On November 1, 2011, the Interagency Task Force on Veterans Small Business Development submitted its first report to the President, which included 18 recommendations that were applicable to the ''six focus areas'' identified above. The purpose of the meeting is scheduled as a full Task Force meeting. The agenda will include a status update of recommendations presented in the November 1, 2011 Task Force Report to the President.

In addition, the Task Force will allow time to obtain public comment from individuals and representatives of organizations regarding the areas of focus.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Task Force must contact Raymond B. Snyder, by August 6, 2012, by email in order to be placed on the agenda. Comments for the Record should be applicable to either the ''six focus areas'' of the Task Force or the recommendations presented in the Report to the President and emailed prior to the meeting for inclusion in the public record, verbal presentations; however, will be limited to five minutes in the interest of time and to accommodate as many presenters as possible.

Written comments should be emailed to Raymond B. Snyder, Deputy Associate Administrator, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, at the email address for the Task Force, *vetstaskforce@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Raymond B. Snyder, Designated Federal Official for the Task Force at (202) 205–6773; or by email at: *raymond.snyder@sba.gov,* SBA, Office

of Veterans Business Development, 409 3rd Street SW., Washington, DC 20416.

For more information, please visit our Web site at *www.sba.gov/vets.*

Dated: July 5, 2012.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2012–17109 Filed 7–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7954]

Culturally Significant Objects Imported for Exhibition Determinations: ''Projects 98: Slavs and Tartars''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Projects 98: Slavs and Tartars,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art in New York, New York from on or about August 8, 2012, until on or about December 11, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 29, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–17170 Filed 7–12–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7953]

Culturally Significant Objects Imported for Exhibition Determinations: ''Lion Attacking a Horse''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object entitled ''Lion Attacking a Horse,'' to be imported by The J. Paul Getty Museum from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at The J. Paul Getty Museum in Los Angeles, California from on or about August 10, 2012 to on or about February 4, 2013; and possible additional exhibitions or venues yet to be determined; is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a listing of the exhibit object, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 29, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–17179 Filed 7–12–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)–C126b, 406 MHz Emergency Locator Transmitters (ELT) and Notice of Intent To Withdraw TSO Authorizations (TSOA) for TSO–C91a, Emergency Locator Transmitter (ELT) Equipment, and TSO–C126/C126a, 406 MHz Emergency Locator Transmitters (ELT)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of proposed TSO–C126b and the FAA's intent to withdraw TSO authorizations (TSOA) issued for the manufacture of automatic fixed (AF) and automatic portable (AP) ELTs under TSO–C91a, TSO–C126, and TSO–C126a which incorporate hook and loop fasteners in their design. This proposed action would affect ELT manufacturers. The FAA is not proposing requiring actions on previously installed ELTs. The FAA is taking this action based on its determination that hook and loop fasteners are not an acceptable means of compliance to meet the mounting and retention requirements of current TSOs for ELTs. The FAA is requesting comment on proposed TSO–C126b and the FAA's proposal to withdraw certain other ELT TSOAs.

DATES: Comments must be received on or before September 11, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Charisse Green, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Telephone (202) 385–5637, fax (202) 385–4651, email to: *Charisse.Green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on proposed TSO–C126b and the proposed withdrawal of TSOAs for the manufacture of automatic fixed (AF) and automatic portable (AP) ELTs under TSO–C91a, TSO–C126, and TSO–C126a which incorporate hook and loop fasteners in their design by submitting written data, views, or arguments to the address specified in **FOR FURTHER INFORMATION CONTACT**. If you propose alternate actions, please provide detailed information on your alternative and indicate whether the information you provide is proprietary. Comments received may be examined, both before and after the closing date at Federal

Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024., weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date.

Background

In several recent aircraft accidents, ELTs mounted with hook and loop fasteners, commonly referred to as Velcro®, have detached from their aircraft mounting tray. The separation of the ELT from its mounting tray has caused the antenna connection to sever, rendering the ELT ineffective and severely impacting the performance of the TSO'd ELT.

Section 347 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95) requires the FAA to determine if the ELT mounting requirements and retention tests specified by TSO–C91a and TSO–C126 are adequate to assess retention capabilities in ELT designs. Based on that determination, the Act requires the Administrator to make any necessary revisions to the requirements and retention tests to ensure that ELTs are properly retained in the event of an aircraft accident.

Evaluation of ELT Mounting Requirements and Retention Tests

The FAA evaluated the mounting requirements and retention tests specified in TSO–C91a, TSO–C126 and TSO–C126a. These TSOs specifically address ELT mounting and require the mounting design to meet certain specifications; however, they do not require or preclude any specific type of retention mechanism. Based upon its evaluation, the FAA has determined that the standards contained in these TSOs do not adequately address the use of hook and loop fasteners. While these types of fasteners can meet the TSO requirements for retention forces in laboratory conditions, accident investigations have found these fasteners are not reliable in service.

Recent accident data reveals hook and loop fasteners have failed to retain the ELT in its mount. The following three documents describe specific accidents in which an ELT failed to remain its mount after an accident:

(1) *NTSB Aircraft Accident Report AAR–11–03:* The antenna cable was severed from the ELT when the ELT slipped out of the hook and loop fastener which retained the ELT to the installed mount. The ELT functioned properly during post accident testing by the manufacturer and NTSB. As a result of its investigation the NTSB made safety recommendation A–10–170 to the FAA which stated: ''Determine if the emergency locator transmitter mounting requirements and retention tests specified by TSO–C91a and TSO–C126a are adequate to assess retention capabilities in ELT designs. Based on the results of this determination, revise, as necessary, TSO requirements to ensure proper retention of ELTs during airplane accidents.''

(2) *NTSB Factual Report—Aviation NTSB ID WPR10FA273:* The antenna cable was severed from the ELT when the ELT slipped out of the hook and loop fastener which retained the ELT to the installed mount. The ELT functioned but without the antenna the transmissions were not strong enough to be received by the search and rescue satellites.

(3) Transportation Safety Board of Canada Aviation Safety Advisory A11W0151–D1–A2, *Loose Attachment of Kannad 406 AF-Compact (ER) ELT*. This advisory highlights an October 2011 Cessna 208B accident where inadequate installation of the hook and loop fastener resulted in the ELT sliding out of its mount, disconnecting from the antenna cable, and failing to perform its intended function.

Both government and industry guidance material discourages the use of hook and loop fasteners and notes potential difficulties with their use in ELT mounting. Advisory material discouraging the use of hook and loop fasteners includes the following:

(1) Advisory Circular AC 91–44A, *Operational and Maintenance Practices for Emergency Locator Transmitters and Receivers,* paragraph 6.a., states that attachment of ELTs solely by means of Velcro® strips and other flexible materials is not considered satisfactory since the ''g'' switches may fail to operate or the equipment may come out of its mounting resulting in damage to the ELT and possible damage to the antenna or antenna coaxial cable.

(2) RTCA DO–DO–182, *Emergency Locator Transmitter (ELT) Equipment Installation and Performance,* section 1.2 a., states that ELTs secured with Velcro® strips are an improper installation.

(3) NASA Technical Memorandum-81960, *Evaluation of Emergency-Locator-Transmitter Performance in Real and Simulated Crash Tests,* states: ''Typical mounts can vary from sturdy mounts, to mounts using Velcro®, plastic ties, and mounts on non-airframe structure in the airplanes. This diversity in mounting techniques include improper and/or inadequate mounting of many ELT's and is likely to be one source of problems of nonfunctioning and/or false activations of some units.''

FAA Concerns

After completing its evaluation of the use of hook and loop fasteners for ELT retention the agency identified the following concerns:

(1) Hook and loop fasteners fail to retain the ELT when insufficient tension is applied when closing the fastener. There is no repeatable method for installation and no method to evaluate the tension of the hook and loop fastener. The allowance for pilots to secure ELTs to the aircraft when changing ELT batteries further increases the potential for inconsistent and unsatisfactory installations.

(2) Hook and loop fasteners closed with proper tension may stretch or loosen over time due to wear, fluids, vibration, and use leading to insufficient tension to retain the ELT.

(3) Hook and loop fasteners closed with proper tension do not provide stated retention capability due to debris which can contaminate the hooks and loops of the fastener.

(4) Hook and loop fasteners closed with proper tension degrade due to environmental factors such as repeated heating and cooling cycles, temperature extremes, and contamination resulting from location in equipment areas.

Safety Awareness Information Bulletin (SAIB) HQ–12–32, Hook and Loop Style Fasteners as a Mounting Mechanism for Emergency Locator Transmitters, was issued May 23, 2012 to bring immediate attention to this issue. It outlines actions ELT manufacturers can take to improve their installation and maintenance instructions to mitigate the concerns with hook and loop ELT retention.

Determination

The FAA has determined that hook and loop fasteners are not an acceptable means of compliance to meet the mounting and retention requirements of the current ELT TSOs.

Proposed Actions

Based on its evaluation, the FAA proposes to:

(1) Issue TSO–C126b which would preclude the use of hook and loop fasteners as a means of securing an ELT in its mounting tray.

(2) Withdraw TSO authorizations issued for the manufacture of ELTs under TSO–C91a, TSO–C126 and TSO–C126a, which incorporate hook and loop fasteners into their design unless the design is revised to replace the hook and loop fastener with an alternative

acceptable to the FAA before June 30, 2014.

(3) Withdraw TSO authorizations issued for the manufacture of ELTs under TSO–C91a, TSO–C126, and TSO–C126a, which incorporate hook and loop fasteners into their design unless the installation and maintenance instructions for the article are revised to include the following information by June 30, 2013:

a. Detailed instructions for properly securing the ELT during installation and reinstallation, as well as a method to determine the appropriate tension of the hook and loop style fasteners. Revised instructions will provide improved guidance on the proper installation of ELTs for owners and operators in the interim period before an enhanced mounting design is available, and for owners and operators who choose not to install the enhanced mounting design when it is available.

b. Detailed instructions for inspecting the hook and loop style fasteners for wear, contamination, environmental degradation, and other effects to ensure they meet the standards of the applicable TSO.

c. A replacement interval for the hook and loop style fasteners.

(4) Encourage owners and operators to install the manufacturer's proposed updated mounting designs in accordance with the revised maintenance and installation instructions.

How To Obtain Copies

You can view or download TSOs C91a, C126, C126a by logging onto *http://rgl.faa.gov* and select Technical Standard Order, and the proposed TSO–C126b may be found at *http://www.faa.gov/aircraft/draft_docs/tso/*. For a paper copy of the documents, contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on July 10, 2012.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2012–17115 Filed 7–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21048]

El Expreso Group, LLC—Asset Acquisition—CUSA EE, LLC D/B/A El Expreso

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Finance Application.

SUMMARY: On June 12, 2012, noncarrier El Expreso Group, LLC (El Expreso Group or Applicant) filed an application for approval under 49 U.S.C. 14303 to acquire control of the assets of CUSA EE, LLC d/b/a El Expreso (CUSA EE) (MC–463171), an interstate motor passenger carrier subsidiary of noncarrier Coach America Holdings, Inc. (Coach America).[1] On June 13, 2012, Michael Yusim, an individual, filed a letter in opposition to the proposed transaction, asserting that the public interest would not be served by allowing the transaction to proceed without certain Department of Labor proceedings first being completed. A copy of this notice will be served on Mr. Yusim. Persons wishing to oppose the application must follow the rules set forth at 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by August 27, 2012. Applicant may file a reply to any comments by September 11, 2012.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21048 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Applicant's representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W. Market Street, Suite 1500, Indianapolis, IN 46204, and Mark Vasquez, 10501 N. Central Expressway, Suite 307, Dallas, TX 75231.

FOR FURTHER INFORMATION CONTACT: Marc Lerner, (202) 245–0390. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: CUSA EE (along with a number of other Coach America subsidiaries) is currently involved in a proceeding instituted under Chapter 11 of the Bankruptcy Code, having filed on January 3, 2012, a voluntary petition for relief with the U.S. Bankruptcy Court for the District of Delaware, and on January 13, 2012, a motion to sell substantially all of its assets and effectively to liquidate. According to Applicant, the proposed transaction would be completed pursuant to 11 U.S.C. 105(a), 363 and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014, and the bankruptcy court's order entered on May 25, 2012, authorizing and approving (1) the sale of substantially all of the assets of debtor CUSA EE, LLC free and clear of liens, claims, and encumbrances, and (2) the assumption and assignment of certain executory contracts and unexpired leases.

Applicant and Tornado, a motor passenger carrier, are owned and controlled by Jan Vazquez, an individual. In addition to interstate common carrier operating authority (MC–276747), Tornado also holds intrastate authority in Texas. Tornado's primary business is providing scheduled passenger transportation throughout the United States and between the United States and Mexico.

As indicated, Michael Yusim has filed a letter in opposition to the application by El Expreso Group to acquire control of the assets of CUSA EE. The basis for his opposition relates to two cases alleging that his employer, an entity named Midnight Sun Tours, Inc. (Midnight Sun), a wholly owned subsidiary of the Coach America bus companies in bankruptcy, discriminated against drivers for having accurately reported their hours of service. According to Mr. Yusim, the two cases are pending before the Secretary of Labor (Secretary), but have been stayed by the bankruptcy court. Mr. Yusim requests that the Board disallow the sale of any subsidiaries of Coach America until the Secretary is allowed to hear and decide the two cases.

Because we have received a timely comment in opposition to the application, we will not grant tentative authority under 49 CFR 1182.4(b). *See* 49 CFR 1182.6(a). Instead, we will institute a proceeding to address this matter, as well as to determine the merits of the application pursuant to 49 U.S.C. 14303. Comments and responses are to be submitted as ordered below. *See* 49 CFR 1182.5 and 1182.6.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov*''.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments must be filed by August 27, 2012. Applicant may file a reply to any comments by September 11, 2012.

2. This notice will be effective on its date of service.

3. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Avenue NW., Washington, DC 20530; (3) the U.S. Department of Transportation,

[1] El Expreso Group's application identified Tornado Bus Company, Inc. (Tornado), an affiliate, as a second acquiring entity. However, by letter dated June 21, 2012, Applicant's representative clarified that Applicant is the sole acquiring entity.

Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; (4) the Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue NW., Washington, DC 20580; and (5) Michael Yusim, 7499 Eagle Point Drive, Delray Beach, FL 33446.

Decided: July 6, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–17184 Filed 7–12–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on July 31, 2012 at 9:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: July 6, 2012.

Matthew S. Rutherford,

Acting Assistant Secretary, (Financial Markets).

[FR Doc. 2012–16947 Filed 7–12–12; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act (FACT Act).'' The OCC is also giving notice that it has submitted this collection to OMB for review.

DATES: Comments must be received by August 13, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0238, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0238, by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting extension of OMB approval for this information collection titled, ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting

Agencies under Section 312 of the Fair and Accurate Credit Transactions Act (FACT Act).'' There have been no changes to the requirements of the regulations; however, the regulations have been transferred to the Bureau of Consumer Financial Protection (CFPB) pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 2036, July 21, 2010 (Dodd-Frank Act), and republished as CFPB regulations (76 FR 79308 (December 21, 2011)). The burden estimates have been revised to remove the burden for OCC-regulated institutions with over $10 billion in assets, now carried by CFPB pursuant to section 1025 of the Dodd-Frank Act, and to remove the initial start-up burden. The OCC retains enforcement authority for its institutions with $10 billion in total assets or less.

Title: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act (FACT Act).

OMB Number: 1557–0238.

Description: Section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) required the issuance of guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also required the issuance of regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer.

Twelve CFR 1022.42(a) requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that they provide to a consumer reporting agency (CRA). Furnishers' accuracy and integrity policies and procedures may include their existing policies and procedures that are relevant and appropriate.

Section 1022.43(a) permits consumers to initiate disputes directly with the furnishers in certain circumstances. Furnishers are required to have procedures to ensure that disputes received directly from consumers are handled in a substantially similar manner to those complaints received through CRAs.

Section 1022.43(f)(2) incorporates the statutory requirement that a furnisher must notify a consumer by mail or other means (if authorized by the consumer) not later than five business days after making a determination that a dispute is frivolous or irrelevant. Section 1022.43(f) incorporates the statute's content requirements for the notices.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 1,918.

Estimated Total Annual Burden: 185,523 hours.

The OCC issued a **Federal Register** Notice for 60 days of comment on May 4, 2012 (77 FR 26605). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 6, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–17063 Filed 7–12–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of 2 Individuals and 2 Entities Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 2 individuals and 2 entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the 2 individuals and 2 entities in this notice, pursuant to Executive Order 13224, are effective on June 29, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose

a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 29, 2012 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, 2 individual(s) and 2 entit(ies) whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for these individuals and entities on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. BARAKZAI, Haji Abdul Sattar (a.k.a. ABDULASATTAR; a.k.a. BARAKZAI, Haji Satar; a.k.a. MANAN, Haji Abdul Satar Haji Abdul; a.k.a. SATAR, Haji Abdul), Kachray Road, Pashtunabad, Quetta, Balochistan Province, Pakistan; Nasrullah Khan Chowk, Pashtunabad Area, Balochistan Province, Pakistan; Chaman, Balochistan Province, Pakistan; Abdul Satar Food Shop, Eno Mina 0093, Kandahar, Afghanistan; DOB 1964; POB Mirmandaw Village, Nahr-e Saraj District, Helmand Province, Afghanistan; alt. POB Qilla Abdullah, Pakistan; alt. POB Mirmadaw Village, Gereshk District, Helmand Province, Afghanistan; Passport AM5421691 (Pakistan) expires 11 Aug 2013; National ID No. 5420250161699 (Pakistan); alt. National ID No. 585629 (Afghanistan) (individual) [SDGT] Linked To: HAJI KHAIRULLAH HAJI SATTAR MONEY EXCHANGE; Linked To: TALIBAN.
2. BARAKZAI, Haji Khairullah (a.k.a. KARIMULLAH, Haji; a.k.a. KHAIRULLAH, Haji; a.k.a. KHEIRULLAH, Haji; a.k.a. KHERULLAH, Haji; a.k.a. MOHAMMAD, Hajji Khair; a.k.a. ULLAH, Haji Khair), Abdul Manan Chowk, Pashtunabad, Quetta, Pakistan; DOB 1965; POB Zumbaleh Village, Nahr-e Saraj District, Helmand Province, Afghanistan; alt. POB Qal'ah Abdulla, Pakistan; alt. POB Mirmadaw Village, Gereshk District, Helmand Province, Afghanistan; Passport BP4199631 (Pakistan) expires 25 Jun 2014; National ID No. 5440005229635 (Pakistan) (individual) [SDGT] Linked To: TALIBAN; Linked To: HAJI KHAIRULLAH HAJI SATTAR MONEY EXCHANGE.

Entities

1. ROSHAN MONEY EXCHANGE (a.k.a. AHMAD SHAH HAWALA; a.k.a. HAJI AHMAD SHAH HAWALA; a.k.a. MAULAWI AHMED SHAH HAWALA; a.k.a. MULLAH AHMED SHAH HAWALA; a.k.a. ROSHAN SARAFI; a.k.a. ROSHAN SHIRKAT; a.k.a. ROSHAN TRADING COMPANY; a.k.a. RUSHAAN TRADING COMPANY), Fahr Khan (variant Furqan) Center, Shop Number 1584, Chalhor Mal Road, Quetta, Balochistan Province, Pakistan; St. Flore, Flat Number 4, Furqan Center, Jamaludden (variant Jamaludin) Afghani Road, Quetta, Balochistan Province, Pakistan; Muslim Plaza Building, Doctor Banu Road, 2nd Floor, Office Number 4, Quetta, Balochistan Province, Pakistan; Cholmon Road, Quetta, Balochistan Province, Pakistan; Munsafi Road, Quetta, Balochistan Province, Pakistan; Abdul Samad Khan Street, Next to Fathma Jena Road, Kadari Place, 1st Floor, Shop Number 1, Quetta, Balochistan Province, Pakistan; Safar Bazaar, Garm Ser District, Helmand Province, Afghanistan; Main Bazaar, Safar, Helmand Province, Afghanistan; Money Exchange Market, Lashkar Gah, Helmand Province, Afghanistan; Haji Ghulam Nabi Market, Lashkar Gah, Helmand Province, Afghanistan; Lashkar Gah Bazaar, Helmand Province, Afghanistan; Hazar Joft, Garmser District, Helmand Province, Afghanistan; Ismat Bazaar, Marjah District, Helmand Province, Afghanistan; Zaranj, Nimruz Province, Afghanistan; Suite 8, 4th Floor, Sarrafi Market, District 1, Kandahar City, Kandahar Province, Afghanistan; Floor 5, Shop 25, Kandahar City Sarafi Market, Kandahar District, Kandahar Province, Afghanistan; Lakri, Helmand Province, Afghanistan; Aziz Market, In front of Azizi Bank, Waish Border, Spin Boldak District, Kandahar Province, Afghanistan; Gardi Jungle, Balochistan Province, Pakistan; Chaghi, Balochistan Province, Pakistan [SDGT] Linked To: TALIBAN.
2. HAJI KHAIRULLAH HAJI SATTAR MONEY EXCHANGE (a.k.a. HAJI ALIM HAWALA; a.k.a. HAJI HAKIM HAWALA; a.k.a. HAJI KHAIR ULLAH MONEY SERVICE; a.k.a. HAJI KHAIRULLAH AND ABDUL SATTAR AND COMPANY; a.k.a. HAJI KHAIRULLAH MONEY EXCHANGE; a.k.a. HAJI KHAIRULLAH-HAJI SATTAR SARAFI; a.k.a. HAJI SALAM HAWALA), Chohar Mir Road, Qandahari Bazaar, Quetta, Balochistan Province, Pakistan; Room Number 1, Abdul Sattar Plaza, Hafiz Saleem Street, Munsafi Road, Quetta, Balochistan Province, Pakistan; Shop Number 3, Dr. Bano Road, Quetta, Pakistan; Office Number 3, Dr. Bano Road, Near Fatima Jinnah Road, Quetta, Pakistan; Kachara Road, Naserullah Khan Chawk, Quetta, Pakistan; Wazir Mohammad Road, Quetta, Balochistan Province, Pakistan; Peshawar, Khyber Paktunkhwa Province, Pakistan; Moishah Chowk Road, Lahore, Punjab Province, Pakistan; Karachi, Sindh Province, Pakistan; 2 Larran Road, Chaman, Balochistan Province, Pakistan; Chaman Central Bazaar, Chaman, Balochistan Province, Pakistan; Shah Zada Market, Shop Number 237, Kabul, Afghanistan; Sarai Shahzada, 3rd Floor, Shop Number 257, Kabul, Afghanistan; Sharai Shahzada Market, Kabul, Afghanistan; Kandahar City Sarafi Market, 2nd Floor, Shop 21 and 22, Kandahar City, Kandahar Province, Afghanistan; New Sarafi Market, 2nd Floor, Kandahar City, Kandahar Province, Afghanistan; Safi Market,

Kandahar City, Kandahar Province, Afghanistan; Gereshk City, Nahr-e Saraj District, Helmand Province, Afghanistan; Lashkar Gah Bazaar, Lashkar Gah, Lashkar Gah District, Helmand Province, Afghanistan; Haji Ghulam Nabi Market, 2nd Floor, Lashkar Gah District, Helmand Province, Afghanistan; Khorasan Market, 3rd Floor, Suite Number 196–197, Herat, Afghanistan; Shahre Naw, District 5, Khorasan Market, Herat, Afghanistan; Sarafi Market, Zaranj District, Nimroz Province, Afghanistan; Ansari Market, 2nd Floor, Nimroz, Afghanistan; Sarafi Market, Wesh, Afghanistan; Wesh, Spin Boldak District, Kandahar Province, Afghanistan; Sarafi Market, Farah, Afghanistan; Dubai, United Arab Emirates; Zahedan, Iran; Zabul, Iran; Tax ID No. 1774308 (Pakistan); alt. Tax ID No. 0980338 (Pakistan); alt. Tax ID No. 3187777 (Pakistan); Afghan Money Service Provider License Number 044 (Afghanistan) [SDGT] Linked To: TALIBAN.

Dated: June 29, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–16855 Filed 7–12–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of one individual and one entity whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the one individual and one entity identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on June 28, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On June 28, 2012, the Director of OFAC removed from the SDN List the one individual and one entity listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individual:

ROLDAN CARDONA, Ana Patricia, c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; Calle 5A No. 43A–73, Medellin, Colombia; DOB 5 Dec 1969; POB Yarumal, Antioquia, Colombia; Cedula No. 43723334 (Colombia) (individual) [SDNTK].

Entity:

LA NUMERO UNO DE CUAUHTEMOC S.A. DE C.V. (a.k.a. CANTINA LA NUMERO UNO; a.k.a. ''SALON DIANA''), Avenida Cuauhtemoc No. 150, Esq. Doctor Erazo, Colonia Doctores, Delegacion Cuauhtemoc, Mexico City, Distrito Federal, Mexico; R.F.C. NUC–940317–IN3 (Mexico) [SDNTK].

Dated: June 29, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–17178 Filed 7–12–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of ten individuals and one entity whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the ten individuals and one entity identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on June 28, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile

through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On June 28, 2012, the Director of OFAC removed from the SDN List the ten individuals and one entity listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

1. BENAVIDES MONTENEGRO, Sandra Patricia, c/o ESPIBENA S.A., Quito, Ecuador; RUC # 0400778890 (Ecuador) (individual) [SDNT].
2. CASTANEDA GIRALDO, Maria Teresa (a.k.a. CASTANEDA DE PABON, Maria Teresa), c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES INMOBILIARIA LTDA., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; DOB 3 Aug 1957; POB Colombia; Cedula No. 35455961 (Colombia) (individual) [SDNT].
3. CURREA CORREA, Carlos Alberto (a.k.a. ''CUCU''; a.k.a. ''LA LLAVERIA''), Calle 24 No. 20–22, Tulua, Valle, Colombia; Spain; citizen Colombia; nationality Colombia; Cedula No. 16347900 (Colombia) (individual) [SDNT].
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Entity

1. COMERCIALIZADORA PELISSIER OSPINA LTDA., Carrera 58B No. 63B–96 bq. 21 int. 15 apto. 201, Bogota, Colombia; NIT # 830009052–5 (Colombia) [SDNT].

Dated: June 29, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

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Federal Energy Regulatory Commission

18 CFR Part 35

Integration of Variable Energy Resources; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–11–000; Order No. 764]

Integration of Variable Energy Resources

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending the *pro forma* Open Access Transmission Tariff to remove unduly discriminatory practices and to ensure just and reasonable rates for Commission-jurisdictional services. Specifically, this Final Rule removes barriers to the integration of variable energy resources by requiring each public utility transmission provider to: offer intra-hourly transmission scheduling; and, incorporate provisions into the *pro forma* Large Generator Interconnection Agreement requiring interconnection customers whose generating facilities are variable energy resources to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting.

DATES: *Effective Date:* This rule will become effective September 11, 2012.

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SUPPLEMENTARY INFORMATION:

139 FERC ¶ 61,246

Department of Energy

Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony T. Clark.

Issued June 22, 2012.

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I. Introduction

1. In this Final Rule, the Commission acts under section 206 of the Federal Power Act (FPA) to adopt reforms that will remove barriers to the integration of variable energy resources (VER) [1] and ensure that the rates, terms, and conditions for Commission-jurisdictional services provided by public utility transmission providers are just and reasonable and not unduly discriminatory or preferential.[2] As the Commission noted in the Proposed Rule (75 FR 75336, December 2, 2010), VERs are making up an increasing percentage of new generating capacity being brought on-line.[3] This evolution in the Nation's generation fleet has caused the industry to reevaluate practices

[1] As defined in the Notice of Proposed Rulemaking, a Variable Energy Resource is a device for the production of electricity that is characterized by an energy source that: (1) Is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. This includes, for example, wind, solar thermal and photovoltaic, and hydrokinetic generating facilities. *See Integration of Variable Energy Resources Notice of Proposed Rulemaking,* FERC Stats. & Regs. ¶ 32,664, at P 64 (2010) (Proposed Rule).

[2] 16 U.S.C. 824e (2006).

[3] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 13.

developed at a time when virtually all generation on the system could be scheduled with relative precision and when only load exhibited significant degrees of within-hour variation. As part of this evaluation, the Commission initiated this rulemaking proceeding to consider its own rules and, based on the comments received, concludes that reforms are needed in order to ensure that transmission customers are not exposed to excessive or unduly discriminatory charges and that public utility transmission providers have the information needed to efficiently manage reserve-related costs.

2. Specifically, the Commission amends the *pro forma* Open Access Transmission Tariff (OATT) to provide all transmission customers the option of using more frequent transmission scheduling intervals within each operating hour, at 15-minute intervals. There is currently no requirement to provide transmission customers the opportunity to adjust their transmission schedules within the hour to reflect changes in generation output. As a result, transmission customers have no ability under the *pro forma* OATT to mitigate Schedule 9 generator imbalance charges in situations when the transmission customer knows or believes that generation output will change within the hour. This lack of ability to update transmission schedules within the hour can cause charges for Schedule 9 generator imbalance service to be unjust and unreasonable or unduly discriminatory. Accordingly, the Commission amends the *pro forma* OATT to correct this deficiency.

3. The Commission also amends the *pro forma* Large Generator Interconnection Agreement (LGIA) to require new interconnection customers whose generating facilities are VERs to provide meteorological and forced outage data to the public utility transmission provider with which the customer is interconnected, where necessary for that public utility transmission provider to develop and deploy power production forecasting. Power production forecasts can provide public utility transmission providers with advanced knowledge of system conditions needed to manage the variability of VER generation through the unit commitment and dispatch process, rather than through the deployment of reserve service, such as regulation reserves which can be more costly. This Final Rule facilitates a public utility transmission provider's use of power production forecasting by amending the *pro forma* LGIA to require new interconnection customers whose generating facilities are VERs to provide the underlying data necessary for public utility transmission providers to perform such forecasts accurately.

4. The Commission declines, however, to modify the *pro forma* OATT to include a new Schedule 10 governing generator regulation service as set forth in the Proposed Rule. The Commission intended for the proposed Schedule 10 to provide clarity to public utility transmission providers and transmission customers alike by setting forth a generic approach to the provision of generator regulation service. In response, numerous commenters urged the Commission not to adopt a standardized approach to generator regulation service, stressing that flexibility is needed in the design of capacity services needed to efficiently integrate VERs into the transmission system. The Commission agrees and, accordingly, will continue a case-by-case approach to evaluating proposed generator regulation service charges. To assist public utility transmission providers and their customers in the development and evaluation of such proposals, the Commission instead provides guidance in response to the comments submitted.

5. Taken together, the reforms adopted and guidance provided in this Final Rule are intended to address issues confronting public utility transmission providers and VERs and to allow for the more efficient utilization of transmission and generation resources to the benefit of all customers. This, in turn, fulfills our statutory obligation to ensure that Commission-jurisdictional services are provided at rates, terms, and conditions of service that are just and reasonable and not unduly discriminatory or preferential.

Background

6. In 1996, the Commission issued Order No. 888, which found that it was in the economic interest of public utility transmission providers to deny transmission service or to offer transmission service on a basis that is inferior to what they provide to themselves.[4] Concluding that unduly discriminatory and anticompetitive practices existed in the electric industry and that, absent Commission action, such practices would increase as competitive pressures in the industry grew, the Commission in Order No. 888 required all public utility transmission providers that own, control, or operate transmission facilities used in interstate commerce to have on file an open access, non-discriminatory transmission tariff that contains minimum terms and conditions of non-discriminatory service. As relevant here, the *pro forma* OATT contains terms for scheduling transmission service and the provision of ancillary services.

7. The Commission later turned its attention to the process by which large generators interconnect with the interstate transmission system. In Order No. 2003, the Commission concluded that there was a pressing need for a single set of procedures and a single, uniformly applicable interconnection agreement for large generator interconnections.[5] Accordingly, the Commission adopted standard procedures (the Large Generator Interconnection Procedures or LGIP) and a standard agreement (the LGIA) for the interconnection of generation resources greater than 20 MW.[6] These reforms were designed to minimize opportunities for undue discrimination and to expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.[7]

8. In Order No. 2003–A, the Commission explained that the interconnection requirements adopted in Order No. 2003 were based on the needs of traditional synchronous generators and that a different approach may be appropriate for generators relying on newer technology.[8] Therefore, Commission exempted wind resources from certain sections of the LGIA and added Appendix G to the LGIA, as a placeholder for the inclusion of interconnection standards specific to newer technologies.[9] Subsequently, in Orders Nos. 661 and 661–A, the Commission adopted a package of interconnection standards applicable to

[4] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,682 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[5] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 11 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied,* 552 U.S. 1230 (2008).

[6] *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146.

[7] *Id.*

[8] Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160 at P 407 & n.85.

[9] *Id.*

large wind generators for inclusion in Appendix G of the LGIA.[10]

9. In recognition of the evolving energy industry and in a further effort to remedy the potential for undue discrimination, the Commission returned to the *pro forma* OATT in Order No. 890 and implemented a series of changes to the requirements of open access transmission service.[11] Among other things, the Commission adopted a set of transmission planning principles,[12] created a new *pro forma* ancillary service schedule designed to address generator imbalances,[13] and instituted a new conditional firm transmission product.[14] With regard to imbalance charges, the Commission found that such charges should be designed to provide appropriate incentives to keep schedules accurate without being excessive and otherwise result in consistency in charges between and among energy and generator imbalances.[15] The Commission recognized that intermittent resources, such as VERs, cannot always accurately follow their schedules and that high penalties for imbalances will not lessen the incentive to deviate from their schedules. Accordingly, the Commission exempted intermittent resources from third-tier deviation band of imbalance penalties.[16]

10. Against this backdrop, the Commission in January 2010 issued a Notice of Inquiry in this proceeding to explore the extent to which barriers may exist that impede the reliable and efficient integration of VERs into the electric grid and whether reforms are needed to eliminate those barriers.[17] The Commission noted that the amount of VERs is rapidly increasing, reaching a point where such resources are becoming a significant component of the nation's energy supply portfolio.[18] In order to determine whether any rules, regulations, tariffs or industry practices within the Commission's jurisdiction hinder the reliable and efficient integration of VERs, the Commission sought comment on a range of subject areas: (1) Power production forecasting, including specific forecasting tools and data and reporting requirements; (2) scheduling practices, flexibility, and incentives for accurate scheduling of VERs; (3) forward market structure and reliability commitment processes; (4) balancing authority area coordination and/or consolidation; (5) suitability of reserve products and reforms necessary to encourage the efficient use of reserve products; (6) capacity market reforms; and (7) redispatch and curtailment practices necessary to accommodate VERs in real time.[19] The response from commenters was significant, with more than 135 entities submitting comments, many of which urged the Commission to undertake basic reforms in response to the increasing number of VERs being integrated into the system.

II. The Need for Reform

A. Commission Proposal

11. In light of the changes occurring within the electric industry, and based on comments submitted in response to the January 2010 Notice of Inquiry, the Commission issued the Proposed Rule to remedy operational and other challenges associated with VER integration that may be causing undue discrimination and increased costs ultimately borne by consumers. The Commission preliminarily found that the proposed set of reforms would eliminate operational procedures that have the *de facto* effect of imposing an undue burden on VERs. The Commission stated that the proposed reforms acknowledge that existing practices as well as the ancillary services used to manage system variability were developed at a time when virtually all generation on the system could be scheduled with relative precision and when only load exhibited significant degrees of within-hour variation. In proposing its reforms, the Commission sought to ensure that VERs are integrated into the transmission system in a coherent and cost-effective manner, consistent with open access principles.[20]

B. Comments

12. Commenters largely support initiation of a rulemaking proceeding to consider potential reforms to reduce discrimination and improve the efficiency of the transmission system.[21] Invenergy Wind, for example, states that the Proposed Rule reflects an important step forward in providing the regulatory foundation that will create an incentive for improvements in system operations and procurement practices necessary to support the addition of renewable resources to the nation's historical generation mix. BP Companies comment that it is important for the Commission to provide a level playing field for wind and solar-generated power.

13. Many commenters point to the importance of the Proposed Rule in removing market barriers to VER integration. NextEra comments that the instant proceeding is important because VERs have been developed in relatively modest amounts until recent years, and the existing market rules were designed to reflect the characteristics of more traditional generating resources (e.g., coal, natural gas and nuclear generation) rather than VERs. NextEra contends that existing rules were aimed at addressing the preferences and requirements of the resources and systems in the past, rather than to anticipate future changes. CEERT states that the Commission's initiative to remove market and operational barriers to VERs integration and eliminate undue discrimination against VERs is critical to making wholesale power markets more competitive and ensuring a sustainable energy future.

14. Iberdrola contends that this proceeding is the best opportunity available for the federal government to encourage the responsible development of renewable energy resources, and to avoid inadvertently stifling the growth

[10] *Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,186, *order on reh'g,* Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005).

[11] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[12] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 444–561. In June 2011, the Commission further amended the *pro forma* OATT to require, among other things, that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan and has a regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation. *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 176 FR 49842 (Aug. 11 2011), FERC Stats. & Regs. ¶ 31,323 (2011).

[13] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 663–72.

[14] *Id.* PP 911–15.

[15] *Id.* P 72.

[16] *Id.* P 665.

[17] *Integration of Variable Energy Resources Notice of Inquiry,* FERC Stats. & Regs. ¶ 35,563 (2010) (Notice of Inquiry).

[18] *Id.* P 2.

[19] *Id.* P 12.

[20] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 17.

[21] *E.g.,* ACSF; AEP; AWEA; Argonne National Lab; BP Companies; Business Council; California ISO; CMUA; CEERT; Center for Rural Affairs; Clean Line; CGC; Defenders of Wildlife; Dominion; EEI; Environmental Defense Fund; Exelon; First Wind; Iberdrola; Idaho Power; ITC Companies; ISO New England; Independent Power Producers Coalition—West; ISO/RTO Council; Invenergy Wind; Large Public Power Council; Massachusetts DPU; MidAmerican; Midwest ISO Transmission Owners; M–S–R Public Power Agency; National Grid; NaturEner; Oregon & New Mexico PUC; NextEra; NorthWestern; PNW Parties; PJM; Powerex; Public Interest Organizations; RenewElec; SMUD; San Diego Gas & Electric; SEIA; Southern California Edison; SWEA; Southwestern; Sunflower and Mid-Kansas; Tacoma Power; Vestas; Western Farmers; Western Grid; Xcel.

of renewable energy resources in an effort to protect the economic interests of incumbents. Similarly, NaturEner comments that the reforms are long overdue and should be implemented without further delay and in a manner requiring prompt compliance. This proceeding, NaturEner states, represents substantial progress towards the elimination of antiquated rules, requirements and processes, a significant reduction in duplication, unnecessary expenditures and inefficient allocation of resources, as well as an important step towards making the grid more robust, economical, and equitable.

15. Oregon & New Mexico PUC state that the Commission can play a valuable role in enabling the western electricity industry to reach state renewable energy goals at a reasonable cost to consumers by exercising its jurisdiction in these areas. Oregon & New Mexico PUC submit that the proposals in the Proposed Rule are an important step toward building the necessary foundation to integrate significant amounts of wind and solar in the West. Defenders of Wildlife similarly contend that by establishing a new rule which encourages VER integration, and long-term and much needed infrastructure investments can be made today to help spur the nation's growing renewable energy economy. ACSF states its strong support for Commission action to integrate VERs into a smarter, cleaner, and more flexible energy grid, whose principal design features should enable much more widespread investment and deployment of integrated and hybrid VER generation systems. ACSF states it is critical that the Commission exercise its authority to develop policies that send adequate economic signals that permit the country's most flexible, clean generation sources to provide complementary power for VERs.

C. Commission Determination

16. As noted above, the Commission initiated this proceeding through the issuance of a Notice of Inquiry to obtain information on barriers to the integration of VERs. The Commission sought to understand the challenges associated with the large-scale integration of VERs on the interstate transmission system and the extent to which existing operational practices may be imposing barriers to their integration. The Commission explained that the changing characteristics of the nation's generation portfolio compelled a fresh look at existing policies and practices, leading the Commission to seek comment on a range of issues.

17. Based on its review of comments to the Notice of Inquiry, the Commission focused in the Proposed Rule on a series of basic reforms regarding transmission scheduling, data reporting requirements, and charges for generator regulation service that can and should be implemented in the near term.[22] The Commission explained that, taken together, the Proposed Reforms were designed to address issues confronting public utility transmission providers and VERs and to allow for the more efficient utilization of transmission and generation resources to the benefit of all customers.[23] The Commission acknowledged that the proposed reforms focused on discrete operational protocols that were only a subset of the issues for which comment was sought in the Notice of Inquiry.[24] The Commission stated its belief that focusing on the particular set of reforms proposed would provide a reasonable foundation for public utility transmission providers seeking to manage system variability associated with increased numbers of VERs and that further study is required for many of the remaining issues raised in the Notice of Inquiry.[25]

18. The Commission received more than 1900 pages of initial and reply comments in response to the Proposed Rule. While differing in opinion on the merits of particular aspects of the Commission's proposal, commenters generally support the Commission's efforts to evaluate its rules through this rulemaking to explore further opportunities to reduce undue discrimination and reduce costs ultimately borne by consumers through more efficient use of the transmission system. Based on these comments, the Commission concludes that it is appropriate to act at this time to revise the transmission scheduling requirements of the *pro forma* OATT and incorporate data reporting requirements into the *pro forma* LGIA, as discussed in further detail later in this Final Rule.[26] As discussed throughout this Final Rule, these reforms are necessary to ensure that transmission customers are not exposed to excessive or unduly discriminatory charges for Schedule 9 generator imbalance service and to provide public utility transmission providers with information necessary to more efficiently manage reserve-related costs recovered from transmission customers through other ancillary services charges.

19. The Commission takes this action now recognizing that the composition of the electric generation portfolio continues to change. VERs are making up an increasing percentage of new generating capacity being brought on-line. New wind generating capacity accounted for 35 percent of all newly installed generating capacity from 2007–2010.[27] As of December 2011, nearly 12,000 MW of additional wind generating capacity has been brought online and another 8,320 MW of wind generating capacity is currently under construction.[28] Current projections indicate that this expansion will continue, with the Energy Information Agency forecasting that generation from wind power will nearly double between 2009 and 2035.[29] This recent and future growth is being facilitated by developments in state and federal public policies that encourage the expansion of VER generation.[30]

[22] Proposed Rule, FERC Stats. & Regs ¶ 32,664 at P 18.

[23] *Id.* P 19.

[24] *Id.* PP 23–24.

[25] *Id.* PP 12, 24.

[26] For the reasons discussed in Schedule 10 below, the Commission declines to standardize charges for generator regulation service through the adoption of a generic Schedule 10 to the *pro forma* OATT as suggested in the Proposed Rule.

[27] *See* American Wind Energy Association, *Wind Power Outlook 2011* (Apr. 2011), *available at http://www.awea.org/_cs_upload/learnabout/publications/reports/8546_1.pdf.*

[28] American Wind Energy Association, *U.S. Wind Industry Fourth Quarter 2011 Market Report* (Jan. 2012), *available at http://www.awea.org/learnabout/industry_stats/upload/4Q-2011-AWEA-Public-Market-Report_1-31.pdf.* In addition, the amount of new photovoltaic generating capacity in 2011 increased by 108 percent over 2010 amounts, adding 1,855 MW of PV and bringing the total solar generating capacity to more than 4,470 MW. Utility installations increased by 185 percent in 2011, far more than residential or commercial market segments. *See* Solar Energy Industries Ass'n, *US Solar Market Insight Report 2011 Year-in-Review Executive Summary* (Mar. 2012), *available at http://www.seia.org/galleries/pdf/SMI-YIR-2011-ES.pdf.*

[29] Annual Energy Outlook at 75, *available at http://www.eia.gov/forecasts/archive/aeo11/pdf/0383(2011).pdf.*

[30] For example, as of May 2011, 30 states and the District of Columbia have a renewable portfolio standard or goal. FERC, Div. of Energy Market Oversight, *Renewable Power and Energy Efficiency Market: Renewable Portfolio Standards* 1 (updated May 2011), *available at http://www.ferc.gov/market-oversight/othr-mkts/renew/othr-rnw-rps.pdf).* In addition, the federal production tax credit, which has been in effect intermittently since the early 1990s, provides an inflation-adjusted credit for power produced from VERs and other renewable resources. 26 U.S.C. 45 (2007). In February 2009, the American Recovery and Reinvestment Act not only extended the production tax credit for a period of three additional years but also instituted an investment tax credit, which allows developers of certain renewable generation facilities to take a 30 percent cash grant in lieu of the production tax credit. American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111–5, § 1101, 123 Stat. 115, 319–20 (2009). Other federal policies that provide incentives to renewable generation facilities include accelerated

Continued

20. As NERC has noted, higher levels of variable generation can alter the operation and characteristics of the bulk power system.[31] Increasing the relative amount of variable generation on a system can increase operational uncertainty that the system operator must manage through operating criteria, practices and procedures, including the commitment of adequate reserves.[32] However, many of these operational protocols were developed for generation resources with a different set of characteristics. For example, the hourly scheduling protocols of the *pro forma* OATT reflect historical practices associated with operation of conventional generating resources that are relatively predictable and controllable when compared to VERs. Similarly, the interconnection requirements of Order No. 2003 were based on the needs of traditional synchronous generators, leading the Commission to revisit those requirements as applied to large wind generators in Order Nos. 661 and 661–A.

21. In Order No. 1000, the Commission recognized that changes in the generation mix influence the need for new transmission facilities and, as a result, Commission policies governing transmission planning and cost allocation.[33] The Commission concluded there that the increased focus on investment in new transmission projects made it critical to implement planning and cost allocation reforms to ensure that the transmission projects that come to fruition efficiently and cost-effectively meet regional needs. The Commission reaches a similar conclusion here. Changes in the generation mix and underlying public policies influencing investment in VER generation have accentuated the need to reform existing practices that unduly discriminate against VERs or otherwise impair the ability of public utility transmission providers and their customers to manage costs associated with VER integration effectively.

22. Specifically, we find that the adoption of intra-hour scheduling and data reporting to support power production forecasting will remedy undue discrimination and ensure just and reasonable rates through more efficient utilization of transmission and generation resources.[34] With regard to transmission scheduling practices, existing hourly scheduling protocols can expose transmission customers to excessive or unduly discriminatory generator imbalance charges. Generator imbalance charges are assessed to pay for the energy service the transmission provider must offer to account for deviations between a transmission customer's scheduled delivery of energy from a generator and the amount of energy actually generated, and also to provide an appropriate incentive for transmission customers to maintain accurate schedules. Under Schedule 9 of the *pro forma* OATT, there is no requirement to provide customers the opportunity to adjust their transmission schedules within the hour to reflect changes in generator output. As a result, transmission customers have no ability under the *pro forma* OATT to mitigate Schedule 9 generator imbalance charges in situations where the customer knows or believes that generation output will change within the hour. Implementation of intra-hour scheduling under this Final Rule will provide VERs and other transmission customers the flexibility to adjust their transmission schedules, thus limiting their exposure to imbalance charges. Over time, implementation of intra-hour scheduling also will allow public utility transmission providers to rely more on planned scheduling and dispatch procedures, and less on reserves, to maintain overall system balance.

23. With regard to data reporting to support power production forecasting, the lack of data reporting requirements can limit the ability of public utility transmission providers to develop and deploy power production forecasts in an effort to more efficiently manage operating costs associated with the integration of VERs interconnecting to their systems. Under the existing requirements of the *pro forma* LGIA, public utility transmission providers are permitted to request this information, but there is no obligation for interconnection customers whose generating facilities are VERs to provide it. Implementation of reporting requirements commensurate with the power production forecasting employed by the public utility transmission provider will allow for more accurate commitment or de-commitment of resources providing reserves, ensuring that reserve-related charges imposed on customers remain just and reasonable and not unduly discriminatory or preferential. While the Commission declines to adopt a *pro forma* generator regulation and frequency response service, we note that public utility transmission providers that decide to file with the Commission to impose such a charge should, as part of any filing, consider the affect of the reforms we adopt in this Final Rule when developing proposed reserve capacity costs and evaluating whether to require different transmission customers to purchase or otherwise account for different quantities of generator regulation reserves.

24. Although focused on discrete issues, the implementation of intra-hour scheduling and reporting requirements through this Final Rule will allow for the efficient utilization of transmission and generation resources as an increasing amount of VER generation is integrated into the system. This in turn will ensure that the rates, terms, and conditions for Commission-jurisdictional services provided by public utility transmission providers are just and reasonable and not unduly discriminatory. Our actions here are intended to build on, rather than undermine, existing efforts at the regional level to address VER integration. The Commission acknowledges that significant work has been done through industry initiatives seeking to craft regional solutions to the challenges associated with VER integration. For example, many public utility transmission providers in the Western Interconnection have implemented some form of transmission scheduling at 30-minute intervals.[35] The Commission is acting here to implement a minimum set of requirements for all public utility transmission providers and new interconnection customers whose generating facilities are VERs as necessary to facilitate the efficient integration of VERs. The Commission appreciates that these requirements go beyond some existing activities. The Commission nonetheless concludes that the reforms adopted herein are

depreciation of certain renewable generation facilities and loan guarantee programs.

[31] NERC, *Accommodating High Levels of Variable Generation* at 8, *available at http://www.nerc.com/docs/pc/ivgtf/IVGTF_Report_041609.pdf.*

[32] *Id.* at 59.

[33] Order No. 1000, 76 FR 49842, FERC Stats. & Regs. ¶ 31,323 at PP 45–46.

[34] In the Proposed Rule, the Commission also proposed to modify the *pro forma* OATT to include a new Schedule 10 governing generator regulation service. For the reasons discussed elsewhere in this Final Rule, the Commission declines to adopt that aspect of the Proposed Rule, instead providing guidance in response to comments submitted to assist public utility transmission providers and their customers in the development and evaluation of proposals on a case-by-case basis.

[35] *See, e.g., Ariz. Pub. Service Co.,* 137 FERC ¶ 61,023 (2011); *NorthWestern Corp.,* 136 FERC ¶ 61,119 (2011). We note that the Joint Initiative indicated in its comments at page 6 that its first step in offering 30-minute scheduling ''is intended to address unanticipated events, not to move to half-hour scheduling.'' In addition, based on business practices posted on OASIS, some transmission providers reserve the right to suspend 30-minute scheduling.

necessary to ensure that Commission-jurisdictional services are being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.

III. Legal Authority To Implement Proposed Reforms

A. Commission Proposal

25. In the Proposed Rule, the Commission preliminarily found that the practice of hourly scheduling, the lack of VER power production forecasting, and the lack of a clear mechanism to recover the cost of providing generator regulation service may be contributing to undue discrimination and unjust and unreasonable rates in light of the entry and increasing presence of VERs on the transmission grid. Thus, the Commission proposed the following three reforms that require public utility transmission providers to: (1) Amend the *pro forma* OATT to require intra-hourly transmission scheduling; (2) amend the *pro forma* LGIA to incorporate provisions requiring interconnection customers whose generating facilities are VERs to provide meteorological and operational data to public utility transmission providers for the purpose of improved power production forecasting; and (3) amend the *pro forma* OATT to add a generic ancillary service rate schedule, Schedule 10—Generator Regulation and Frequency Response Service, in which public utility transmission providers will offer to provide regulation service for transmission customers using transmission service to deliver energy from a generator located within a public utility transmission provider's balancing authority area.[36] The Commission preliminarily concluded that the proposed rules are necessary to ensure that rates for Commission-jurisdictional services are just and reasonable and to remedy undue discrimination in existing transmission system operations.[37]

B. Comments

26. Some commenters take issue with the Commission's authority to mandate the tariff amendments contained in the Proposed Rule. With regard to forecasting and 15-minute scheduling, EEI and Southern assert that the Proposed Rule does not articulate a sufficient basis for changing existing tariff-based scheduling requirements under section 206 of the FPA.[38] Specifically, EEI and Southern question whether the Commission is relying upon record findings to support these proposed requirements. EEI and Southern submit that sections 205 and 206 ''are simply parts of a single statutory scheme under which all rates are *established initially by the* [public utilities], by contract or otherwise. * * * Thus, FERC plays an essentially passive and reactive role under section 205.'' [39] EEI and Southern maintain that these types of decisions should be left to public utility transmission providers and RTOs and should be informed by regional conditions and not dictated on a generic basis.

27. In contrast, NextEra states that assertions that there is no record evidence not only ignore how current rules disadvantage VERs, but misunderstand the Commission's authority to promulgate rules of general applicability. NextEra points out that the Commission does not have to find that the tariffs or practices of every utility under its jurisdiction are unjust and unreasonable in order to proceed with a rulemaking. Rather, NextEra asserts that courts have confirmed that the Commission is not required to make individual findings when it exercises its statutory authority to promulgate a rule of general applicability.

28. Certain commenters also question the Commission's reliance in this proceeding on its authority to remedy undue discrimination.[40] Specifically, EEI and Southern take issue with the Commission's conclusion that procedures (such as hourly scheduling) applied uniformly to all transmission customers are unduly discriminatory under the FPA when those procedures arguably have a disparate impact on different types of transmission customers and/or place those customers at a competitive disadvantage in wholesale markets. EEI and Southern submit that the Commission and the DC Circuit have rejected the notion that facially-neutral technology and customer-blind transmission scheduling procedures are unduly discriminatory under section 205 of the FPA because of the effects or impacts of those requirements on different customer groups.[41] EEI asks the Commission to clarify that facially-neutral, technology- and customer-blind operational practices will not be deemed unduly discriminatory solely by virtue of disparate impact on dissimilar technologies or customers, and that the Proposed Rule is not intended as a departure from precedent in determining undue discrimination.

29. Similarly, Public Power Council questions the sufficiency of the Commission's evidence of undue discrimination against VERs. Public Power Council asserts that the Commission has not demonstrated that the costs of capacity charged to VERs were not incurred for the benefit of VERs, or would not have been incurred but for the needs of VERs, and that the costs of capacity were not prudently incurred. Public Power Council submits that the rules applicable to generation for the payment of balancing capacity costs are facially neutral, as VERs require more balancing capacity than non-variable resources. According to Public Power Council, if a load's characteristics required extraordinary amounts of balancing capacity, it seems unlikely that it or anyone else would complain that the rules should be changed to reduce costs. Thus, Public Power Council argues that a federal policy to promote renewable generation cannot be translated into an overriding mandate to prefer VERs.

30. ELCON asserts, with regard to 15-minute scheduling, forecasting, and Schedule 10 service, that the principle flaw in the Proposed Rule is its reliance on the supposition that operating practices favoring the dispatchability of resources are a form of ''preferential treatment,'' and therefore that non-dispatchable resources such as VERs are being discriminated against. ELCON explains that the proposals set forth in the Proposed Rule are costly measures that would apply preferentially to just one class of generation—VERs—seeking to address discrimination that does not actually exist.

31. Southern asserts that, in instances where a single rate is found to have disparate cost impacts upon dissimilar customers, such a result is only considered unduly discriminatory if such differences cannot be cost-

[36] Throughout this Final Rule the term Balancing Authority is used as defined by the North American Electric Reliability Cooperation (NERC). NERC, Glossary of Terms, available at *http://www.nerc.com/files/Glossary_of_Terms_2012January11.pdf.*

[37] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 23.

[38] EEI and Southern argue, for example, that the Commission must rely upon factual, record findings to support these proposed mandates. EEI (citing *National Fuels* v. *FERC,* 468 F.3d 831, 839–44 (D.C. Cir. 2006)); Southern (citing, e.g., *National Fuels,* 468 F.3d 831, 839–44).

[39] EEI (citing *Atlantic City* v. *FERC,* 295 F.3d 1,21 (D.C. Cir. 2002) (quoting *United Gas Pipe Line Co.* v. *Mobile Gas Serv. Corp.,* 350 U.S. 332341 (1956) and *City of Winnfield* v. *FERC,* 744 F.2d 871, 876 (D.C. Cir. 1984)); Southern (citing *Atlantic City* v. *FERC,* 295 F.3d 1,21 (D.C. Cir. 2002) (quoting *United Gas Pipe Line Co.* v. *Mobile Gas Serv. Corp,* 350 U.S. 332341 (1956) and *City of Winnfield* v. *FERC,* 744 F.2d 871, 876 (D.C. Cir. 1984)).

[40] *E.g.,* Southern; EEI.

[41] Southern (citing *Enron Power Marketing, Inc.* v. *FERC,* 296 F.3d 1148 (D.C. Cir. 2002) (*Enron*)); EEI (citing *Enron,* 296 F.3d 1148).

justified.[42] Southern argues that existing scheduling and imbalance practices are not unduly discriminatory against VERs. Southern explains that VER customers pay more energy imbalance charges than others because they impose more imbalance burdens and costs upon the system.[43] Similarly, ELCON maintains that the cost causation model of cost allocation results in greater economic efficiency by retaining a direct tie between the costs and the benefits of a given project. ELCON argues that in the instant case, there is no tie to the costs customers will be forced to bear.

32. Midwest ISO Transmission Owners contend that all generation resources should be treated on a comparable basis, and none should be subject to undue discrimination or receive an undue preference. Midwest ISO Transmission Owners state that in the Midwest ISO this will mean that VERs are subject to the same requirements as existing resources unless additional requirements are necessary to maintain reliability.[44] ELCON argues that the Commission should apply a principle of ''source neutrality,'' which it contends will create a level playing field for all alternative resources including demand response and combined heat and power. ELCON explains that, without the adoption of a resource planning paradigm based on source neutrality, almost any non-traditional resource may fall prey to undue discrimination with respect to transmission of electric energy and sales of electric energy for resale in interstate markets.

33. On the contrary, NextEra argues that most market rules are not oriented to aiding VERs, and may in fact present obstacles to VERs. NextEra states that, even in RTO markets, the fundamental principles around which markets are designed are day-ahead schedules, economic dispatch, and the impact of congestion. NextEra points out that none of these concepts are particularly applicable to VERs, which can have difficulty producing accurate day-ahead forecasts, are not truly dispatchable, and have limited ability to choose sites to reduce congestion. For example, NextEra contends that while nodal representation of generators may work best for dispatchable units, a system that was designed around non-dispatchable VERs could include features such as aggregation and scheduling from a portfolio of generators that might be staggered geographically, so as to reduce variability and forecasting errors and allow pooling of energy imbalances and deviations.

34. NextEra explains that when the Commission remedies unfair rules and practices, it is not doing so to create a preference for the type of entity that was being harmed, but rather to benefit the market and consumers. Thus, NextEra maintains that Commission action to provide greater flexibility, promote innovation or foster participation by new market entrants will ultimately benefit energy markets and consumers, even though the measure itself focuses on changes or incentives for one type of market participant.

35. Finally, with regard to meteorological forecasting in particular, Southern contends that such forecasting practices are beyond the scope of the Commission's authority. Southern states that courts have recognized that the Commission ''is a 'creature of statute,' having no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress.''[45] Southern contends that public utilities have long engaged in meteorological forecasting for load forecasting and dispatch purposes. Southern argues that there never has been an indication that such practices were within the scope of the Commission's jurisdiction, and the advent of VER generation has not added such forecasting to the scope of the Commission's authority.

C. Commission Determination

36. The Commission concludes that it has authority under section 206 of the FPA to adopt the reforms set forth in this Final Rule. Section 313(b) of the FPA makes Commission findings of fact conclusive if they are supported by substantial evidence.[46] When applied in a rulemaking context, ''the substantial evidence test is identical to the familiar arbitrary and capricious standard.''[47] The Commission thus must show that a ''reasonable mind might accept'' that the evidentiary record here is ''adequate to support a conclusion,''[48] that this Final Rule is needed to address barriers to the integration of VERs by remedying challenges that may be causing undue discrimination and increased costs ultimately borne by consumers. As explained below, the Commission has met its burden.

37. As discussed throughout this Final Rule, the reforms adopted in this proceeding are intended to ensure that rates for jurisdictional services remain both just and reasonable and are not unduly discriminatory or preferential. In this way, the reforms contained in this Final Rule build on the work of Order No. 890, in which the Commission made several reforms to the *pro forma* OATT, in part because of a recognition that the mix of generation resources on the system was changing and that not all generation resources were similarly situated.[49] Like the reforms instituted in Order No. 890, the reforms adopted herein are designed to remedy deficiencies in existing requirements that can cause the rates, terms, and conditions of jurisdictional services to become unjust and unreasonable or unduly discriminatory or preferential.

38. The basis for adopting changes to the *pro forma* OATT and *pro forma* LGIA is discussed in the sections below addressing reforms to transmission scheduling practices and the reporting of meteorological data. There the Commission concludes that changes to scheduling practices are necessary in order to ensure that charges for generator imbalance service under schedule 9 of the *pro forma* OATT and for generator regulation service, as relevant, are just and reasonable and not unduly discriminatory. The Commission also concludes that, without the reporting requirements adopted herein, the terms of the *pro forma* LGIA may impair the ability of public utility transmission providers to develop and deploy power production forecasting, which in turn can lead to rates for jurisdictional services that are unjust and unreasonable or unduly discriminatory.

39. The Commission concludes that we have the authority to make these determinations under applicable precedent, including *National Fuel.* In that case, the court found that the

[42] Southern (citing *Ala Elec. Coop.* v. *FERC,* 684 F.2d 20, 29 (D.C. Cir. 1982) (*Alabama Power*)).

[43] Southern further contends that VERs are not similarly situated to dispatchable generation for sheduling and imbalance purposes. *Id.* (citing *City of Vernon* v. *FERC,* 845 F.2d 1042, 1045–46 (D.C. Cir. 1988)).

[44] Midwest ISO Transmission Owners (referencing Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at PP 37, 45, 55 (stating that proposed reforms in intra-hour scheduling and power production forecasting can enhance reliability).

[45] Southern (citing *Cal. Indep. Sys. Operator Co.* v. *FERC,* 372 F.3d 395, 398 (D.C. Cir. 2004) (citing *Atlantic City Elec. Co.* v. *FERC,* 295 F.3d at 8)).

[46] 16 U.S.C. 825l(b).

[47] *Wisc. Gas Co.* v. *FERC,* 770 F.2d 1144, 1156 (1985); *see also Associated Gas Distrib.* v. *FERC,* 824 F.2d 981, at 1018 (D.C. Cir. 1987).

[48] *Dickenson* v. *Zurko,* 527 U.S. 150, 155 (1999).

[49] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 2 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 5. The Commission further recognized that intermittent resources, such as wind power, have a limited ability to control their output, and that this limitation supports tailoring certain requirements to the special circumstances presented by this type of resource. Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663 (requiring that generator imbalance provisions account for the special circumstances presented by intermittent generators).

Commission had not met the substantial evidence standard when it sought to extend its Standards of Conduct that regulate natural gas pipelines' interactions with their marketing affiliates to their interactions with their non-marketing affiliates. The court noted that it had previously upheld the Standards of Conduct as applied to marketing affiliates because the Commission had demonstrated both a theoretical threat, namely that pipelines could grant undue preferences to their marketing affiliates, and substantial record evidence that such abuse had actually occurred.[50] In considering the Commission's order extending the Standards to non-marketing affiliates, the court found that the Commission had cited a theoretical threat of undue preference, but had not cited a single example of actual abuse by non-marketing affiliates. It concluded that instead of providing evidence of a real problem with respect to non-marketing affiliates, the Commission had relied either on examples of abuse by marketing affiliates, and therefore already covered by the old Standards, or on comments from the rulemaking that merely reiterated a theoretical potential for abuse.[51] The court remanded the matter and noted that if the Commission chose to proceed with promulgating the new Standards, it would have to develop a factual record to support them. If the Commission decided instead to rely solely on a theoretical threat, it would need to show how this threat justified the costs that the Standards would create.[52]

40. Our actions in this Final Rule are consistent with the standards that the court set forth in *National Fuel.* We conclude that, in light of the increasing deployment of VERs on the nation's transmission system, the reforms adopted herein are necessary to correct operational practices that can limit the cost-effective integration of VERs into the transmission system consistent with open access principles. In other words, the problem that the Commission seeks to resolve represents a ''theoretical threat,'' in the words of the *National Fuel* decision, the features of which are discussed throughout the body of this Final Rule in the context of each of the reforms adopted herein. This threat is significant enough to justify the reforms imposed by this Final Rule. It is not one that can be addressed adequately or efficiently through the adjudication of individual complaints.[53] In the terminology of *National Fuel,* the remedy we adopt is justified sufficiently by the ''theoretical threat'' identified herein, even without ''record evidence of abuse.'' The actual experiences of problems cited in the record herein provide additional support for our action, but are not necessary to justify the remedy.

41. Citing *Enron,* Southern and EEI also argue that the Commission does not have the authority to remedy undue discrimination in situations where facially neutral operational practices result in a disparate impact on different market participants. The Commission disagrees. *Enron* involved an OATT Filing by a public utility (Entergy) in which the utility sought to require point-to-point transmission customers to designate specific sources and sinks for transmission service. The proposal also set forth what the utility would accept as a valid source or sink, prohibiting a generator (or generation-only control area) from being a sink, and prohibiting a load (or load-only control area) from being a source.[54] Customers objected to the proposal, arguing that the provision would not limit Entergy's ability to reserve capacity and schedule in and out of its control area because it had load and generation within its control area, but would prohibit similar transactions from customers operating control areas completely surrounded by Entergy that sought to set up transactions in and out of those control areas. The Commission evaluated Entergy's proposal under the applicable standard of review, i.e., whether the OATT Filing was consistent with or superior to the Order No. 888 *pro forma* OATT. The Commission accepted the proposal, and the United States Court of Appeals for the District of Columbia Circuit upheld the decision.[55]

42. We find that commenters' reliance on *Enron* is misplaced. In *Enron,* the Commission reviewed a tariff filing made under section 205 of the FPA to determine if it was consistent with or superior to the *pro forma* OATT. The scope of that analysis is not analogous to that of our inquiry in this proceeding, which is to determine if changes to the *pro forma* OATT and *pro forma* LGIA are necessary to ensure that rates for jurisdictional services remain just and reasonable and not unduly discriminatory. In any event, to the extent that *Enron* may be relevant to a rulemaking proceeding of general applicability, Southern and EEI appear to misunderstand the result in *Enron.* In that case, the court found that it was neither arbitrary nor capricious for the Commission to accept a tariff provision forbidding the designation of a generator-only control area as a sink and a load-only control area as a source as comparable to the *pro forma* OATT.[56] In addition to this holding, the court indicated that it was sufficient for the Commission to address comparability of an OATT (the applicable standard in that proceeding) ''on the basis of the terms and conditions offered to customers, not on the usefulness of those terms and conditions to a particular customer because of that customer's capacities and needs,'' noting also that the Commission found that the provision was not discriminatory.[57]

43. *Enron* did not, as Southern and EEI suggest, reject the notion that facially-neutral, technology- and customer-blind operational practices could be found to be unduly discriminatory because of the effects or impacts of those requirements on different customer groups. Instead, the relevant *Enron dicta* indicate that the Commission *could* sustain a determination that a tariff provision is comparable to the *pro forma* OATT where it offers the same terms and conditions to customers, notwithstanding a difference in how different customers will use or benefit from those tariff provisions.[58] However, nothing in *Enron* mandates that result.

44. Our conclusion that Southern and EEI erred in their interpretation of *Enron* is bolstered by other cases included in the comments of both parties. For example, Southern and EEI cite *Alabama Power* for the proposition that, in instances where a single rate is found to have disparate cost impacts on dissimilar customers, such a result is only considered unduly discriminatory if the differences cannot be cost justified.[59] In *Alabama Power,* the issue for the court was whether an application of the same rate to two groups of customers that were similar in many respects may nevertheless violate statutory prohibitions against unduly discriminatory rate schemes. That case involved rate filings by a utility that

[50] *National Fuel,* 468 F.3d at 840.

[51] *Id.* at 841.

[52] *Id.* at 844.

[53] Individual adjudications by their nature focus on discrete questions of a specific case. Rules setting forth general principles are necessary to ensure that adequate processes are in place.

[54] *Enron,* 296 F.3d at 1151.

[55] *Id.* at 1153–54.

[56] *Id.* at 1151–52.

[57] *Id.* at 1151. The court further found that the Commission adequately addressed charges that the provision would lead to discriminatory treatment by accepting the utility's commitment to apply the provision on a nondiscriminatory basis.

[58] *Id.*

[59] Southern (citing *Alabama Power,* 684 F.2d at 29); EEI (citing *Alabama Power,* 684 F.2d 20).

applied the same rate to two groups of wholesale service customers. One group alleged that this single rate represented a misallocation of costs, resulting in that group paying significantly more (and the other paying significantly less) than the costs for which its members were responsible. The court held that notwithstanding the fact that the same rate applied to both groups of customers, the Commission was obligated to evaluate whether the different costs imposed by those two groups rendered the use of a single rate unduly discriminatory.[60]

45. Southern argues that a finding in the Proposed Rule—that existing hourly transmission scheduling protocols expose transmission customers to ''excessive or unduly discriminatory generator imbalance charges''—may run afoul of *Alabama Power* because VER customers require greater amounts of imbalance service and therefore should be required to pay more in the way of imbalance charges.[61] Southern and EEI contend that, because VERs are not similarly situated to dispatchable generation for scheduling and imbalance purposes, existing scheduling and imbalance practices cannot be unduly discriminatory toward VERs.[62] Similarly, ELCON argues that the Proposed Rule would require all ratepayers to subsidize the integration of VERs despite not receiving any benefits, thereby violating cost causation principles.

46. As with commenters' reliance on *Enron,* we find that commenters' reliance on *Alabama Power* is misplaced. The Commission is not determining whether a single rate imposed on two groups of customers may unduly discriminate against one of those groups. Instead, the Commission is promulgating a generic rule that amends the scheduling requirements of the *pro forma* OATT to remedy practices throughout the industry that may be causing jurisdictional rates to be excessive or unduly preferential. Accordingly, the task before the Commission is not comparing the impact of a concrete rate proposal on distinct and readily identifiable customers or classes. Rather, the Commission is broadly evaluating whether the *pro forma* OATT contains the appropriate set of requirements to ensure that rates for all customers remain just and reasonable and not unduly discriminatory. As in Order No. 890, the Commission is acting in part to remedy OATT provisions that may allow public utility transmission providers to treat some customers in an unduly discriminatory manner. Such an endeavor necessarily requires the Commission to take notice of the general developments in the electric industry in deciding what generic reforms may be needed to ensure that the *pro forma* OATT does not unduly discriminate against any one class of customers.[63]

47. In Order No. 890, the Commission recognized that the mix of generation resources on the system was changing and that not all generation resources were similarly situated.[64] In response, the Commission instituted reforms that recognized the unique nature of intermittent resources, tailoring certain requirements to the special circumstances presented by this type of resource.[65] We again recognize that VERs, by definition,[66] are not similarly situated to conventional, dispatchable generators and that reforms to the *pro forma* OATT are necessary to ensure that these resources are treated in a fair and not unduly discriminatory manner. Simply because VERs are not similarly situated in all respects to conventional, dispatchable generators, it does not follow, as Southern and EEI assert, that existing *pro forma* OATT provisions that place a disproportionate burden on VERs are just and reasonable.[67] The more frequent scheduling intervals required by this Final Rule will enable VERs, as well as other generators, to schedule transmission service accurately based on forecasted energy output. This will mitigate VERs' exposure to imbalance charges, while at the same time giving public utility transmission providers a better understanding of expected energy flows on their systems.

48. The Commission does not need to make specific findings with respect to each affected entity so long as the agency's factual determinations are reasonable.[68] As further discussed herein, the Final Rule amends the *pro forma* OATT in ways that will limit uncertainty and provide additional control over scheduling, which should reduce imbalance charges for all customers. The proposed reforms will further benefit customers and the market as a whole by providing increased flexibility and encouraging innovation and participation by new market participants.[69] While the Commission commenced this proceeding as a response to the significantly increasing penetration of VERs into the nation's generation portfolio, the Commission's purpose is not to favor VERs over other forms of generation (or demand) resources. Quite the contrary, a primary goal of this proceeding is to remove obstacles that can have a discriminatory impact on the ability of VERs to compete in the marketplace and that can otherwise result in unjust and unreasonable rates for all market participants.[70]

49. Finally, in response to Southern, the Commission notes that it is not

[60] *Alabama Power,* 684 F.2d at 28–29.

[61] Southern (citing Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 37).

[62] Both Southern and EEI cite additional authority for this point, i.e., that in order to demonstrate that it was unduly discriminated against, a party must show that it is similarly situated to another party receiving different treatment. *See* EEI (citing *Ark. Elec. Energy Consumers* v. *FERC,* 290 F.3d 362 (D.C. Cir. 2002) (''a rate is not 'unduly' preferential or 'unreasonably' '' discriminatory in violation of the FPA if disparate effect of transmission or sale of electric energy by the jurisdictional utility can justify the disparate effect'')); Southern (citing *City of Vernon* v. *FERC,* 845 F.2d 1042, 1045–46 (D.C. Cir. 1988) (''The Commission's opinion sets forth a two-part test for discriminatory treatment where different rates or services are offered, requiring a showing that the unequally treated customers are 'similarly situated,' and that the service sought is the 'same service' actually offered elsewhere.'') & n.2 (''FERC has typically relied on factors like these in defining a prima facie case of undue discrimination.''); *see,* e.g.,*Sacramento Mun. Util. Dist.* v. *FERC,* 474 F.3d 797, 802 (D.C. Cir. 2007) (''In order for PG&E's refusal to negotiate a successor agreement with [Sacramento Municipal Utility District (SMUD)] to constitute undue discrimination, SMUD must demonstrate it is similarly situated to Western.'').

[63] *See Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000) (TAPS) (affirming Order No. 888 rulemaking based on general findings, rejecting utility arguments that FERC must have substantial evidence and make specific factual findings); *Wisc. Gas Co.* v. *FERC,* 770 F.2d 1144 (affirming that Commission need not make individual findings regarding each affected entity but can rely on a broader record in promulgating rule of general applicability); *Associated Gas Distrib.* v. *FERC,* 824 F.2d 981 (affirming that the Commission is not required to have empirical data for all the propositions upon which its order depended before promulgating a rule).

[64] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 5.

[65] *Id.* P 663 (requiring that generator imbalance provisions account for the special circumstances presented by intermittent generators).

[66] *See supra* note 1 (defining VER).

[67] *See Alabama Power,* 684 F.2d at 23–24 (''It matters little that the affected customer groups may be in most respects similarly situated—that is, that they may require similar types of service at similar (even if varying) voltage levels. If the costs of providing service to one group are different from the costs of serving the other, the two groups are in one important respect quite dissimilar.'').

[68] TAPS, 225 F.3d at 688 (citing *Wisc. Gas Co.* v. *FERC,* 770 F.2d at 1158).

[69] *Cf.* Order No. 679, *Promoting Transmission Investment through Pricing Reform,* Order No. 679, FERC Stats. & Regs. ¶ 31,222, at PP 131, 176, 224, *order on reh'g,* Order No. 679–A, FERC Stats. & Regs. ¶ 31,236, at P 77 (2006), *order on reh'g,* Order No. 679–B, 119 FERC ¶ 61,062 (2007). The Commission does not authorize these measures to provide a unilateral benefit to transmission owners but rather to encourage the development of needed transmission, which has broader benefits to the market and consumers.

[70] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 23.

asserting jurisdiction over the practice of power production forecasting in this Final Rule. Rather, the Commission is adopting changes to the *pro forma* LGIA to impose reporting requirements on interconnection customers whose generating facilities are VERs. As discussed in further detail later in this Final Rule, power production forecasting can be used by public utility transmission providers to significantly reduce operating costs associated with the integration of VERs interconnected to their systems.[71] However, the ability of public utility transmission providers to engage in power production forecasting may be limited without data from interconnected VERs. In order to facilitate a public utility transmission provider's use of power production forecasting to reduce its operating costs, the Commission is amending the requirements of the *pro forma* LGIA to impose a data reporting requirement as a condition of interconnection service for interconnection customers whose generating facilities are VERs.

50. The question then is whether the Commission has jurisdiction to condition the grant of interconnection service on the reporting of meteorological and outage data by interconnection customers whose generating facilities are VERs as a practice affecting rates subject to the Commission's jurisdiction under the FPA.[72] As the Commission explained in Order No. 2003, interconnection service is a component of open access transmission service, subject to the Commission's regulation under sections 205 and 206 of the FPA.[73] The reporting of meteorological and outage data by VER customers taking jurisdictional interconnection service has a direct affect on the ability of the public utility transmission provider to efficiently manage the VER integration through the development and deployment of power production forecasting. Failure to require the reporting of this data could limit the public utility transmission provider's ability to develop and deploy power production forecasts and, in turn, its attempts to efficiently commit or de-commit resources providing regulation reserves, potentially resulting in rates for reserve-related services that are unjust and unreasonable or unduly discriminatory. It is therefore reasonable for the Commission to conclude that it is within our jurisdiction to implement the data reporting requirements of this Final Rule as a condition of interconnection service.

IV. Proposed Reforms

A. Intra-Hour Scheduling

51. The first of the two reforms adopted in this Final Rule relates to the intervals at which transmission customers may submit transmission schedules under the *pro forma* OATT. As discussed below, the Commission amends the *pro forma* OATT to provide all transmission customers the option of using more frequent transmission scheduling intervals within each operating hour, at 15-minute intervals. The Commission concludes this change to existing operational practices is necessary in order to ensure that charges for generator imbalance service under Schedule 9 of the *pro forma* OATT and for generator regulation service, as relevant, are just and reasonable and not unduly discriminatory.

1. Intra-Hour Scheduling Requirement

a. Commission Proposal

52. In the Proposed Rule, the Commission preliminarily found that hourly transmission scheduling protocols are no longer just and reasonable and may be unduly discriminatory as the default scheduling time periods required by the *pro forma* OATT. Specifically, the Commission preliminarily found that existing hourly transmission scheduling protocols expose transmission customers to excessive or unduly discriminatory generator imbalance charges and are insufficient to provide system operators with the flexibility to manage their system effectively and efficiently. Therefore, the Commission proposed to amend sections 13.8 and 14.6 of the *pro forma* OATT to provide transmission customers the option to schedule transmission service on an intra-hour basis, at intervals of 15 minutes. The Commission noted that its proposed reform would allow for intra-hour scheduling adjustments and that it did not propose changes to the hourly transmission service reservation provided in the OATT.[74]

53. The Commission acknowledged in the Proposed Rule that a number of public utility transmission providers already have begun implementing intra-hour scheduling practices. The Commission stated that, while these individual reforms are important steps toward the efficient integration of VERs, it believed that it also is important to establish 15-minute scheduling periods as the default scheduling process. At the same time, the Commission acknowledged arguments that regional differences should be respected when developing an implementation process and that any Commission action should not negatively affect ongoing industry efforts. In that regard, the Commission sought comment on the best approach for implementing the proposed intra-hour scheduling reforms. The Commission recognized that an optimal implementation approach should support ongoing industry efforts and may consider regional differences, such as the amount of VERs present in that region. In proposing implementation approaches, the Commission encouraged commenters to consider any impacts on transmission customers scheduling across multiple systems and whether these impacts diminish the benefits of implementing intra-hour scheduling.[75]

54. To understand more fully the modifications that this proposed reform may require, the Commission sought comment on the specific hardware, software, and personnel changes that are necessary to implement intra-hour scheduling. The Commission further inquired as to whether there would be any additional impacts on relatively small public utility transmission providers, and how to best facilitate this reform for small public utility transmission providers.

b. Comments

i. Obligation to Offer Intra-Hour Scheduling

55. A number of commenters support the Commission's proposal to require public utility transmission providers to offer intra-hour scheduling,[76] although some seek clarifications or modifications of the proposal. Additionally, commenters disagree as to the appropriate period of time for submitting intra-hour schedules. These commenters generally agree that intra-hour scheduling would enable transmission customers to align transmission schedules with actual generation output more effectively, reduce the need for transmission providers to carry expensive operating

[71] *See infra* § IV.B.1 (Data Requirements).

[72] *See Cal. Indep. Sys. Oper.* v. *FERC,* 372 F.3d 395 (D.C. Cir. 2004).

[73] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at 12.

[74] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 39 & n.89.

[75] *Id.* PP 42–43.

[76] *E.g.,* A123; Alstom Grid; ACSF; Argonne National Lab; BP Energy; California ISO; CESA; CMUA; CEERT; Center for Rural Affairs; Clean Line; CGC; Defenders of Wildlife; Environmental Defense Fund; EPSA; Exelon; First Wind; FriiPwr; Independent Power Producers Coalition—West; Independent Energy Producers; ITC Companies; NextEra; NaturEner; Organization of Midwest ISO States; Oregon and New Mexico PUC; Public Interest Organizations; Powerex; SWEA; Tacoma Power; Tres Amigas; TVA; Vestas; Viridity Energy; Vote Solar; Western Grid; Xcel.

reserves, and provide for greater system flexibility by utilizing available resources in a more efficient manner.

56. For example, EPSA states that the option of 15-minute scheduling would expand the availability of flexible generation resources and demand response resources to provide additional liquidity and consistency in the market. Exelon argues that implementing intra-hour scheduling will reduce supply-side uncertainty, which should allow resources to be more optimally selected and allocated than otherwise would be the case. Powerex contends that shorter scheduling intervals would allow the use of more accurate forecasts that are closer to the operating time-frame. Joined by CEERT and others, Powerex argues that intra-hour scheduling would increase transmission system flexibility and efficiency, providing grid operators with more options for scheduling resources during each hour and decreasing the need for (and costs of) ancillary services needed for reliable integration of VERs.[77] The Center for Rural Affairs asserts that making intra-hour scheduling available is essential for public utility transmission providers and balancing authorities seeking to provide system balance with increasing generation from VERs.

57. While acknowledging that some stakeholders in this proceeding oppose the mandatory nature of the Commission's proposal, disagree about scheduling costs, and question the reliability impacts of the proposed reforms, Public Interest Organizations state that almost all stakeholders have acknowledged that intra-hour scheduling does improve scheduling accuracy and decrease the need for energy imbalance services. Public Interest Organizations, joined by Environmental Defense Fund and Argonne National Lab, contend that intra-hour scheduling, as compared to hourly scheduling protocols, allows for a more accurate prediction of the variable generation that can be delivered within the market interval, reducing the need to procure expensive regulation or energy imbalance services.[78] NaturEner agrees, arguing that shorter scheduling intervals would allow for more frequent generation adjustments, thus, decreasing the negative impacts on both the transmission system and the grid from frequent generation disruptions. Iberdrola similarly contends that moving toward smaller intra-hour scheduling intervals will provide incentives for more complete and efficient scheduling practices and eliminate other outdated and discriminatory operating practices.

58. California ISO states that continuing to require resources to match hourly transmission schedules would perpetuate inefficient and burdensome operational requirements. Tres Amigas contends that current scheduling practices have been associated with underutilized transmission assets and sub-optimal operating practices resulting in inefficient curtailment of generation. BP Energy asserts that 15-minute scheduling intervals will increase the ability of a transmission customer scheduling energy from a VER to manage the scheduled input and, therefore, its imbalance costs. Vestas notes that all generators, regardless of fuel type, will be able to track their schedules more closely with actual levels of production as a result of intra-hour scheduling. Vestas explains that, if a large fossil-fueled resource suffers an outage or derate within an hour, the ability to change its schedule earlier than the next clock hour can provide significant benefits to both the generator and the transmission system operator. Clean Line contends that intra-hour scheduling is likely to have benefits independent of variable generation integration, stating that sub-hourly variations in load could be managed in a more cost-effective manner. Also, A123 contends that shorter scheduling intervals will help OATT markets incorporate the benefits of high-ramp, limited energy resources like storage.[79]

59. However, other commenters oppose mandatory intra-hour scheduling, arguing generally that current scheduling practices are neither preferential nor unduly discriminatory.[80] For example, ELCON states that the Commission's proposals are costly measures that would apply preferentially to just one class of generation—VERs—in order to address discrimination that does not actually exist. Some commenters argue that further study of the need for intra-hour scheduling should be undertaken prior to mandating the practice. Several of these commenters assert that the Commission should not require the implementation of 15-minute intra-hour scheduling until certain impacts are better understood.[81] LADWP submits that intra-hour scheduling should not be implemented until it has been fully vetted and researched to assess operational capabilities and coordination.

60. Some commenters argue that the Commission's proposed reform may not lead to a reduction in aggregate reserve costs. These commenters contend that the implementation of intra-hour scheduling does not negate the inherent variability of VERs and, therefore, the cost of providing balancing services is merely shifted, rather than mitigated, by intra-hour scheduling.[82] For example, Avista explains that, while the host balancing authority will provide a reduced amount of balancing reserves within each scheduling period, a significant portion of this variability is being covered by the sink balancing authority or the load serving entity (LSE). Avista contends the sink balancing authority or LSE will incur increased balancing costs to follow the fluctuating VER schedule against a relatively more constant load, thereby shifting the cost of managing that variability as opposed to creating substantial cost savings through intra-hour scheduling. If the host balancing authority area and the sink balancing authority area are the same, Avista argues that no cost savings or reduction in reserves is accomplished by the proposed scheduling reforms. Iberdrola argues that implementing intra-hour scheduling absent a market for dispatchable resources to manage variability could potentially be more harmful than helpful to VER integration. Duke argues that, due to the inherent variability of VERs, more regulating reserves will be needed regardless of the scheduling interval. While operating experience may diminish the need for regulating reserves over time, Duke contends that the level of regulating reserves will ultimately be maintained at a higher level than required today. M–S–R Public Power Agency encourages the Commission to consider the effectiveness of reducing overall intermittency management obligations further before implementing an intra-hour scheduling reform.

61. With regard to the appropriate time interval for intra-hour scheduling, a number of commenters support the Commission's proposal to require public utility transmission providers to offer intra-hour scheduling at 15-minute intervals.[83] Many of these commenters

[77] *E.g.,* CEERT; Powerex; Public Interest Organizations; Vestas.

[78] *E.g.,* Argonne National Lab; Environmental Defense Fund; Public Interest Organizations.

[79] A ramp rate is the rate, expressed in megawatts per minute, that a resources changes its output. *See* NERC Glossary of Terms, available online at *http://www.nerc.com/files/Glossary_of_Terms.pdf.*

[80] *E.g.,* ELCON; Midwest ISO; NV Energy; Southern.

[81] *E.g.,* California PUC; LADWP; NorthWestern; NV Energy; Pacific Gas & Electric.

[82] *E.g.,* Avista; Bonneville Power; M–S–R Public Power Agency; Xcel.

[83] *E.g.,* A123; Alstom Grid; ACSF; Argonne National Lab; BP Companies; CESA; CEERT; Center for Rural Affairs; Clean Line; CGC; Defenders of

agree that a scheduling interval of 15-minutes or shorter provides a number of benefits such as lowering the costs related to integrating VERs into the market and operational benefits. Argonne National Lab states that requiring transmission providers to schedule resources with a frequency of at least every 15 minutes would provide benefits to all supply and demand resources in the power system, not only VERs. Several commenters argue that scheduling in 15-minute intervals would reduce imbalance charges through more accurate schedules.[84] EPSA notes that the proposed 15-minute scheduling interval is consistent with NERC recommendations for achieving greater flexibility while meeting relevant reliability requirements.[85] Exelon asserts that 15-minute scheduling is an industry best practice and that the Commission should set a deadline by which all transmission providers must conform.

62. Vestas acknowledges that a shortened scheduling interval must strike a balance between the benefits of increased certainty and reduced variability resulting from customers' ability to more closely match their schedules with their anticipated output and any increased complexity and technical issues that could result if the scheduling interval is too short. Vestas contends that a 15-minute scheduling window provides a reasonable compromise between the current hour and the even shorter 5-minute intervals utilized in certain RTO markets. Oregon & New Mexico PUC agree that as more wind and solar generation are integrated into the system, shorter intra-hour intervals will generate greater cost savings than longer intervals. Oregon & New Mexico PUC urge the Commission to adopt a minimum standard for transmission scheduling at 15-minute intervals to focus industry efforts on implementing a consistent standard rather than debating the appropriate interval.

63. Some commenters are concerned that the proposed 15-minute scheduling interval is too long.[86] While supportive of 15-minute scheduling as an interim step, several commenters recommend that the Commission require public utility transmission providers to move to shorter scheduling intervals.[87] RenewElec asserts that 15-minute scheduling may not be sufficient for the integration of large amounts of VERs. As an option for increasing flexibility without decreasing the 15-minute scheduling period, SEIA asks the Commission to clarify that generators may submit 15-minute schedules with different output levels at the beginning and end of the 15-minute period to reflect anticipated ramps to manage the variations in diurnal ramping of solar resources. Vote Solar echoes the concerns of SEIA with regard to solar diurnal ramping and argues for scheduling intervals more granular than 15-minutes to accommodate wide-area balancing. Vote Solar recommends that the Commission additionally require a 5-minute intertie scheduling interval. However, EEI cautions that if the Commission decides to move forward with the rule as proposed, the scheduling interval should be no less than 15 minutes as it may undermine the reliable operation of the system.

64. Other commenters argue that the proposed 15-minute scheduling interval is too short.[88] Several commenters recommend an initial 30-minute intra-hour scheduling interval to coincide with current regional initiatives or as a general first step.[89] Some commenters argue that the Commission should use the output of ongoing regional initiatives to determine whether a 15-minute scheduling interval is necessary, or whether another mechanism is the desired method to reduce VER integration costs.[90] EEI states that, if there is no demand for intra-hour scheduling, investments to implement 15-minute scheduling would be unnecessary. NorthWestern expresses uncertainty as to whether 15-minute scheduling would provide benefits greater than those achieved through 30-minute scheduling. Southern California Edison suggests that a 30-minute scheduling interval is sufficient as it can capture forecast error reductions, align with the commitment capabilities of most integrating resources, and reduce the need for additional administrative overhead. Iberdrola recommends that the Commission allow public utility transmission providers to provide intra-hour schedules at 30-minute intervals as an interim step to participation in an energy imbalance market.

65. Some commenters contend that a 15-minute scheduling interval does not support the standard 20-minute generator/scheduling ramp rate in the West.[91] Tacoma Power explains that continuing to use 20-minute ramps would create interface problems with the receipt of schedules on a 15-minute interval. Bonneville Power similarly argues that scheduling on a 15-minute interval would result in almost continuous ramping in a way that 30-minute scheduling does not, and that the resulting reduction in dynamic transfer capability could preclude implementation of other options for reducing VER integration costs. WestConnect asserts that this may result in a disparity in the accurate scheduling of VERs and the system operator's ability to efficiently integrate VERs under restricted ramping intervals.

66. Bonneville Power and Xcel request clarification that ''intra-hour scheduling adjustments'' include both adjustments to existing schedules and the submission of new schedules.[92] MidAmerican requests clarification as to whether intra-hour scheduling is intended to be available only within the current hour or also in future hours.

ii. Consistency in Scheduling Requirements

67. Commenters differ regarding whether the Commission should adopt a consistent intra-hour scheduling requirement for all transmission providers under the *pro forma* OATT. If the Commission decides to move forward with its proposal, EEI recommends that the Commission require a uniform, consistent scheduling interval throughout each interconnection. EEI contends that this will allow for the development of uniform and consistent intervals in reliability standards and business practices and also promote accuracy of results. A number of other commenters agree that consistent scheduling intervals are needed in order for intra-hour scheduling to occur across balancing authority areas.[93] For

Wildlife; Environmental Defense Fund; EPSA; Exelon; First Wind; Independent Energy Producers; ITC Companies; NaturEner; Organization of Midwest ISO States; Oregon & New Mexico PUC; Powerex; Public Interest Organizations; SWEA; Tres Amigas; Viridity Energy; Vote Solar; Western Grid; Xcel.

[84] *E.g.,* BP Energy; CEERT; CGC; Defenders of Wildlife; Duke; NextEra; Public Interest Organizations; SEIA; Vestas; Xcel.

[85] EPSA (citing NERC April 12, 2010 Response to NOI at 17–18).

[86] *E.g.,* Environmental Defense Fund; FriiPower; Independent Power Producers Coalition-West; RenewElec; SEIA; Vestas.

[87] *E.g.,* Environmental Defense Fund; Independent Power Producers Coalition-West; RenewElec.

[88] *E.g.,* LADWP; Montana PSC; NV Energy; Puget.

[89] *E.g.,* Bonneville Power; California ISO; California PUC; CMUA; Montana PSC; NorthWestern; NV Energy; Snohomish County PUD; Southern California Edison; WUTC.

[90] *E.g.,* Bonneville Power; California PUC; CMUA; FirstEnergy; NorthWestern; Snohomish County PUD; Southern California Edison.

[91] *E.g.,* LADWP; NorthWestern; PNW Parties; Tacoma Power; WestConnect.

[92] Bonneville Power; Xcel.

[93] *E.g.,* Argonne National Lab; EEI; Iberdrola; Independent Power Producers Coalition-West; NaturEner; NorthWestern; NRECA; Oregon & New Mexico PUC; Public Interest Organizations; Puget;

Continued

example, NorthWestern and Southern contend that, unless all public utility transmission providers within an interconnection are required to comply with the same intra-hour scheduling interval, intra-hour scheduling may erode a utility's ability to maintain reliability.

68. Public Interest Organizations agree that there is a need to apply consistent scheduling obligations across the country in order to avoid undue discrimination against VERs and argue that the benefits of 15-minute intra-hour scheduling will apply throughout the system, not just to VERs. If the Commission decides to allow for a public utility transmission provider to propose variations to 15-minute scheduling, Public Interest Organizations suggest that the entity be required to demonstrate why a variation is necessary and show that the proposed alternative will be equally effective or superior to the Commission's proposal. NextEra points out that the arguments favoring regional variations in scheduling requirements ignore the fact that many regions have no overall regional body or authority with sufficient ability to ensure consistency in resolving issues regarding VER integration. NextEra submits that the Commission has ultimate responsibility to ensure that market rules are just and reasonable, and that the Commission cannot delegate its responsibility to states, regions, or public utilities. Tres Amigas requests that the Commission clarify that intra-hour scheduling will apply to all generation scheduled on the bulk transmission system; inter- and intra-balancing authority transactions, and point-to-point, network, or native load service. Tres Amigas states that inconsistent transmission scheduling periods will lead to inefficient and/or discriminatory use of the transmission system.

69. Many commenters contend that the Commission should afford public utility transmission providers the flexibility to determine how best to implement intra-hour scheduling in their region. These commenters ask the Commission to acknowledge that region-specific scheduling practices may be appropriate in light of system circumstances and market designs.[94] Several of these commenters note that there are regional efforts and pilot programs underway that are aimed at efficiently managing the integration of VERs and providing an opportunity for intra-hour scheduling.[95] These commenters generally contend that the Commission should support and not undermine such regional initiatives. Examples of regional initiatives identified by commenters include the Joint Initiative,[96] the WECC Efficient Dispatch Toolkit,[97] and a pilot between Bonneville Power and the California ISO to evaluate the use of intra-hour scheduling on the California-Oregon Intertie.[98] Several commenters suggest that the Commission should conduct technical conferences to investigate the relative merits of these and alternative approaches prior to imposing a uniform national mandate.[99]

70. Some commenters express concern that a Commission mandate may detrimentally affect current regional efforts by diverting resources from or discouraging participation in voluntary regional initiatives by both jurisdictional and non-jurisdictional entities.[100] Bonneville Power and CMUA suggest that ongoing initiatives may provide the Commission with real-world data and alternative options to reach the Commission's stated goals. In order to support ongoing regional initiatives, Pacific Gas & Electric recommends that the Commission not implement 15-minute scheduling until regional initiatives have been given a reasonable amount of time to come to an end. Grant PUD argues that 20–30 minute scheduling intervals appear to be sufficient for the Northwest region of the country and that the Commission should allow this to be considered a ''regional practice.'' [101] In addition, NRECA argues that the Commission should afford public utility transmission providers an opportunity to demonstrate that existing practices or practices under development are or will be consistent with or superior to the Commission's proposed reforms.

71. Some commenters stress the need for regional flexibility because, in their view, intra-hour scheduling may not be the right decision for everyone.[102] For example, LADWP asserts that the Proposed Rule is ill-timed, and that intra-hour scheduling may not be necessary in regions where the existing generation portfolio provides sufficient flexibility to integrate a fixed percentage of VER penetration reliably. Southwestern explains that, as a federal agency operating under a Congressional statutory mandate, the Administration may not be able to implement intra-hour scheduling as this may impact the purposes of the Corps projects such as flood control, hydropower, navigation, fish and wildlife, and recreation. If the Commission adopts the Proposed Rule, NRECA urges the Commission to permit public utility transmission providers to seek a waiver from implementing intra-hour scheduling until the entity receives a request to schedule intra-hour.

72. A number of commenters question the applicability of the proposed intra-hour scheduling requirements in regions with RTOs/ISOs, arguing that these markets already provide for system flexibility that is consistent with or superior to the intra-hour scheduling protocol proposed by the Commission.[103] Business Council suggests that the Commission should focus its attention on areas where rapid spot energy and ancillary service markets do not exist, particularly non-RTO/ISO areas that are experiencing significant renewable energy penetration. ISO/RTO Council asks the Commission to recognize that different regions currently provide varying levels of flexibility to VERs through different

Southern California Edison; Southern; and Tres Amigas.

[94] *E.g.*, Avista; Bonneville Power; California ISO; CMUA; California PUC; Detroit Edison; Dominion; EEI; FirstEnergy; Grant PUD; Idaho Power; Independent Power Producers Coalition-West; ISO/RTO Council; Midwest ISO; Montana PSC; National Grid; NorthWestern; NRECA; New York ISO; NV Energy; PJM; PNW Parties; Public Power Council; Puget; SMUD; Southern; Tacoma Power; WUTC; WestConnect.

[95] *E.g.*, Avista; Bonneville Power; Business Council; California ISO; California PUC; CESA; CMUA; EEI; Idaho Power; Joint Initiative; Montana PSC; National Grid; NorthWestern; NV Energy; PNW Parties; Puget; SMUD; WestConnect.

[96] The Joint Initiative is a consensual, collaborative effort within the Western Interconnection to develop high-value and cost-effective regional products, identified through a stakeholder process, for implementation by interested parties. It is jointly sponsored by Columbia Grid, Northern Tier Transmission Group, and WestConnect. Joint Initiative at 1–3. Step one of the Products and Services Strike Team intra-hour scheduling initiative began in July 2011 with the scheduling of transmission in half hour increments. Step two includes broader application of intra-hour scheduling and scheduling in finer increments (15 or 20 minutes) only after evaluation that this step is necessary.

[97] The WECC Efficient Dispatch Toolkit contains: (1) An enhanced curtailment calculator that will aid in managing flows across constrained paths; and (2) an energy imbalance market that will efficiently dispatch resources in response to imbalance.

[98] This pilot program is intended to facilitate the export of wind resources located in Bonneville Power's Balancing Authority into the California ISO. The pilot will use dynamic e-tagging and communication to facilitate intra-hour schedule changes, beginning with a 30-minute scheduling interval.

[99] *E.g.*, California ISO; Grays Harbor PUD; Pacific Gas & Electric; SMUD; Snohomish County PUD.

[100] *E.g.*, Avista; Bonneville Power; California PUC; EEI; Idaho Power; National Grid; NorthWestern; NRECA; NV Energy; PNW Parties.

[101] Grant PUD at 4.

[102] *E.g.*, ISO/RTO Council; NorthWestern; Pacific Gas & Electric; PNW Parties; Public Power Council; Puget.

[103] *E.g.*, AWEA; California ISO; California PUC; Detroit Edison; Iberdrola; ISO New England; Massachusetts DPU; Midwest ISO; PJM; Public Interest Organizations; RENEW; Sunflower and Mid-Kansas; Western Farmers.

systems and market mechanisms, suggesting that the Commission craft the Final Rule in a manner that allows transmission providers to work with their stakeholders to develop solutions that work for their region. FirstEnergy asserts that each RTO and ISO, through its stakeholder process, should be given the opportunity to evaluate the potential need for, and benefits and costs associated with, intra-hour scheduling. Sunflower and Mid-Kansas similarly argue that the Final Rule should recognize the differences between organized markets and not group them with non-RTO public utility transmission providers. Environmental Defense Fund asserts that, because some RTOs and/or balancing authorities have begun to implement regional scheduling reforms, the Commission should avoid imposing duplicative requirements or obstructing such efforts.

73. Some commenters suggest that the Commission clarify that its proposed intra-hour scheduling reforms apply only to RTOs and ISOs in the context of transactions between balancing authorities.[104] However, National Grid cautions the Commission against overly-prescriptive requirements for scheduling between regions and asks for clarification that public utility transmission providers are permitted to pursue other scheduling improvements for cross border transactions and inter-tie scheduling. National Grid notes that New York ISO and ISO New England are already working on solutions to improve interregional interchange scheduling. ISO/RTO Council states that accelerated scheduling changes may negatively affect RTO and ISO interchanges with non-market areas, as those smaller areas may be unable to keep up with an RTO or ISO scheduling within the hour.

74. Many commenters express concern regarding the potential for seams issues, particularly with transmission providers that are not subject to the Commission's ratemaking jurisdiction under sections 205 and 206 of the FPA.[105] Some commenters argue that, for a generator to submit a 15-minute schedule, all balancing authorities involved in the transmission chain must approve the tag or it will be rejected.[106] While the source balancing authority may approve the schedule, PNW Parties explain that the schedule may be denied in the adjacent balancing area if the same intra-hour scheduling procedures are not used, irrespective of the jurisdictional status of the transmission providers involved. Xcel suggests that, in areas where the balancing authority and transmission provider are separate entities, explicit guidance may be needed in order for a balancing authority to accept intra-hour schedules from a transmission provider. Xcel recommends that the Commission place responsibility on the balancing authority to approve intra-hour scheduling changes made in accordance with an approved tariff.

75. Additionally, these commenters question how beneficial intra-hour scheduling will be in the absence of consistent and compatible scheduling intervals among jurisdictional and non-jurisdictional entities.[107] Puget states that, while it has offered intra-hour scheduling since December 2009, its customers have scheduled few transactions due to the lack of conforming scheduling practices in neighboring non-jurisdictional utilities. If transmission customers are unable to schedule across seams at 15-minute intervals, Puget argues that jurisdictional utilities will receive little benefit from the required software, personnel and accounting changes needed to facilitate 15-minute scheduling. Idaho Power submits that seams issues created by different intervals in adjacent systems may ultimately lead to an increase in the costs of VER integration. WUTC asserts that for jurisdictional entities to implement intra-hour scheduling unilaterally would be economically unproductive and may disrupt reliability functions. Idaho Power and EEI similarly contend that seams issues may affect reliability.

76. EEI suggests that the Commission not require public utility transmission providers to provide intra-hour scheduling prior to an evaluation of the impacts on coordination between and among jurisdictional and non-jurisdictional entities. California ISO contends the parties in the West should continue with coordinated efforts to find reasonable solutions that can be implemented without placing an undue burden on neighboring parties. California PUC recommends that the Commission allow sufficient flexibility for public utility transmission providers to determine the most efficient way to support intra-hour scheduling across interties.

77. Snohomish County PUD and Grays Harbor PUD request that the Commission evaluate whether existing supply arrangements with Bonneville Power, referred to as ''slice'' contracts, allow for intra-hour scheduling before adopting the proposed requirements. Snohomish County PUD explains that these contracts allow customers to pay a fixed percentage of Bonneville Power's costs and, in turn, receive an equal percentage of output, thereby taking advantage of the flexibility of the federal system. However, Snohomish County PUD and Grays Harbor PUD state that these ''slice'' contracts limit customers to hourly scheduling. Snohomish County PUD is concerned that it and other similarly situated transmission providers may be unable to implement 15-minute scheduling. Snohomish County PUD contends that, as a result, it and others may have to acquire additional reserves in order to balance wind resources, in effect paying twice for the same capacity and scheduling flexibility. Snohomish County PUD asserts that this issue has already arisen in Bonneville Power's ongoing efforts to develop intra-hour scheduling at 30-minute intervals.

iii. Cost to Implement Intra-Hour Scheduling

78. A number of parties address the potential costs of implementing the Commission's proposed intra-hour scheduling requirement. Exelon states that there likely will be some development and ongoing administrative costs, such as modifying Open Access Same-Time Information System (OASIS) and interchange ramp software and additional staff to evaluate and confirm more frequent scheduling changes, but does not expect that such costs would be excessive. Tres Amigas contends that the incremental costs of providing intra-hour scheduling will be very modest. NaturEner argues that many transmission providers could implement intra-hour scheduling with existing staff and equipment but that, even if that is not the case, entities should be incentivized or required to automate or otherwise update their system as it would expedite the scheduling and transmission approval system. Independent Power Producers Coalition-West contends that increased automation and staffing would enhance the ability of a balancing authority to schedule at shorter intervals and achieve further integration of VERs.

79. Other commenters state that the cost of implementing intra-hour

[104] *E.g.*, AWEA; Iberdrola; Public Interest Organizations; and RENEW.

[105] *E.g.*, Avista; California ISO; Duke; EEI; Idaho Power; MidAmerican; NorthWestern; NV Energy; PNW Parties; Puget; Southern California Edison; Southern; Tres Amigas; WUTC.

[106] *E.g.*, PNW Parties; Puget; WUTC.

[107] *E.g.*, Avista; California ISO; Duke; EEI; Idaho Power; NorthWestern; NV Energy; PNW Parties; Puget; Southern California Edison; Southern; Tres Amigas; WUTC.

scheduling may be significant.[108] EEI and PNW Parties assert that intra-hour scheduling will affect many activities and systems, causing transmission providers in some regions to institute hardware, software, and personnel changes. For example, EEI and PNW Parties contend that changes will be required to numerous computer systems, such as energy management systems, scheduling applications, and automated checkout systems such as the WECC Interchange Tool, and also that certain practices not currently automated will have to be automated. EEI and PNW Parties note that staff would need to be trained on these new tools and additional staff would be required to process the expanded scheduling information being received. NRECA contends that the costs will be driven largely by software and personnel changes, rather than hardware investments, but that it is difficult to estimate with precision what software changes would be needed without knowing what measures NAESB will adopt in order to standardize the new scheduling regime.

80. NextEra explains that several steps will need to be taken in order to implement 15-minute scheduling but contends that the cost impacts are uncertain. NextEra provides that actions to implement intra-hour scheduling include potential modifications to both internal and external software packages. According to NextEra, these software programs, providing functions such as eTagging, accounting, and billing, will need to be harmonized across vendors. Additionally, NextEra contends that it is unclear whether existing systems would need to be replaced or modified, or whether functions currently being performed manually would need to be automated.

81. Some transmission providers estimate the level of investment and staffing changes that would be required to implement 15-minute scheduling on their system, although most discuss such estimates in the context of a broader range of activities that they believe may be intended or implicated by the implementation of 15-minute scheduling.[109] For example, Avista states that it would need to hire and train around-the-clock personnel at an estimated cost of $1.2 million per year to implement ''an approach that will allow for schedule adjustments *and* imbalance settlements in 15 minute periods.'' [110] MidAmerican estimates approximately $1.0 million in staff costs to implement ''similar intervals for balancing activities and interchange'' and, to the extent energy management and accounting systems must be changed, up to $2.0–2.3 million in infrastructure upgrades.[111] Bonneville Power also contends that it would need an additional 24x7 position, staffed by six full-time employees, to manage what it characterizes as the risks created by 15-minute scheduling, including the redesign of imbalance service and increased use of special protection schemes.

82. NRECA notes that the relative cost impact of implementing intra-hour scheduling will depend on a number of factors, such as the size of the system and how widely intra-hour scheduling is utilized. Although agreeing that the costs may be significant, NRECA states that costs are not expected to be extraordinary and can be mitigated through proper design and implementation. NRECA estimates implementation costs under a range of scenarios. Assuming hourly schedules at a 15-minute interval used only by VERs, NRECA anticipates the need for software modifications in the range of $50,000 per company, but notes that some of its members have incurred expenses in the range of $250,000 annually for software licensing and maintenance related to scheduling and energy accounting software upgrades. If hourly schedules at a 15-minute interval are widely used by transmission customers, NRECA estimates a minimum of one additional 24x7 shift, resulting in approximately $1.0 million of staffing costs, and potentially two 24x7 positions depending on the size of the transmission provider. Finally, if hourly schedules at a 15-minute interval are settled on a 15-minute basis, NRECA estimates an additional $250,000 to $300,000 for additional ''back room'' staff to settle 15-minute schedules, interchange and deviation accounts.

83. Bonneville Power contends that many of the short-term costs associated with 15-minute scheduling would not be incurred to implement scheduling on 30-minute intervals. Bonneville Power states that it is currently updating systems and work processes to implement 30-minute scheduling in association with regional initiatives and that it believes the changes, resources, and system impacts associated with the implementation of scheduling at a 30-minute interval will be relatively modest compared to what would be required to implement 15-minute scheduling. Bonneville Power asserts that the systems, transmission upgrades, and resources required to accommodate the increasingly dynamic movements of power across the interconnection under 15-minute scheduling would not be required under 30-minute scheduling. Tacoma Power argues that it will determine the level of automation needed for 30-minute scheduling based on the experience it gains during implementation of the Joint Initiative intra-hour program, but that implementation of 15-minute scheduling intervals as discussed in the Proposed Rule would require immediate automation of all the processes for Tacoma Power to have any market presence.

iv. Requests for Additional Requirements

84. Some commenters contend that transmission customers should be encouraged or required to submit intra-hour schedules, arguing that the Commission's objectives of lowering reserve costs can be reached only if intra-hour scheduling is utilized in a consistent and predictable manner.[112] Bonneville Power argues that mandatory intra-hour scheduling is necessary to achieve the reduction in reserve requirements of 80 percent cited in its 2008 study.[113] Idaho Power and PNW Parties contend that VERs generally have a strong financial incentive to maximize energy output and, therefore, may schedule for a full hour to maximize benefits regardless of the availability of 15-minute scheduling. WUTC recommends that the Commission couple the implementation of intra-hour scheduling with measures to mitigate over-scheduling by VERs, particularly when market conditions are favorable for over-scheduling.

85. Others recommend that the Commission provide incentives to use intra-hour scheduling by eliminating the exemption of VERs from third-tier generator imbalance penalties in Schedule 9 of the *pro forma* OATT, which they argue would no longer be just and reasonable given the

[108] *E.g.*, Avista; Bonneville Power; EEI; Grant PUD; MidAmerican; NRECA; NorthWestern; PNW Parties; Puget; Snohomish PUD; Southern California Edison; Southwestern; Tacoma Power; TVA.

[109] *E.g.*, Avista; Bonneville Power; Grant PUD; MidAmerican; NorthWestern; PNW Parties; Puget; Snohomish County PUD; Southwestern; Tacoma Power; TVA.

[110] Avista at 12, 14 (emphasis in original).

[111] MidAmerican at 14.

[112] *E.g.*, Bonneville Power; EEI; Idaho Power; MidAmerican; NorthWestern; Puget; PNW Parties; WUTC.

[113] Bonneville Power (citing Bart McManus, *Large Wind Integration Challenges and Solutions for Operations/System Reliability* (2008). Bonneville Power clarifies that, in the study, mandatory 10-minute scheduling on a 10-minute persistence basis reduced the reserve requirements in the BPA region by 80 percent. Bonneville Power also clarifies that this reduction only applies to the source Balancing Authority, not the sink Balancing Authority).

Commission's proposed reforms.[114] In addition to eliminating the exemption from third-tier generation imbalance penalties, MidAmerican suggests that an additional imbalance penalty tier be created for any transmission customer that consistently fails to adjust schedules on an intra-hour basis and creates significant variability. Avista recommends that the Commission allow transmission providers to impose appropriate penalties and recover the true costs of providing intra-hour schedules from VERs that continue to schedule on an hourly basis.

86. Several commenters argue that intra-hour scheduling may not achieve its intended benefits without additional reforms to augment intra-hour scheduling practices.[115] Some of these commenters assert that the Commission should allow a public utility transmission provider the flexibility to revise its energy imbalance settlement periods to align with any intra-hour scheduling interval.[116] Southern contends that this will allow a public utility transmission provider to offer appropriate incentives to customers to follow a given schedule and limit the potential for exposure to uncompensated risks.

87. However, Avista states that there are positives and negatives to either maintaining hourly settlement with intra-hour scheduling or modifying settlement intervals to coincide with intra-hour scheduling intervals. Avista asserts that conforming intra-hour schedules and imbalance settlement at 15-minute increments for all transmission schedules would result in alignment of scheduling and imbalance billing for all transactions and reduce gaming potential. Avista argues that the potential for gaming by transmission customers through the overcorrection of schedules in order to minimize imbalance charges may require a public utility transmission provider to carry regulation reserves in excess of what is needed. Midwest ISO agrees, citing a report from its Independent Market Monitor indicating that large changes in Net Scheduled Interchange caused by 15-minute intra-hour scheduling could lead to price volatility and negative operational impacts.[117] Avista and Midwest ISO further state that conforming imbalance settlement with intra-hour schedules may require substantial and potentially costly office system changes, additional operations staff, and other costs incurred through the communication, metering, and storage of all customer data at 15-minute increments.

88. Some commenters contend that intra-hour scheduling only governs the scheduling of flows on the transmission system and, by itself, does not necessarily affect the frequency with which generators are dispatched.[118] AWEA and Invenergy Wind agree that a transition to sub-hourly dispatch is the key for increasing the flexibility of the power system and for reducing the amount of reserves that must be held, which in turn will reduce costs for consumers and enable cost effective integration of VERs. Commenters recommend that the Commission require public utility transmission providers to implement a sub-hourly, real-time energy exchange that provides automated generation dispatch (such as an Efficient Dispatch Toolkit or the Energy Imbalance Market as adopted by the Southwest Power Pool and currently being studied in WECC). In AWEA's view, a market for sub-hourly energy would allow for netting of sub-hourly deviations and would provide price signals to incent greater sub-hourly flexibility.

89. AWEA acknowledges that changes to dispatch protocols and expansion of market options are being considered in regional efforts, but argues that progress is uncertain and unlikely to come to fruition in the near term. Iberdrola argues that intra-hour scheduling must be combined with intra-hour dispatch or market purchases to achieve the Commission's goals. Oregon and New Mexico PUC recommend that the Commission encourage reforms such as an Energy Imbalance Market or 15-minute calculations of available transmission capability (ATC) as a complement to intra-hour scheduling. However, Bonneville Power suggests distinguishing between intra-hour scheduling outside of a market region and intra-hour dispatch in an organized market, arguing that the costs and benefits of each may be dramatically different. Bonneville Power explains that the resources devoted to implementing 15-minute scheduling may be better used to pursue the development of an organized market with frequent dispatch intervals.

90. Some commenters assert that the Commission should consider changes to other aspects of electricity markets to facilitate intra-hour scheduling.[119] Invenergy Wind contends that consistent timeframes across all transmission and generation functions may lead to more efficient use of transmission capacity, regulation, and other ancillary services. American Clean Skies explains that the technology necessary to schedule transmission in 15-minute increments will also allow for scheduling reforms in the day-ahead market and the unit commitment process and, therefore, the Commission should require 15-minute scheduling reforms in these areas as well. However, PJM asserts that real-time control issues do not exist day-ahead and, therefore, the Commission need not consider reforms to the day-ahead market.

c. Commission Determination

91. The Commission concludes that it is appropriate to act at this time to adopt the scheduling reforms set forth in the Proposed Rule. Specifically, the Commission amends the *pro forma* OATT to provide all transmission customers the option of using more frequent transmission scheduling intervals within each operating hour, at 15-minute intervals. Our actions in this Final Rule will ensure that charges for generator imbalance service under Schedule 9 of the *pro forma* OATT and for other ancillary services through which reserve-related costs are recovered are just and reasonable and are not unduly discriminatory.[120]

92. As noted in the Proposed Rule, many *pro forma* OATT requirements, including hourly scheduling protocols, were developed at a time when virtually all generation on the system could be scheduled with relative precision.[121] As part of the Commission's regulatory responsibilities, we routinely review and, where appropriate, implement reforms to ensure the provision of service that remains just and reasonable and not unduly discriminatory. A similar review led the Commission in Order No. 890 to exempt VERs from the third-tier of generator imbalance penalties, given that VERs have a limited ability to accurately follow an hourly transmission schedule and, as a result, exposure to high imbalance penalties does not lessen their incentive to deviate from their schedule.[122] In this Final Rule, we take an additional step to allow transmission customers the flexibility to adjust their transmission

[114] *E.g.*, Avista; EEI; Idaho Power; MidAmerican; Puget; WUTC.

[115] *E.g.*, Avista; AWEA; RenewElec; Vote Solar.

[116] *E.g.*, EEI; Duke; Idaho Power; Southern.

[117] Midwest ISO (Potomac Economics, 2008 *State of the Market Report for the Midwest ISO,* Docket No. ZZ09–4–000 at 169 [141] (June 21, 2009)).

[118] *E.g.*, AWEA; CEERT; Invenergy Wind.

[119] *E.g.,* American Clean Skies; Invenergy Wind.

[120] In section IV.C (Generator Regulation Service Capacity) *infra,* the Commission acknowledges that a range of capacity services could be used by public utility transmission providers to recover reserve-related costs.

[121] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 38.

[122] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 665.

schedules, in advance of real-time, to reflect the variability of output in generation, more accurate power production forecasts to predict output, and other changes in load profiles and system conditions.

93. Specifically, the Commission affirms the preliminary finding in the Proposed Rule that existing hourly scheduling protocols expose transmission customers to excessive or unduly discriminatory generator imbalance charges.[123] Under Schedule 9 of the *pro forma* OATT, generator imbalance charges are assessed on deviations between generator output and a delivery schedule over a single hour.[124] There is no requirement to provide customers the opportunity to adjust their transmission schedules within the hour to reflect changes in generator output. As a result, transmission customers have no ability under the *pro forma* OATT to mitigate Schedule 9 generator imbalance charges in situations when the transmission customer knows or believes that generation output will change within the hour. The Commission concludes that this lack of ability to update transmission schedules within the hour can cause charges for Schedule 9 generator imbalance service to be unjust and unreasonable or unduly discriminatory. As a result of the intra-hour scheduling reforms of this Final Rule, the metric against which generator imbalances are measured will be more granular than under current hourly scheduling protocols.

94. The Commission expects that many types of entities, not only VERs, may benefit from the availability of intra-hour scheduling. Every transmission customer will have the ability to adjust its schedule at 15-minute intervals to reflect changing conditions. This includes, for example, transmission customers that experience a within-hour forced outage or transmission customers taking delivery from energy constrained resources (such as flow-limited hydro-electric generators, emission-limited thermal generators, and energy storage resources), even if using point-to-point transmission internal to the system. For example, we note that Entergy voluntarily adopted intra-hour transmission scheduling without the presence of substantial VERs in an effort to manage fluctuations in output from qualifying facilities on its system.[125] Based on this experience and the record in this proceeding, the Commission finds that intra-hour scheduling will provide a range of transmission customers with a necessary tool to mitigate exposure to Schedule 9 generator imbalance charges in light of changing conditions.

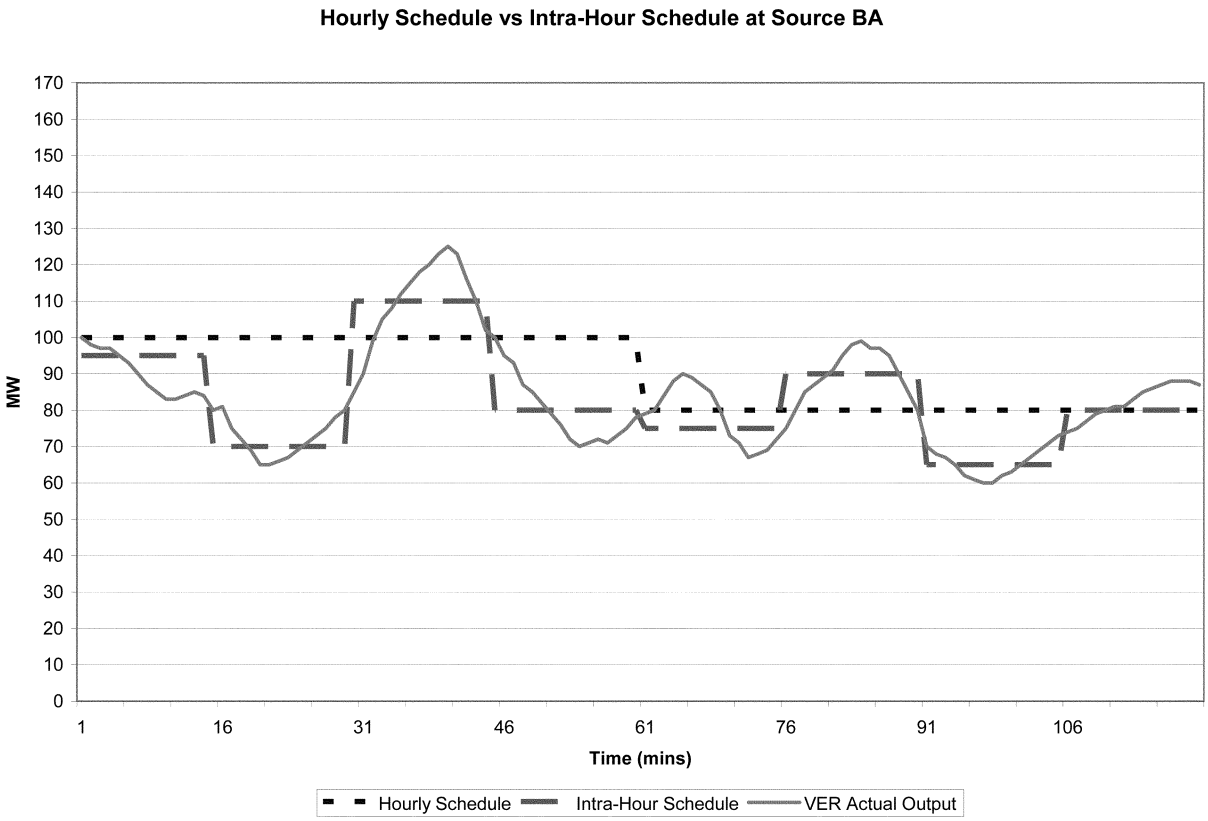
95. The Commission also finds that, over time, implementation of intra-hour scheduling will allow public utility transmission providers to rely more on planned scheduling and dispatch procedures, and less on reserves, to maintain overall system balance. Under hourly scheduling protocols, the source balancing authority for a transaction is required to honor its transmission schedule across an entire hour, requiring the source balancing authority to have sufficient reserves in place to manage imbalances within the hour, i.e., maintain consistent delivery of the scheduled amount of energy to the sink balancing authority over the hour. This includes reserves to respond to variations in generation output that are moment-to-moment as well as longer-term, but occurring within the hour, represented by the solid line in Figure 1.

[123] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 37.

[124] Imbalance charges are calculated by multiplying the quantity of imbalance by a set percentage of incremental or decremental costs defined in three deviation bands. These charges are netted on a monthy basis and settled financially at the end of each month. For example, any deviations greater than ± 7.5 percent (or 10 MW) of the scheduled transaction (applied hourly) will be settled at 125 percent of incremental costs or 75 percent of decremental costs. *See* OATT Schedule 9.

[125] *See Entergy Serv. Inc.,* 111 FERC ¶ 61,314 (2005).

Figure 1



96. By moving from hourly to 15-minute scheduling intervals, the amount of imbalance energy for which the source balancing authority is potentially responsible can be reduced, as reflected in Figure 1. This can lead to a corresponding reduction in the amount of capacity held to provide that energy and, in turn, lower reserve-related costs for the source balancing authority, and ultimately consumers. Therefore, the Commission also finds that implementation of intra-hour schedules is necessary in order to ensure that charges for ancillary services through which reserve-related costs are recovered are just and reasonable and not unduly discriminatory.[126]

97. For these reasons, the Commission adopts the proposal set forth in the Proposed Rule and directs public utility transmission providers, consistent with the compliance deadlines addressed below, to revise their OATTs to provide an opportunity for transmission customers to submit transmission schedules at 15-minute intervals. In response to Bonneville Power and Xcel, the Commission clarifies that this requirement is intended to allow transmission customers to both modify existing schedules as well as create new schedules, provided that the transmission customer has a transmission reservation in place.[127] The ability to create new transmission schedules within the hour will be particularly important to resources that may seek to provide intra-hour energy products, as discussed further below.

98. The Commission notes that most commenters support the practice of intra-hour scheduling, with disagreement focused primarily on the frequency of schedule adjustments and whether changes to existing scheduling should be paired with other reforms. Balancing the competing considerations raised by commenters, the Commission concludes that a 15-minute scheduling interval is appropriate and declines to impose additional reforms at this time. The Commission appreciates that implementation of other reforms, such as intra-hour imbalance settlement, an intra-hour transmission product, increasing the frequency of resource commitment through sub-hourly dispatch, or the formation of intra-hour imbalance markets, could yield additional benefits for public utility transmission providers and their customers. However, these additional reforms can have significant costs. The Commission's review of the record in this proceeding suggests that a more measured approach is appropriate to take at this time.[128]

99. The Commission acknowledges that implementation of intra-hour scheduling can result in a shift of responsibility for holding certain reserves away from the source balancing

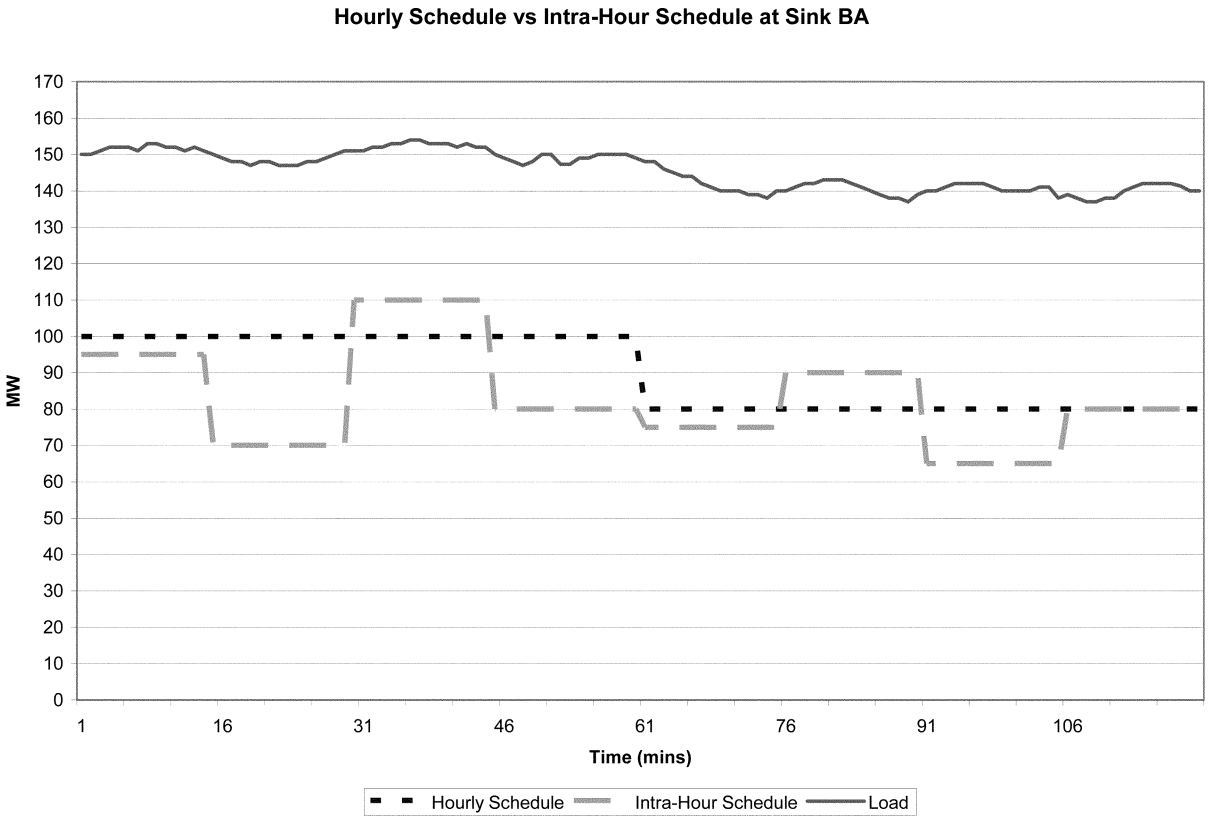
[126] One mechanism that could be used to recover reserve-related costs is generator regulation service. The Commission provides guidance regarding the development of generation regulation charges in section IV.C.2 (Mechanics of Generator Regulation Charge) *infra.* Among other things, public utility transmission providers should consider the extent to which transmission customers are using intra-hour scheduling in evaluating whether to require different transmission customers to provide or otherwise account for different quantities of generator regulation service.

[127] To be clear, this Final Rule does not alter the transmission products of the *pro forma* OATT and, therefore, implementation of intra-hour scheduling does not require (yet would not preclude) the intra-hour calculation of ATC or sale of transmission service.

[128] As noted below, public utility transmission providers will have an opportunity on compliance to demonstrate that alternative intra-hour scheduling proposals are consistent with or superior to the intra-hour scheduling requirements of this Final Rule. Such a proposal could include one or more of the additional reforms requested by commenters, such as the formation of intra-hour imbalance markets.

authority for export transactions.[129] As explained above, allowing for more granular transmission schedules can reduce the amount of variation in generation output for which the source balancing authority is responsible. The Commission appreciates that, from the sink balancing authority's perspective, scheduling at shorter intervals may result in the purchaser of energy having to manage more frequent changes in scheduled deliveries as compared to scheduling at hourly intervals. As indicated in Figure 2, a purchaser under existing hourly scheduling protocols receives a fixed quantity of energy over the hour from the source balancing authority, whereas use of 15-minute intervals could result in fluctuating deliveries across the hour.

Figure 2



To the extent the purchaser desires to continue receiving a constant delivery of energy across the hour, represented by the dotted line in Figure 2, it may be required to obtain that energy from the market.[130] The Commission concludes that this is an appropriate division of responsibility, as opposed to the current hourly system which places all responsibility for managing variations in generation output across the hour solely on the source balancing authority. Within the hour, the source balancing authority retains its responsibility of providing the energy needed for the VER to meet its schedule, while the purchaser takes on the responsibility of managing more frequent deliveries of scheduled energy.

100. By shifting responsibility for managing certain variations in generation output to the purchasing entity, purchasing entities will have greater incentive to manage changes in scheduled deliveries from 15-minute interval to 15-minute interval and the portfolio of resources that ultimately manage total VER variability will likely be more cost-effective than under current practices. Specifically, a portfolio of resources that respond over a range of time scales, from very fast to relatively slow, is lower cost than a portfolio that relies on resources designed to manage only the short-run variability of VERs.[131] For instance, portfolio cost savings could result from using a combination of expensive resources with automated generator control and less expensive resources that provide following service rather than using only resources with automated generator control. While the source balancing area could choose to manage VER variability with a portfolio of resources that respond over a range of time, it has little incentive to do so because any additional costs can be recovered from transmission customers. We expect use of a portfolio of resources to lower the overall cost of managing VER variability. The Commission anticipates that buyers and sellers also may respond by developing intra-hour balancing products. EPSA notes that the additional market liquidity created by the ability to schedule transmission intra-hourly can provide opportunities for existing resources to manage system

[129] *E.g.,* Xcel; Iberdrola.

[130] For example, sellers of VER energy could have existing contractual commitments to deliver at constant volumes over specified periods.

[131] *See e.g.,* J. Apt, *The Spectrum of Power from Wind Turbines.* Journal of Power Sources, Vol. 169, No. 2, at 369–374 (2007); cited at RenewElec comments at note 4.

variability by offering within-hour energy products. This is equally true for market participants seeking to maximize the value of their resources, or lower their purchased power costs, through intra-hour trading. As the liquidity of intra-hour energy products stabilizes, market participants also may begin to commit or otherwise acquire fewer reserves in advance, with the knowledge that they can purchase additional reserves on an as-needed basis from third parties. Requiring public utility transmission providers to offer intra-hour scheduling is a necessary predicate to facilitate these market opportunities.[132]

101. Notwithstanding broad support in comments for some version of intra-hour scheduling, as noted above, there was significant disagreement in the comments as to the appropriate time interval. Some commenters supported the 15-minute interval proposed by the Commission,[133] while others argued for either shorter (e.g., 5-minute) or longer (e.g., 30-minute) scheduling intervals.[134] In evaluating these comments, the Commission has balanced the competing interests of allowing transmission customers to more closely match schedules with anticipated generation output against not unduly burdening public utility transmission providers in implementing the intra-hour scheduling reform. The Commission concludes that adoption of a 15-minute scheduling interval for purposes of the *pro forma* OATT is reasonable. In its comments on the NOI, NERC states that the ideal scheduling increment would be between 5 and 15 minutes depending on system characteristics.[135] NERC reasoned that, while balancing authorities that schedule energy transactions on an hourly basis may have sufficient regulation resources to maintain the schedule for the hour, reducing scheduling intervals to ten minutes, for example, could make economically dispatchable generators in an adjacent balancing authority available to provide necessary ramping capability through an interconnection.[136] The Commission agrees and, as discussed above, anticipates that the availability of intra-hour scheduling at 15-minute intervals will facilitate the development of ramping products to manage variability in generation output more effectively. For these reasons we adopt 15-minute transmission scheduling as proposed.

102. In adopting a 15-minute transmission scheduling interval, we recognize that the cost of moving from hourly to 15-minute transmission scheduling could be substantial. Several transmission providers state that costs will depend heavily on the extent to which intra-hour scheduling is actually used by transmission customers, estimating staffing costs to be in the range of $1–2 million per year if widely used.[137] While these costs are not insignificant, greater use of intra-hour schedules means that more transmission customers are mitigating exposure to Schedule 9 generator imbalance charges and providing greater opportunities for public utility transmission providers to lower reserve-related costs. Commenters generally agree that the cost of implementing intra-hour scheduling will correlate to usage, with lower costs in those systems with fewer intra-hour schedules. In contrast, substantial use of intra-hour scheduling would affirm the usefulness of the option for transmission customers, justifying the added expense of processing a larger number of transmission schedules.

103. Many of the costs cited by commenters as being specific to 15-minute scheduling are related to the automation of systems used to process transmission schedules and verify cross-balancing authority aggregate schedules. The Commission notes that it is not mandating automation of scheduling practices, although we expect that each public utility transmission provider will consider whether automation of certain aspects of its system are necessary to implement scheduling at 15-minute intervals. To the extent a public utility transmission provider automates scheduling processes in response to increased scheduling activity, the Commission agrees with NaturEner and Independent Power Producers Coalition-West that automation of these processes represents a secondary benefit of our transmission scheduling reform. Several Commission staff audits have uncovered errors related to manual processing of transmission schedules.[138] These errors resulted in a transmission customer submitting a transmission schedule that resulted in a higher curtailment priority than the underlying transmission service reservation provided, allowed use of firm network service to deliver energy from resources that were not designated resources and allowed use of network transmission service to deliver a sale to a third party. As a result of these errors, the transmission customer may have gained access to transmission service that was not otherwise available, may have inappropriately gained additional protection from curtailment, and avoided payment for point-to-point transmission service. Increased automation of schedule process can reduce such errors and, in turn, ensure that the provision of transmission service is consistent with the *pro forma* OATT.

104. Some commenters raising concerns regarding the cost of implementing intra-hour scheduling imply that the proposed scheduling reforms would require changes in settlement procedures for imbalance service or the frequency of resource commitment through sub-hourly dispatch, which they state would require significant investments. For example, EEI and PNW Parties caution that these additional activities would affect computer systems, such as energy management and accounting systems.[139] MidAmerican estimates that upgrading such systems would cost $2.0–2.3 million. Other commenters, however, encourage the Commission to require intra-hour imbalance settlement and sub-hourly dispatch in order to align intra-hour scheduling with financial settlements and resource commitment. The Commission clarifies that the requirements of this Final Rule apply to scheduling practices, not imbalance settlement or sub-hourly dispatch. Public utility transmission providers may continue to calculate *pro forma* Schedule 9 generator imbalance charges on an hourly basis under the *pro forma*

[132] For example, the Joint Initiative has implemented an electronic platform to facilitate bilateral intra-hour transactions, the Intra-hour Transaction Accelerator Platform (I–TAP), also referred to as the WebExchange. *See http://www.columbiagrid.org/itap-overview.cfm.*

[133] *E.g.,* A123; Alstom Grid; ACSF; Argonne National Lab; BP Companies; CESA; CEERT; Center for Rural Affairs; Clean Line; CGC; Defenders of Wildlife; EPSA; Exelon; First Wind; Independent Energy Producers; NaturEner; Organization of Midwest ISO States; Oregon & New Mexico PUC; Powerex; Public Interest Organizations; SWEA; Tres Amigas; Viridity Energy; Western Grid; Xcel.

[134] *Compare* Environmental Defense Fund; FriiPower; Independent Power Producers Coalition-West; RenewElec; SEIA; Vestas; and Vote Solar (advocates of shorter) with Bonneville Power; California PUC; CMUA; Montana PSC; NorthWestern; Puget; Snohomish County PUD; Southern California Edison; WUTC (advocates of longer).

[135] NERC April 12, 2010 Response to NOI (NERC NOI Comments).

[136] NERC NOI Comments.

[137] *E.g.,* Avista; NRECA. To the extent intra-hour scheduling is not widely used by transmission customers, NRECA states its members likely could implement scheduling at 15-minute intervals with software modifications in the range of $50,000 per company, without additional staffing requirements.

[138] *E.g., Puget Sound Energy,* Docket No. PA07–1–000 at 25–27; *MidAmerican Energy Co.,* Audit Report, 112 FERC ¶ 61,346 at PP 30–34 (2005); and *Public Service Company of Colorado,* Docket No. PA05–1–000 at 9–11.

[139] *Eg.,* EEI; PNW Parties.

OATT and rely on hourly resource commitment practices.[140]

105. Notwithstanding the continued ability of public utility transmission providers to rely on hourly calculation of Schedule 9 generator imbalances, as a result of the intra-hour scheduling reforms of this Final Rule, the metric against which generator imbalances are measured will be more granular than under current hourly scheduling protocols. To the extent a public utility transmission provider believes that aligning the imbalance settlement with the intra-hour scheduling interval or implementing sub-hourly dispatch will result in more efficient operations, provide appropriate price signals to customers, or address other potential issues, it may seek any authorizations necessary from the Commission to do so under section 205 of the FPA.[141] Such proposals could be submitted contemporaneously with the compliance filing in response to this Final Rule or at such other time the public utility transmission provider believes appropriate.

106. Several commenters request that the Commission allow for regional variation in scheduling protocols.[142] In the Western Interconnection, many public utility transmission providers already have implemented some form of intra-hour scheduling at 30-minute intervals as part of an effort to enhance the operation of bilateral markets in the Western Interconnection.[143] Other tools recently implemented in the West include the I–TAP electronic platform to schedule energy and request transmission, the Dynamic Scheduling System to facilitate dynamic scheduling,[144] and the ACE Diversity Interchange Program to allow netting of momentary imbalances across participating balancing authority footprints.[145] Public utility transmission providers, state regulators, and others in the West are studying the impact of these recent initiatives, as well as the potential benefits and costs of pursuing additional market enhancements in the future, such as formation of an energy imbalance market. The Commission acknowledges that future market enhancements in addition to existing 30-minute scheduling practices and the above-referenced tools, might yield equivalent or greater benefits to transmission customers and public utility transmission providers when compared to reducing the scheduling interval from 30 to 15 minutes and therefore could be consistent with or superior to the Final Rule's intra-hour scheduling requirements.

107. The Commission therefore affirms the ability of public utility transmission providers to submit alternative proposals that are consistent with or superior to the intra-hour scheduling requirements of this Final Rule and are otherwise just and reasonable and not unduly discriminatory or preferential.[146] To make such a showing, a public utility transmission provider must demonstrate in its compliance filing how its proposal provides equivalent or greater opportunities for transmission customers to mitigate Schedule 9 generator imbalance charges, and for the public utility transmission provider to lower its reserve-related costs, when compared to implementation of the intra-hour scheduling requirements of this Final Rule under market practices currently in place within the region, including tools referenced above that already have been implemented in the West.[147] The public utility transmission provider must include in its compliance filing the tariff provisions necessary to implement its proposal, including the interval at which transmission customers may submit transmission schedules. The public utility transmission provider also must address how its proposed scheduling interval is consistent with other scheduling practices within its region. Finally, in recognition that implementation of intra-hour scheduling can result in a shift of responsibility for holding certain reserves away from the source balancing authority for export transactions, public utility transmission providers may consider the extent to which alternative proposals result in savings to transmission customers across multiple public utility transmission provider systems when making the demonstration required above.

108. Turning to other issues raised by commenters, the Commission is not convinced by arguments that the current exemption from third-tier generator imbalance penalties for intermittent resources should be eliminated to create an incentive for VERs to take advantage of the option to update transmission schedules every 15 minutes.[148] In Order No. 890, the Commission found intermittent generators cannot always accurately follow their schedules and that high penalties will not lessen the incentive to deviate from their schedules.[149] While the implementation of 15-minute scheduling provides an opportunity for VERs to better align transmission schedules with actual generation, the Commission continues to believe that third-tier generator imbalance penalties are unduly punitive for VERs given their relative inability to accurately follow schedules whether submitted on an hourly or 15-minute interval. The Commission concludes that the ability to avoid penalties in the first two tiers of generator imbalance charges will provide a sufficient incentive for VERs to adjust transmission schedules, to the extent they believe such adjustments will mitigate exposure to Schedule 9 generator imbalance charges. If a public utility transmission provider believes it necessary to address intentional deviations, it may propose revisions to Schedule 9 generator imbalance service pursuant to section 205 of the FPA.[150] Such proposals would need to demonstrate that VERs are not adjusting their transmission schedules despite their reasonable ability to foresee that

[140] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 722; Order No. 890–A, FERC Stats. & Regs. ¶ 61,297 at P 325 & n.117.

[141] For example, PNW Parties and Idaho Power note that the financial incentives some transmission customers have to maximize output over an hour may in some instances counteract financial incentives to adjust transmission schedules on a 15-minute basis.

[142] *E.g.,* Avista; Bonneville Power; California ISO; CESA; CMUA; California PUC; Detroit Edison; EEI; FirstEnergy; Grant PUD; Idaho Power; Independent Power Producers Coalition-West; ISO/RTO Council; Midwest ISO; National Grid; Northwestern; NRECA; New York ISO; NV Energy; Pacific Gas & Electric; PJM; PNW Parties; Public Power Council; Puget; SMUD; Tacoma Power; WUTC; and WestConnect.

[143] *See e.g., Arizona Public Service Co.,* 137 FERC ¶ 61,023 (2011), *NorthWestern Corp.,* 136 FERC ¶ 61,119 (2011).

[144] *See* Joint Initiative.

[145] *See* NERC, *DRAFT Reliability Guideline: ACE Diversity Interchange* (June 2012), *available at http://www.nerc.com/docs/oc/rs/Draft%20ADI%20Reliability%20Guideline%20-%20V1%20060112.pdf.*

[146] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,770 (permitting public utility transmission providers to propose tariff modifications that are consistent with or superior to the requirements of the *pro forma* OATT).

[147] To the extent such an alternative proposal includes a commitment to develop and implement additional market enhancements in the future, the public utility transmission provider must provide in its compliance filing: A commitment by senior management to develop and implement the proposal; a description of collaborative efforts to date and timeline for future efforts in support of developing the proposal; and, the date by which the proposed market enhancement will be implemented.

[148] *E.g.,* Avista; EEI; Idaho Power; MidAmerican; Puget; WUTC.

[149] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 665.

[150] *Cf. id.* P 676 (noting the ability of public utility transmission providers to propose additional imbalance penalties for intentional deviations). Alternatively, the public utility transmission provider may propose alternative designs for other ancillary services rates to, for example, offer lower rates to those transmission customers committing to use intra-hour scheduling.

output will deviate significantly from existing transmission schedules.[151]

109. The Commission acknowledges comments made by some, particularly in the Pacific Northwest, asserting that the benefits of intra-hour scheduling will not be fully realized if non-jurisdictional entities do not adopt a consistent scheduling interval.[152] However, the Commission does not believe that limitations in our ratemaking jurisdiction over non-public utilities should stop us from moving ahead with reforms applicable to public utilities simply because the impact of those reforms might be more significant with participation by all entities. As explained above, requiring all public utility transmission providers to offer 15-minute transmission scheduling will enable public utility transmission providers and their customers to manage system variability more effectively. Therefore, the Commission is hopeful that non-jurisdictional transmission providers will voluntarily choose to implement 15-minute transmission scheduling in order to better manage variations in generation output. We understand that the existence of compatible business practices within a region is beneficial, and we encourage both jurisdictional and non-jurisdictional transmission providers to continue to coordinate and collaborate in order to maintain the continuity of the system and address issues as they arise. This includes collaboration in the development of any alternative compliance proposals developed by public utility transmission providers.

110. The Commission disagrees with comments by Southern and others that different scheduling intervals between jurisdictional and non-jurisdictional transmission providers may negatively affect reliability within an interconnection.[153] In the event a non-jurisdictional transmission provider only accepts hourly schedules, any attempt to submit an intra-hour schedule for delivery to the non-jurisdictional transmission provider would be rejected, as several commenters note.[154] This may lead to an inability to implement 15-minute scheduling fully and, in turn, could result in less effective management of system variability. However, the Commission does not believe that it would create any reliability challenges beyond those that exist today under hourly scheduling protocols. The Commission notes that voluntary efforts to implement intra-hour scheduling on 30-minute intervals in the Western Interconnection referenced above have not been uniformly applied, yet do not appear to have negatively affected reliability.

111. In response to concerns raised by Snohomish County PUD and Grays Harbor PUD regarding ''slice'' contracts with Bonneville Power, the Commission acknowledges that some existing power supply arrangements may not be flexible enough to take advantage of the benefits of intra-hour scheduling. Over time, the Commission anticipates that the market will respond to the availability of intra-hour scheduling through the development of new balancing products as well as modifications of existing arrangements where appropriate. However, in the case where the terms of an existing contract are inconsistent with intra-hour scheduling and cannot be modified, the Commission appreciates that the benefits of intra-hour scheduling may not be available with respect to that particular transaction.

112. In response to comments by WestConnect and NorthWestern that a 15-minute scheduling interval is inconsistent with the standard 20-minute generator ramp rate used in the West, we note that many of the Joint Initiative transmission providers—including members from WestConnect—have already implemented a 10-minute ramp rate to accommodate 30-minute transmission schedules. To the extent changes in ramping are necessary to support use of a 15-minute transmission schedules, it does not appear that such changes present a significant impediment for public utility transmission providers.

113. A number of commenters question the applicability of the intra-hour scheduling requirements to public utility transmission providers in RTO and ISO regions.[155] The Commission clarifies that the implementation of 15-minute transmission scheduling will only apply to intertie transactions in organized wholesale energy markets. The Commission finds that a consistent scheduling interval for transactions among all public utility transmission providers, including RTOs, is necessary in order to attain the benefits of intra-hour scheduling noted above. Additional reforms to other markets requested by commenters, such as adjustments to day-ahead markets, are beyond the scope of this rulemaking.

2. Implementation of Intra-Hour Scheduling

114. Commenters raise a number of additional issues related to how the intra-hour scheduling requirements adopted in this Final Rule should be implemented. The Commission addresses these issues below, including the following: (1) The appropriate notification period for submitting transmission schedules; (2) the recovery of costs associated with implementing intra-hour scheduling; (3) clarifications regarding the definition of transmission schedule, curtailment priorities, and calculations of ATC; (4) review of NERC reliability standards and NAESB business practices; and (5) other issues related to high voltage direct current (HVDC) transmission lines, dynamic scheduling, and the geographic location of resources used to provide reserves.

a. Notification Time for Submission of Transmission Schedule

i. Commission Proposal

115. In the Proposed Rule, the Commission proposed to allow all transmission customers the option of submitting intra-hour schedules up to 15 minutes before each scheduling interval.[156]

ii. Comments

116. Several commenters ask the Commission to retain the existing 20-minute notification time for submission of transmission schedules, arguing that schedules should be submitted no later than 20 minutes prior to the start of the schedule as required by NERC Reliability Standards INT–005, INT–006, INT–008, and NAESB WEQ–004 Appendix D.[157] Commenters contend that allowing only 15 minutes between schedule submission and start would not provide enough time for transmission operators to adequately evaluate, approve, and implement transmission schedules. ISO/RTO Council adds that changing to a 15-minute notice period will require

[151] The Commission notes that there is a relationship between a public utility transmission provider's potential need for alternative imbalance charge structures and the period used for imbalance settlements. Reinstating third-tier imbalance penalties in combination with shortened imbalance settlements would more likely punish VERs for variability that they cannot control, contrary to the exemption granted in Order No. 890 and affirmed here.

[152] *E.g.,* Avista; California ISO; Duke; Idaho Power; NorthWestern; NV Energy; PNW Parties; Puget; Southern California Edison; Southern; Tres Amigas.

[153] *E.g.,* EEI; Idaho Power; NorthWestern; Southern; Tacoma Power.

[154] *E.g.,* PNW Parties; Puget; WUTC.

[155] *E.g.,* AWEA; Iberdrola; ISO New England; Massachusetts DPU; PJM; Public Interest Organizations; RENEW; Sunflower and Mid-Kansas; Western Farmers.

[156] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 41.

[157] *E.g.,* Duke; EEI; Entergy; NRECA; PJM; Puget; Southern.

transmission operators to change their current systems and increase staff levels for processing transmission schedule requests. PJM comments that the 20-minute notification deadline is an established industry standard and that it should not be changed to 15 minutes.

117. Although not opposed to the Commission's proposal, NaturEner states that a shorter notification period would result in abbreviated response times for everyone in the scheduling process, including transmission customers. NaturEner asks the Commission to clarify that transmission providers have the discretion to accept schedule changes after the notification deadline. NaturEner contends that inclusion of such a clarification both supports the reform's underlying rationales and avoids any unnecessary future confusion regarding whether a balancing authority or transmission provider possesses such discretion.

iii. Commission Determination

118. The Commission will retain the existing 20-minute prior notification period for the submission of a transmission schedule and not adopt its proposal. The Commission agrees with commenters that the existing 20-minute prior notification period is needed to adequately evaluate, approve and implement transmission schedules. Accordingly, the Commission retains the existing notification period set forth in sections 13.8 and 14.6 of the *pro forma* OATT, which permits scheduling changes up to 20 minutes (or a reasonable time that is generally accepted in the region and is consistent and adhered to by the transmission provider) before the start of the next schedule change provided that the delivering party and receiving party also agree to the schedule modification. In response to NaturEner, the existing language of the *pro forma* OATT provides adequate flexibility for transmission providers to adopt alternative deadlines for accepting scheduling changes.

b. Recovery of Intra-Hour Scheduling Costs

i. Commission Proposal

119. In the Proposed Rule, the Commission proposed to allow public utility transmission providers to recover any costs incurred to implement the proposed intra-hour scheduling reform pursuant to Schedule 1 of a transmission provider's OATT.[158]

ii. Comments

120. Several commenters support the Commission's proposal, arguing that the benefits of intra-hour scheduling apply to more than VERs and, thus, costs relating to the implementation of intra-hour scheduling should be allocated to all transmission customers under Schedule 1 of the *pro forma* OATT.[159] For example, NextEra contends that intra-hour scheduling would provide long-term benefits for all customers through savings on reserve procurement. Public Interest Organizations agree, arguing that the initial costs of establishing 15-minute scheduling are an upfront investment that will yield exponential returns over time in the form of direct economic savings from increased grid efficiency and reliability, as well as energy security, greenhouse gas and other pollutant reductions, and job creation that accompanies increased renewable VER penetration. Center for Rural Affairs supports recovery of intra-hour scheduling costs to all beneficiaries through Schedule 1 in order to mitigate any challenge that this reform may present for small transmission providers, especially in rural communities with smaller areas of distribution. NaturEner points to the Joint Initiative as an example of allocating the hardware and software costs associated with implementation of intra-hour scheduling to all participants using the intra-hour scheduling system, i.e., the balancing authorities, transmission providers, and transmission customers. While Organization of Midwest ISO States supports the proposal, it asks that a clear showing of the costs incurred to implement intra-hour scheduling be required prior to allowing for recovery of those costs.

121. Other commenters disagree with the Commission's proposal to allow the costs associated with implementing intra-hour scheduling to be recovered through Schedule 1 and, instead, contend that such costs should be allocated to VERs and their customers.[160] These commenters argue that intra-hour scheduling will be predominantly used by and benefit VERs and their customers.[161] ELCON contends that traditional generation resources do not require intra-hour scheduling. In the Pacific Northwest, WUTC claims that intra-hour scheduling would be utilized almost exclusively by wind and other VERs, and not by thermal or hydropower resources. WUTC agrees that assignment of costs to those who cause them is essential to fair and just rates and to economic efficiency. Puget agrees that the only parties to benefit from 15-minute scheduling are VERs that are potentially able to reduce Schedule 9 generator imbalance charges by adjusting their schedules within the hour in response to changing wind conditions. Natural Gas argues that strict adherence to cost causation principles is central to ensuring that the proposals are limited to removing barriers and do not have the unintended consequence of subsidization and, ultimately, departure from the central precept of fuel neutrality.

122. Montana PSC states that traditional generation choosing to utilize intra-hour scheduling should be allocated a portion of implementation costs; however, absent this election VERs should be responsible for all costs related to development, operations, and maintenance of intra-hour scheduling.[162] NRECA similarly contends that, if transmission customers other than VERs make use of the new scheduling regime, it would be appropriate for those entities to share in the cost through Schedule 1 charges. Grant PUD argues that there is no guarantee that other resources may benefit from a shorter scheduling period and that some resources may actually incur costs to maintain 15-minute schedules, in which case they would pay twice for the shift to shorter schedules.

123. Avista asserts that allowing recovery through Schedule 1 will allocate costs not only to all transmission customers, but also to bundled retail native load customers. Avista argues that native load customers achieve no cost savings when a VER is located within a balancing authority area and is used to serve load within the same balancing area. Avista states that in this situation the native load customers bear all of the costs associated with following the output of the VER and do not need or benefit from intra-hour scheduling. Thus, Avista requests that none of the costs of implementing intra-hour scheduling be

[158] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 41.

[159] *E.g.,* Environmental Defense Fund; NextEra; Public Interest Organizations.

[160] *E.g.,* Avista; ELCON; Grant PUD; Montana PSC; Natural Gas; NorthWestern; NRECA; Puget; WUTC.

[161] *E.g.,* Avista; ELCON; Grant PUD; MidAmerican; NorthWestern; NRECA; Puget; WUTC.

[162] Similarly, NorthWestern asserts that unless intra-hour scheduling is made mandatory for all transmission customers, the VERs opting to use intra-hour scheduling should pay for the increased scheduling flexibility and the non VER customers should not be required to subsidize any particular generator type.

borne by a transmission provider's bundled retail native load customers.

124. Several of these commenters recommend that the Commission consider other mechanisms for recovering the costs of implementing intra-hour scheduling as opposed to a broad cost allocation scheme through Schedule 1.[163] For example, Avista asks the Commission to allow a transmission provider to directly assign the costs of implementing these reforms to the VER transmission customers that are the cause of such reforms through an appropriate charge included in either Schedule 1 or Schedule 10. NRECA argues that there is more than one method that a public utility transmission provider could use to recover costs and requests that the Commission provide public utility transmission providers the flexibility to choose the method that works best for each system and demonstrate a just and reasonable rate pursuant to section 205 of the FPA. NRECA also urges the Commission to include costs incurred to comply with any new Reliability Standards that ensue from the Final Rule.

iii. Commission Determination

125. The Commission adopts its proposal and allows public utility transmission providers to recover any costs incurred to implement the intra-hour scheduling reforms adopted in this Final Rule pursuant to Schedule 1 of the transmission provider's OATT. The Commission is not persuaded by commenters opposing the proposal that recovery of these costs through Schedule 1 will result in an overly broad assignment of costs. Such commenters argue that only a subset of transmission customers is likely to use intra-hour scheduling and that only those customers should bear the cost of implementing intra-hour scheduling reforms. The Commission disagrees. As discussed above, intra-hour scheduling provides all transmission customers with the tools needed to mitigate exposure to Schedule 9 generator imbalance charges in light of changing conditions.[164] Implementation of intra-hour scheduling is also necessary to the extent sellers wish to develop intra-hour energy products to maximize the value of available resources or to allow load serving entities to lower purchased power costs.[165] The Commission finds that these benefits will be spread broadly across customer classes.

126. Moreover, commenters opposing the Commission's proposal fail to reconcile their position with existing approaches used to recover scheduling-related costs under Schedule 1 of the *pro forma* OATT. Transmission providers do not currently parse scheduling costs into, for example, categories for network customers and point-to-point customers even though at times scheduling reforms have focused on one set of customers and not the other.[166] Rather, transmission customers as a whole have allocated the costs of scheduling-related activities through Schedule 1: Scheduling, System Control and Dispatch Service, and relevant allocations to retail native load have been made by public utility transmission providers. Commenters have failed to justify why the Commission should depart from this precedent during implementation of intra-hour scheduling practices.

127. In response to NRECA, the Commission's focus in this proceeding is on the implementation of intra-hour scheduling and, as relevant here, the recovery of scheduling-related implementation costs pursuant to Schedule 1 of the *pro forma* OATT. The Commission did not propose to address, and does not address here, recovery of other costs associated with compliance with NERC Reliability Standards.

c. Clarify Proposed Rule Language

i. Comments

128. Commenters ask the Commission to clarify what is intended by the terms schedule and scheduling interval. Southern and EEI state that the term ''schedule'' is not well defined throughout the electric industry and requests that the Commission clarify that ''schedule'' is equivalent to ''Interchange Transaction'' in the NERC Reliability Standards Glossary of Terms. TVA suggests that ''scheduling intervals'' coincide with the ''ramp start'' times as defined in the Timing Requirements tables of the NERC Reliability Standards INT–005–3, Interchange Authority Distributes Arranged Interchange; INT–006–3, Response to Interchange Authority; and INT–008–3, Interchange Authority Distributes Status. TVA contends that to view the term ''scheduling interval'' otherwise would deviate from NERC Reliability Standards and potentially have an adverse effect on assessment periods for reliability.

129. Bonneville Power requests that the Commission clarify the responsibilities of source and sink balancing authorities in regards to holding contingency reserves associated with scheduling of VER generation. Bonneville Power states that there is a debate regarding whether and when a source or sink balancing authority should deploy contingency reserves when a VER scheduling error exhausts the available balancing reserve capacity. Bonneville Power asks the Commission to clarify that a transmission provider can establish a base obligation to provide balancing reserve capacity to balance VERs and that the transmission provider can negotiate options for additional service beyond the base obligation with individual transmission customers.

130. A few commenters request clarification of the appropriate curtailment priority for intra-hour transmission schedules under the proposed reform.[167] Specifically, these commenters inquire as to whether a firm transmission reservation that is scheduled for less than the full hour would have priority over a non-firm hourly schedule. Bonneville Power and NRECA contend that submission of a firm intra-hour schedule should not necessarily result in the curtailment of lower priority hourly schedules. MidAmerican requests that the Commission clarify whether the submission of an intra-hour schedule by a transmission customer with firm transmission rights, after a competing intra-hour schedule from a transmission customer with only non-firm transmission rights, has curtailment priority.

131. Other commenters question how ATC calculations should be performed after implementation of intra-hour scheduling.[168] Public Interest Organizations state that current policy in the West does not allow ATC associated with transmission reservations that are not scheduled day-ahead to be used by other customers. Public Interest Organizations suggest that this policy may severely constrain or prohibit the effectiveness of intra-hour scheduling. In addition, Tacoma Power suggests that it may be appropriate to align ATC calculations with intra-hour scheduling intervals. Invenergy Wind asserts that the entire operational construct needs to shift from an hourly to a 15-minute basis in order to increase the efficiency of operating

[163] *E.g.,* Avista; Grant PUD; NRECA; Puget.

[164] *See supra* § IV.A.1 (Intra-Hour Scheduling Requirement).

[165] *Id.*

[166] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 770.

[167] *E.g.,* Bonneville Power; EEI; MidAmerican; NRECA.

[168] *E.g.,* Public Interest Organizations; Tacoma Power.

the transmission system and acquiring sufficient reserves in order to integrate VERs on a non-discriminatory basis. However, NorthWestern argues that continued use of hourly transmission service reservations would not be inconsistent with implementation of intra-hour transmission scheduling, stating that administering intra-hour transmission reservations would be difficult and costly.

132. Grant PUD makes reference to the Commission's use of the term ''reasonable control'' in the Proposed Rule, where the Commission states that it is unduly discriminatory to continue to require a resource to match an hourly schedule, especially when the output of the resource fluctuates beyond its reasonable control.[169] Grant PUD contends that what is reasonable depends on the current state of technology and requests that the Commission clarify that the definition of ''reasonable control'' is expected to improve over time.

ii. Commission Determination

133. In response to Southern and EEI, the Commission clarifies that the term ''schedule'' as used in this Final Rule is equivalent to its use in Schedule 9 of the OATT: ''* * * a delivery schedule from [a] generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area.'' [170] The procedures for submitting and revising a transmission schedule are delineated in sections 13.8 and 14.6 of the *pro forma* OATT, as changed by this Final Rule. Any transmission service schedule currently submitted pursuant to OATT sections 13.8 and 14.6 can therefore be modified or created in 15-minute intervals under this Final Rule.

134. In response to TVA, the Commission clarifies that the 15-minute scheduling interval will be treated the same as the current one-hour scheduling interval with respect to ramp start and stop times as defined in the Timing Requirements tables of NERC Reliability Standards INT–005–3, INT–006–3, and INT–008–3. As an example, in the Eastern Interconnection ramp start times will begin five minutes before the start of the 15-minute scheduling interval and end five minutes after the start of the 15-minute scheduling interval.

135. Regarding responsibilities for holding contingency reserves, the Commission did not propose any changes to existing rules regarding the use of contingency reserves in this proceeding. As Bonneville Power notes, there is ongoing debate in the industry regarding when and how contingency reserves may be used under NERC Reliability Standards. The Commission concludes it is appropriate, in the first instance, for stakeholders to address these questions through the NERC processes.[171]

136. The Commission also did not propose any changes to curtailment policies or ATC calculation. The Commission recognizes that transmission providers have flexibility under the *pro forma* OATT to award transmission service based on transmission capability that becomes available when firm transmission service is not scheduled by 10:00 a.m. the day prior to operation.[172] The Commission appreciates that, when a transmission provider makes service available under these circumstances, application of curtailment priorities and ATC calculation rules become more complicated. However, that is already the case under hourly transmission schedules. Therefore, the Commission did not propose any change to those practices to accommodate the possibility of intra-hour transmission schedules. All transmission schedules for firm service will continue to have curtailment priority over all transmission schedules for non-firm service [173] and transmission providers will continue to be required to follow existing rules governing the calculation of ATC.[174]

137. In response to the request from Grant PUD for clarification of the term ''reasonable control,'' the Commission explains that use of the term ''reasonable control'' is not intended to be a metric or a determining factor, but illustrative of the difficulty VERs experience when attempting to follow hourly schedules accurately. The Commission does not find it necessary to offer any further clarification.

d. NERC and NAESB Standards

i. Commission Proposal

138. In the Proposed Rule, the Commission noted that many commenters, in response to the NOI, claimed that shorter scheduling intervals may enhance reliability. The Commission therefore stated that it did not believe that an independent review of NERC Reliability Standards is necessary in order to propose implementation of intra-hour scheduling. However, the Commission sought comment on the issue to ensure that there is no inconsistency between relevant NERC standards and the proposed intra-hour scheduling tariff reform.[175]

ii. Comments

139. NERC states that certain entities currently offer 15-minute scheduling and that it is unaware of any conflicts with Reliability Standards. However, NERC asserts that wide spread use of intra-hour scheduling will likely require review and refinement of several existing Reliability Standards. Based on its preliminary review of Reliability Standards in coordination with industry stakeholders, NERC states that it does not believe there are any insurmountable hurdles that prevent industry from implementing 15-minute transmission scheduling. NERC explains that sufficient time must be allowed for Reliability Standards to be modified through the NERC Reliability Standards Committee prioritization process, but that transitioning to broad intra-hour scheduling flexibility is achievable in a reasonable timeframe.

140. Some commenters do not anticipate that a review of NERC Reliability Standards is necessary to ensure reliability upon the implementation of intra-hour scheduling.[176] NaturEner argues that an independent review of NERC standards may not be necessary, but if such a review occurs it should not delay implementation of intra-hour scheduling. Pacific Gas & Electric agrees that implementation of intra-hour scheduling can be achieved without a review of NERC standards, but recommends that NERC and other industry experts review and update current planning and operating criteria to ensure that balancing authorities have the necessary tools to flexibly balance

[169] Grant PUD (citing Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 39).

[170] OATT Schedule 9.

[171] The Commission addresses requests by Bonneville Power and others to limit the amount of capacity it must make available to transmission customers for generator regulation service under Schedule 10 in § IV.C.1 (Schedule 10—Generator Regulation and Frequency Response Service) below.

[172] The *pro forma* OATT states that ''[s]chedules for the Transmission Customers' Firm Point-To-Point Transmission Service must be submitted no later than 10:00 a.m. * * * of the day prior to commencement of such service.'' OATT Schedule 13.8.

[173] The *pro forma* OATT makes clear that ''(p)arties requesting Non-Firm Point-To-Point Transmission Service for the transmission of firm power do so with the full realization that such service is subject to availability and to Curtailment or Interruption under the terms of the Tariff.'' OATT Schedule 14.5.

[174] In compliance with Order No. 890, public utility transmission providers have documented rules governing their calculation of ATC in Schedule C of their OATTs. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 193.

[175] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 37.

[176] *E.g.,* NaturEner; Southern California Edison.

loads and resources with the advent of increased VER penetration.

141. Other commenters contend that review and modification of standards may be necessary, but not a prerequisite to implementation.[177] Southern and Xcel state that only modest, if any, changes would be needed to NERC Reliability Standards. Southern indicates that several standards may need to be reviewed and revised as they currently contemplate hourly intervals. Xcel contends that standards related to the maximum lead times required for entry and approval of a schedule may require changes. Xcel explains that the lead times for entry and approval of a tag may exceed the length of a scheduling interval, thus diminishing the usefulness of intra-hour scheduling. AEP and Duke Energy suggest that sensitivity studies should be performed by an industry forum or working group to determine the reliability impacts of the proposed scheduling changes on real-time system operations.

142. Several commenters argue that review and revision of NERC Reliability Standards, as well as NAESB business practice standards, may be necessary for the implementation of intra-hour scheduling at 15-minute intervals.[178] These commenters point out that many Reliability Standards and business practices are largely predicated on hourly scheduling intervals and govern transactions both internal to a particular balancing authority as well as across neighboring balancing authorities. Although most commenters did not identify specific changes to standards that would be necessary, some commenters suggest that NERC Reliability Standards related to some or all of the following areas be reviewed: Interchange Scheduling and Maintenance Coordination (INT), Resource and Demand Balancing (BAL), Emergency Preparedness and Operations (EOP), and Transmission Operations (TOP) standards.[179] Additionally, commenters indicate that reliability scheduling tools, such as the Interchange Distribution Calculator used in the Eastern Interconnection and the WebSAS system used in the Western Interconnection for scheduling, curtailment and ''check out'' processes may also require modification.[180]

143. NRECA cautions that any modifications to NERC standards should allow for the implementation of intra-hour scheduling but not mandate this practice. NRECA suggests that NERC be allowed to complete any updates to its standards associated with implementation of intra-hour scheduling prior to NAESB undertaking a review to ensure uniformity of approaches. NV Energy notes that, in order to schedule at 30 minute intervals or less, the protocols to effectuate such transactions must be agreed upon by all entities in WECC. Therefore, NV Energy requests that the Commission defer issuance of the Final Rule until the industry has had the opportunity to address NERC, WECC and NAESB standards issues.

144. PNW Parties state that the Joint Initiative participants found it necessary to review NERC and NAESB standards as part of their development of a 30-minute scheduling program, but did not identify in comments whether any changes to standards or business practices were needed. PNW Parties suggests, however, that applicable standards and business practices be reviewed and revised as necessary prior-to implementing more granular scheduling.

145. Some commenters within the VER industry request clarification and/or modification of NERC scheduling protocols to allow for a resource to be indentified as a ''sink.''[181] These commenters claim that this is necessary because under the Commission's proposed reforms VERs will be transacting on an intra-hour basis in order to supplement their variable supply. Iberdrola explains that, in order to enter into bilateral transactions for balancing energy where a VER's 15-minute schedule is less than its hour-ahead schedule, the additional balancing energy purchased from a generator with excess energy would need to be tagged as the ''source'' and the VER would need to be tagged as the ''sink.'' Iberdrola claims that this is necessary because VERs will be transacting bilaterally in the sub-hourly timeframe in an effort to maintain the schedule that was entered prior to the operating hour. AWEA agrees, arguing that some of the benefits of intra-hour scheduling will not be realized without this additional clarification. In response to the potential concerns of transmission providers regarding generators being tagged as sinks, AWEA and Iberdrola argue that reliability concerns would only be present when the ultimate delivery point is unknown.[182] AWEA explains that the case presented by a VER transacting as a sink for intra-hour scheduling purposes is entirely different, as the ultimate delivery point is already known. In this case, AWEA points out that there is a schedule to deliver energy to a real load and explains that this schedule is delivering energy to the load which the VER is unable to serve. Therefore, AWEA and Iberdrola conclude that such scheduling practices do not present reliability concerns.

iii. Commission Determination

146. The Commission concludes that an independent review of NERC standards and NAESB business practices is not necessary prior to the implementation of intra-hour scheduling. As noted by NERC, several entities currently offer intra-hour scheduling without any apparent conflict with Reliability Standards. NERC comments that it does not believe there are any existing standards that prohibit industry from implementing intra-hour scheduling, and no commenters have pointed to specific NAESB business practices that prevent industry from implementing intra-hour scheduling. The Commission therefore concludes that it is not necessary to delay adoption of the intra-hour scheduling requirements of this Final Rule pending further review of NERC Reliability Standards and NAESB business practices. To the extent industry believes it is beneficial to refine one or more existing NERC Reliability Standards or NAESB business practices to reflect intra-hour scheduling, stakeholders can use existing processes to pursue such refinements.

147. With regard to the requests from AWEA and Iberdrola to allow a VER resource to be designated as a ''sink'' for purposes of transmission scheduling, rules for scheduling transmission segments are set forth in NAESB's Coordinate Interchange Standards,[183] which have been incorporated into the Commission's regulations by reference.[184] The Proposed Rule did not propose any changes to those rules and the Commission declines to interpret the application to any particular transactions in this generic rulemaking proceeding.

3. Other Issues

a. Comments

148. Several commenters question the application of intra-hour scheduling reforms to HVDC transmission lines. Clean Line states that HVDC

[177] *E.g.,* NERC; Pacific Gas & Electric.

[178] *E.g.,* Bonneville Power; Duke; EEI; MidAmerican; NRECA; PNW Parties; Southern.

[179] *E.g.,* Duke; EEI; NERC; NRECA; PNW Parties; Southern.

[180] *E.g.,* NERC; NRECA; Southern.

[181] *E.g.,* AWEA; Iberdrola.

[182] *E.g.,* AWEA; Iberdrola.

[183] NAESB WEQ–004, App. C, § 2 (Commercial Timing Table).

[184] *See* 18 CFR 38.2 (2011).

transmission lines can precisely control power and, thus, are typically expected to submit schedules to public utility transmission providers. Clean Line requests that HVDC transmission lines receive equal treatment and be allowed to submit intra-hour schedules on the same basis as generators. In contrast, ALLETE and Midwest ISO Transmission Owners both request that the Commission grant an exemption from 15-minute schedules for HVDC transmission lines. These commenters argue that 15-minute scheduling of HVDC transmission lines could lead to an increase in the duty on the load tap changers of HVDC converter transformers, potentially resulting in an increase in maintenance costs and an increased potential of transformer failure.

149. Bonneville Power raises questions regarding the impact of intra-hour scheduling on dynamic scheduling practices. Bonneville Power states that 15-minute scheduling will lead to increased ramping and inhibit the availability of dynamic transfer capability in areas where dynamic transfer capability is limited, such as the Bonneville Power system and other parts of the West. Bonneville Power contends that 30-minute scheduling relieves this problem and requests that the Commission gain a better understanding of the impacts that 15-minute scheduling will have on dynamic transfers. In contrast, First Wind requests that the Commission encourage dynamic transfers in addition to implementing intra-hour scheduling, suggesting that dynamic transfers can reduce regulation service requirements for transmission owners and transfer regulation requirements to purchasers of VER energy. First Wind also argues that intra-hour scheduling and dynamic transfers will allow for better tracking of real-time generation and reduce the need for ancillary services while increasing opportunities for flexible generation and demand response.

150. M–S–R Public Power Agency states that shortening the scheduling interval does not reduce the intermittency of the VERs themselves. M–S–R Public Power Agency offers that as a matter of physics a VER requires a back-up resource to ''balance'' its intermittency, irrespective of scheduling, adding that while a shorter scheduling interval may mitigate the number of megawatts needed to assure reliability, it will not mitigate the location or cost of back-up reserves. M–S–R Public Power Agency goes on to state that VER penetration levels of 20–25 percent start to exhaust the capability of even the most robust systems and that the proposed mitigation may be insufficient. M–S–R Public Power Agency explains that the raw energy of VERs must be converted to conditioned energy (traditional resources) at the source, and not shifted to other locations through mitigation, or there will be a degradation of services to all VERs within that system. M–S–R Public Power Agency states that intermittent resources require that the transmission owner have nearly infinite capability to provide backup resources; however, even the most robust balancing authority has limitations of how fast, how often, and when it can provide back up resources. M–S–R Public Power Agency offers that, with both the cost of transmission and reliability (back-up generation) challenges, VERs may be uneconomic. M–S–R Public Power Agency encourages the Commission to solicit input on this issue.

Commission Determination

151. All transmission customers that are currently eligible to submit hourly energy schedules will be eligible to participate in intra-hour scheduling, including HVDC lines that currently submit hourly energy schedules. To the extent a transmission provider believes an exemption is appropriate, it has the right to request a waiver of all or part of the OATT requirements as described in 18 CFR 35.28(d): ''A public utility subject to the requirements of this section and Order No. 889, FERC Stats. & Regs. ¶31,037 (Final Rule on Open Access Same-Time Information System and Standards of Conduct) may file a request for waiver of all or part of the requirements of this section, or Part 37 (Open Access Same-Time Information System and Standards of Conduct for Public Utilities), for good cause shown.'' Waiver requests will be evaluated in separate proceedings if and when they are submitted based on the facts and circumstances of each request.

152. With regard to the use of dynamic schedules, the Commission did not propose and is not adopting any change in policy with regard to dynamic scheduling. The Commission is not persuaded by arguments from Bonneville Power that 15-minute scheduling intervals will negatively affect dynamic transfer capability. However, the Commission acknowledges that a transmission provider's implementation of charges for generator regulation service, as discussed in the following section, may have the result of encouraging the use of dynamic scheduling to avoid such charges.

153. In response to M–S–R Public Power Agency, the Commission appreciates that the location of a particular resource can be relevant in determining whether it can be used to satisfy reserve obligations. That is, a public utility transmission provider providing ancillary services under the *pro forma* OATT, or a transmission customer self-supplying such ancillary services needs transmission capacity to ensure deliverability of a particular resource. Whether that is the case will be fact specific and we expect the transmission provider to take the appropriate steps to ensure such transmission capacity is available.

B. Data Reporting To Support Power Production Forecasting

154. The second of the two reforms adopted in this Final Rule relates to the submission of meteorological and forced outage data,[185] by new interconnection customers whose generating facilities are VERs, to the public utility transmission provider with which the customer is interconnected if the public utility transmission provider is doing power production forecasting. As discussed below, the Commission amends the *pro forma* LGIA to effectuate this data reporting requirement. The Commission concludes that, without these reporting requirements in place, the terms of the *pro forma* LGIA may impair the ability of public utility transmission providers to develop and deploy power production forecasting, which in turn can lead to rates for jurisdictional services that are unjust and unreasonable or unduly discriminatory.

1. Data Requirements

a. Commission Proposal

155. To facilitate the development and deployment of power production forecasting by public utility transmission providers, the Proposed Rule set forth revisions to the *pro forma* LGIA that would require interconnection customers whose generating facilities are VERs to provide certain meteorological and operational data to the public utility transmission provider with whom they are

[185] The Proposed Rule used the term ''operational data'' and specified forced outages as a particular type of operational data. To reflect the limited nature of data to be reported under this Final Rule more accurately, the Commission instead refers more specifically to ''forced outage data'' in our determinations here and accompanying revisions to the *pro forma* LGIA. We also note that Section 9.7.1 of the LGIA requires Transmission Providers and Interconnection Customers to coordinate and report planned outages. Within the context of this Final Rule, the Commission references the term ''forced outage'' as defined by NERC. *See NERC* Glossary of terms *available at http://www.nerc.com/files/Glossary_of_Terms.pdf.*

interconnected, if doing forecasting. The Commission proposed that such data would be transmitted from the interconnection customer to the public utility transmission provider at or near real-time. The Commission stated that this proposal built on existing Commission data-sharing requirements by outlining specific meteorological and operational data necessary to develop power production forecasts.[186]

156. With regard to the reporting of meteorological data, the Commission proposed revisions to the *pro forma* LGIA that would result in different types of meteorological information being provided by interconnection customers based on the type of VER they own and/or operate. The Commission proposed to require interconnection customers whose generating facilities are wind-based VERs to provide public utility transmission providers with site-specific meteorological data including, but not limited to, temperature, wind speed, wind direction, and atmospheric pressure. The Commission proposed to require interconnection customers whose generating facilities are solar-based VERs to provide public utility transmission providers with site-specific meteorological data including, but not limited to, temperature, atmospheric pressure, and cloud cover. The Commission recognized that different power production forecasts may require meteorological instruments to be located at hub height, up-wind of resources, or at ground level. However, the Commission refrained from proposing specific requirements in this respect and, instead, proposed to allow the public utility transmission provider and interconnection customers to negotiate these details taking into account the size and configuration of the VER facility, its characteristics, location, and importance in maintaining generation resource adequacy and transmission system reliability in its area. The Commission stated that resource-specific data requirements contained in individual LGIAs must be negotiated on a not unduly discriminatory basis.[187]

157. With respect to the reporting of operational data, the Commission proposed to revise the *pro forma* LGIA to require interconnection customers whose generating facilities are VERs to report to the public utility transmission provider any forced outages that reduce the generating capability of the resource by 1 MW or more for 15 minutes or more. The Commission noted that provision of VER outage data at this level of granularity would allow a public utility transmission provider to ascertain the extent to which current VER power production is a result of unit availability as opposed to changing weather conditions.[188] The Commission preliminarily found that having such information would eliminate a significant source of forecasting errors by ensuring that the public utility transmission provider has accurate information regarding the capacity actually available to produce electricity during the time-frame of the operational forecasts.[189]

158. The Commission sought comment on the extent to which the lists of basic meteorological and operational data articulated above may be inadequate or incomplete in achieving the stated power production forecasting goals.[190]

b. Comments

159. Commenters addressing the reporting of meteorological data generally support requiring the provision of data as necessary to enable public utility transmission providers to employ power production forecasts.[191] While disagreeing that public utility transmission providers should be responsible for power production forecasting, Montana PSC argues that, should the Commission impose forecasting requirements, public utility transmission providers should have access to all meteorological data that are site-specific to the VER, provided that the parties have a confidentiality agreement in place to protect proprietary information. BP Companies and First Wind request that the Commission clarify that the proposal is only relevant to instances in which the public utility transmission provider is developing and/or implementing VER power production forecasting.

160. Several commenters support the Commission's identification of certain categories of meteorological data to be provided by wind and solar resources.[192] For example, with regard to wind resources, Iberdrola agrees that wind speed, wind direction, temperature and pressure are all key atmospheric variables related to wind farm output and are the most important fields to measure. With regard to solar resources, NextEra, SEIA, and Xcel generally support the minimum categories of data identified in the Proposed Rule, but they suggest that the Commission revise the reference to cloud cover because it is ambiguous. Specifically, NextEra and SEIA recommend that the Commission require solar resources to report diffuse, direct, and global horizontal irradiance. NextEra adds that humidity should also be provided for a solar VER using concentrating thermal solar technology, while SEIA suggests that plane of array irradiance or direct normal radiation may also be necessary. These commenters note that irradiance is often a better measure because it actually drives energy production.

161. Commenters generally support the Commission's proposal to allow the public utility transmission provider and interconnection customer to negotiate additional meteorological and operational data reporting requirements.[193] Commenters identified a variety of additional meteorological and facility-specific data that may be useful in developing and deploying power production forecasts. These commenters generally note that regional differences may dictate additional data needs,[194] with several asking the Commission to acknowledge that additional data beyond that specifically identified in the Proposed Rule may be needed by a public utility transmission provider.[195]

162. Several commenters raise concerns regarding the Commission's discussion of the location of meteorological towers and other equipment necessary to record and report data to public utility transmission providers.[196] NextEra asks that the Commission refrain from allowing public utility transmission providers to require VERs to install multiple meteorological towers, arguing that data beyond what is available through one meteorological tower has little value for advanced power production forecasting methods. Invenergy similarly argues that a single meteorological tower per

[186] *See* Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at PP 60–61.

[187] *See id.* P 61.

[188] *See id.* P 62 (citing *Cal. Indep. Sys. Operator Corp.,* 131 FERC ¶ 61,087, at P 64 (2010)).

[189] *Id.* P 62.

[190] *Id.* P 63.

[191] *E.g.,* AWEA; Bonneville Power; California ISO; CEERT; Clean Line; California PUC; Exelon; First Wind; Iberdrola; Independent Energy Producers; Independent Power Producers Coalition-West; ISO/RTO Council; ISO New England; Large Public Power; Midwest ISO; Midwest ISO Transmission Owners; NaturEner; NextEra; NRECA; Pacific Gas & Electric; PJM; Powerex.

[192] *E.g.,* AWEA; Iberdrola; ISO New England; RENEW.

[193] *E.g.,* Bonneville Power; ISO New England; ISO/RTO Council; Large Public Power Council; Midwest ISO; NRECA; PNW Parties; RENEW; Xcel.

[194] *E.g.,* Bonneville Power; First Energy; ISO New England; ISO/RTO Council; NextEra; MidAmerican; Midwest ISO; Midwest ISO Transmission Owners; NorthWestern; NRECA; Pacific Gas & Electric; Xcel.

[195] *E.g.,* Bonneville Power; ISO New England; Midwest ISO; NextEra; NRECA.

[196] *E.g.,* AWEA; Invenergy; NextEra.

facility is usually sufficient for predicting plant output.

163. With regard to the frequency of reporting meteorological data, several commenters suggest that the frequency of data reporting should match the use of the data, which may not be at or near real-time.[197] For example, AWEA, Iberdrola, and NextEra state that second-by-second or minute-by-minute meteorological recordings yield minimal benefits for forecasting accuracy and could be costly and burdensome. AWEA and Clean Line suggest that a reasonable requirement for the frequency at which real-time meteorological and operational data is reported from a wind plant is 10 minutes or more. NorthWestern, however, states that it would be helpful to require each VER to update the forecasting data that it has provided to the public utility transmission provider when it provides a new energy schedule.

164. AWEA and Iberdrola also contend that distinctions should be made between the types of data that should be provided in real-time and the types of data that should be provided historically. These commenters state that archived time series data are crucial to statistical forecasting techniques and that this application is not done in real-time. AWEA and Iberdrola state that data needed for forecast training can be compiled into larger datasets and transmitted at less frequent intervals at a much lower cost. RenewElec and Bonneville Power generally agree that there is significant value in historical data recorded by VERs.

165. With regard to the operational data reporting requirements, some commenters urge the Commission to adopt the proposed requirement that VERs report to the public utility transmission provider any forced outages that reduce the generating capacity of a resource by 1 MW or more for 15 minutes or more.[198] For example, Bonneville Power states that having access to forced outage information will enable public utility transmission providers to determine whether forecast inaccuracy results from unit availability, changing weather conditions, or a combination of the two. Bonneville Power further states that without such information it will be difficult to verify forecasts and improve forecast accuracy. California ISO requests that the Commission not overturn its recent decision approving California ISO's 1 MW threshold for reporting a forced outage of an eligible intermittent resource. California ISO argues that outage reporting requirements that are less stringent than those proposed would increase the likelihood that the forecasting algorithm would accumulate inaccurate data.

166. Other commenters acknowledge that forced outage data are useful in developing power production forecasts, but disagree on the exact reporting requirements.[199] Some commenters contend that a 1 MW reporting threshold would pose an unnecessary burden on a wind plant owner/operator, yield minimal benefits for forecast accuracy, and pose compliance difficulties.[200] Instead of the proposed requirement, NaturEner recommends requiring that only planned outages of greater than 15 percent of the generator's capacity should be reported as soon as they are known by the generator. AWEA suggests that reporting apply only to forced outages that exceed 10 percent of the nameplate capacity of a plant, a requirement that AWEA states is similar to the one imposed on conventional generators. NextEra similarly asks that the outage reporting requirements be identical to those that apply to conventional resources. MidAmerican recommends that VER transmission customers be required to report forced outages lasting more than 24 hours and involving the lesser of either 20 MW or 50 percent of nameplate capacity. Xcel recommends that the Commission ask NERC to analyze and determine the appropriate threshold level for reporting VER outages to public utility transmission providers and balancing authorities.

167. SEIA contends that the forced outage reporting requirement may be appropriate for large solar photovoltaic generators, but not for concentrating solar plants that experience frequent changes in power output. SEIA states that, with respect to concentrating solar power-generating facilities, the Commission should consider a threshold for reporting such fluctuations based either on the total capacity of the facility or particular types of maintenance or repair activities that would result in an outage at a percentage of the facility.

168. Exelon asks the Commission to clarify what constitutes a forced outage for purposes of the requirement to report operational data, suggesting it should only include unanticipated outage events. NRECA notes that the Proposed Rule did not identify the frequency for reporting operational data to the public utility transmission provider. NRECA contends that the public utility transmission provider should be notified as soon as the VER is aware of an outage.

169. Several commenters recommend that the Commission provide regional flexibility with respect to the operational data reporting requirements.[201] For example, Iberdrola states that VER forced outage reporting requirements should be regional and: (1) Based on the penetration of VERs in the region; (2) based on the ability of the transmission provider to incorporate the data into power production forecasting from VERs that is in turn used for reliably operating the system; and (3) limited to an interval that enables the use of predictive outage reporting capability.

170. Some commenters argue that the Commission should acknowledge the importance of standardized regional reporting mechanisms when considering these proposed reforms.[202] For example, Midwest ISO notes that IEC Standard 61400–25 already exists to facilitate the exchange of information between individual wind turbines, their constituent components, wind power plants, area control, and other external systems. Midwest ISO suggests that use of a common format for communicating data between the VER and public utility transmission provider would promote the development of power production forecasting. However, Invenergy asks that the Commission make clear that public utility transmission providers are required to accept reasonable alternative means of data communication and not implement uniform standards that impose unnecessary costs on wind projects.

c. Commission Determination

171. The Commission adopts, as modified below, the proposed requirement that interconnection customers whose generating facilities are VERs provide meteorological and forced outage data to the public utility transmission provider with which the customer is interconnected, where necessary for that public utility transmission provider to develop and deploy power production forecasting. As discussed below, power production forecasting can be used by public utility transmission providers to operate their

[197] *E.g.,* AWEA; Clean Line; Iberdrola; NextEra; NaturEner; NorthWestern; Public Interest Organizations.

[198] *E.g.,* Bonneville Power; California ISO; NRECA.

[199] *E.g.,* AWEA; Exelon; NaturEner; SEIA; Xcel; MidAmerican; NextEra.

[200] *E.g.,* AWEA; Iberdrola; NaturEner; MidAmerican; PJM.

[201] *E.g.,* Iberdrola; ISO New England; Midwest ISO Transmission Owners; PJM; Southern California Edison.

[202] *E.g.,* Alstom; EEI; Midwest ISO.

systems and manage reserves more efficiently. To the extent a public utility transmission provider seeks to rely on power production forecasting, the Commission concludes it is appropriate to require new interconnection customers whose generating facilities are VERs to provide related data to the public utility transmission provider under the circumstances below. The Commission therefore directs public utility transmission providers to modify their *pro forma* LGIAs to effectuate the data reporting requirement.

172. As the Commission noted in the Proposed Rule, industry studies demonstrate the potential for significant benefits from the incorporation of power production forecasts into scheduling and unit commitment processes. In WECC alone, NREL estimated the use of VER power production forecasts has the potential to reduce operating costs by up to 14 percent or $5 billion per year.[203] NERC has similarly concluded that forecasting the output of variable generation is critical to bulk power system reliability in order to ensure that adequate resources are available for ancillary services and ramping requirements.[204] NERC has therefore recommended that forecasting techniques be incorporated into day-to-day operational planning and real-time operations routines/practices including unit commitment and dispatch.[205] The Commission notes that the benefits of power production forecasting can accrue across a variety of time frames, including the operating day, day-ahead, and seasonally.

173. However, power production forecasts are only as good as the data on which they rely. The ability of public utility transmission providers to use power production forecasting in the commitment and de-commitment of resources may be limited without adequate meteorological and forced outage data from VERs. The current lack of meteorological and forced outage data reporting requirements in the *pro forma* LGIA therefore may limit efforts by public utility transmission providers to more efficiently manage operating costs associated with the integration of VERs interconnecting to their systems. Under the existing requirements of the *pro forma* LGIA, public utility transmission providers are permitted to request this information, but there is no obligation for interconnection customers whose generating facilities are VERs to provide it. The Commission remedies this deficiency by adopting reporting requirements for new interconnection customers whose facilities are VERs, commensurate with the power production forecasting employed by the public utility transmission provider, to allow for more accurate commitment and de-commitment of resources providing reserves, ensuring that reserve-related charges imposed on customers remain just and reasonable and not unduly discriminatory or preferential. The Commission implements this requirement by requiring public utility transmission providers to modify their *pro forma* LGIAs to include the reporting requirements discussed below.

174. The reporting requirements adopted in this Final Rule are specifically designed to support the development and deployment of power production forecasting by public utility transmission providers. As a result, nothing in this Final Rule should be construed as creating an obligation for interconnection customers whose generating facilities are VERs to provide meteorological and forced outage data in cases where the public utility transmission provider is not engaging in power production forecasting. The Commission recognizes that VER potential and penetration varies across public utility transmission provider systems and that, at this time, not all public utility transmission providers have sufficient levels of VERs to warrant engaging in power production forecasting. The Commission is nonetheless amending the *pro forma* LGIA to ensure that those public utility transmission providers seeking to develop and deploy power production forecasting in response to increasing VER penetration have adequate information to do so. To make the conditional nature of the reporting requirements clear, the Commission revises the proposed Article 8.4 of the *pro forma* LGIA to state that all requirements for meteorological and forced outage data must be consistent with the power production forecasting employed by the Transmission Provider, if any, to manage reserve commitments. The Commission believes that this strikes a reasonable balance between the requirement to provide the data and the public utility transmission provider's use of the data to manage reserve commitments more efficiently.

175. Turning to the particular reporting requirements imposed on interconnection customers whose generating facilities are VERs, the Commission affirms the approach set forth in the Proposed Rule allowing public utility transmission providers flexibility in identifying the specific meteorological and forced outage data to be reported. As proposed, Article 8.4 of the *pro forma* LGIA would specify certain categories of data to be provided by interconnection customers with VERs having wind or solar as the energy source, with the exact specifications of data to be provided taking into account the size and configuration of the VER, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area. Some commenters generally support this approach, stating that the type of power production forecasting deployed by public utility transmission providers and the tools used to perform forecasts could vary widely, and therefore any reporting requirements associated with power production forecasting should be flexible.[206] This approach will provide public utility transmission providers the flexibility to negotiate, in the first instance, with interconnection customers whose generating facilities are VERs to identify the particular data to be reported by the customer.

176. The Commission finds that this flexible approach to establishing data reporting requirements will ensure that all reporting of meteorological and forced outage data corresponds with the power production forecasting being employed by the public utility transmission providers. To be clear, however, public utility transmission providers cannot unduly discriminate among interconnection customers with regard to data reporting requirements. By linking the requirement to provide meteorological and forced outage data to the use of these data by the public utility transmission provider in power production forecasting to manage reserve commitments, the Commission seeks to minimize opportunities for undue discrimination as well as needless burden on interconnection customers. At the same time, to the extent meteorological and forced outage data are needed for the public utility transmission provider to engage in power production forecasting, they must be provided by the interconnection customer, even if that means investment in additional equipment by the customer.[207] To the extent there are

[203] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 45 (citing National Renewable Energy Laboratory, *Western Wind and Solar Integration Study* ES–18 (2010), *available at http://www.nrel.gov/wind/systemsintegration/wwsis.html*).

[204] NERC, *Accommodating High Levels of Variable Generation* 54 (2009), *available at http://www.nerc.com/files/IVGTF_Report_041609.pdf.*

[205] *Id.* at 59.

[206] *E.g.,* Iberdrola; NextEra.

[207] The Commission acknowledges the concern of some commenters that the installation of multiple

Continued

concerns of discriminatory or unnecessary application of data reporting requirements, interconnection customers can request that the public utility transmission provider file with the Commission an unexecuted LGIA in order to resolve the disagreement.[208]

177. Notwithstanding the flexibility provided for party-specific negotiations of data reporting requirements, the record in this proceeding also confirms that some categories of meteorological data from VERs having wind or solar as the energy source will be relevant to most, if not all, power production forecasting deployed by a public utility transmission provider for these resources. Therefore, the Commission adopts the proposal to require certain categories of meteorological data from VERs having wind or solar as the energy source. Specifically, an interconnection customer with a VER having wind as the energy source must provide, at a minimum, site-specific meteorological data including: Temperature, wind speed, wind direction, and atmospheric pressure. An interconnection customer with a VER having solar as the energy source must provide, at a minimum, site-specific meteorological data including: temperature, atmospheric pressure, and irradiance. The exact specifications of data to be provided by the interconnection customer will remain subject to negotiation between the parties, which as noted above must take into account the size and configuration of the VER, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area. It may also include additional meteorological data commensurate with the power production forecasting employed by the public utility transmission provider. As with other data reporting requirements, the public utility transmission provider may file an unexecuted LGIA pursuant to FPA section 205 seeking to demonstrate the necessity of requests for additional information if the parties cannot reach mutual agreement as to the specifications of data to be provided.[209]

178. By defining certain categories of data that must be provided, while leaving the exact specifications of data to negotiation between the interconnection customer and the public utility transmission provider, the Commission has sought to balance the competing interests of clarity and flexibility. The Commission appreciates that defining all data requirements with precision in this Final Rule might result in rules that are easier to implement. However, it also could lead to interconnection customers incurring costs to provide data at a level of granularity, for example, that is of no use to the public utility transmission provider given the type of power production forecasting deployed. By linking the reporting requirements to the data needs of the public utility transmission provider, the Commission seeks to facilitate the deployment of power production forecasting without unduly burdening the interconnection customer.

179. In the Proposed Rule, the Commission included ''cloud cover'' within the categories of data required of interconnection customers with a VER having solar as the energy source. The Commission agrees with commenters that the term ''cloud cover'' is imprecise and thus we modify Article 8.4 of the *pro forma* LGIA to refer to ''irradiance.'' However, the Commission declines to distinguish between types of irradiance and also declines to include ''humidity'' in the minimal categories of data. These additional characteristics may be more relevant for some types of facilities than others, so we leave to public utility transmission providers and their interconnection customers to identify the specifications of data relevant for reporting.

180. With regard to the frequency and timing of data reporting, the Commission modifies the Proposed Rule and allows public utility transmission providers and interconnection customers whose generating facilities are VERs to negotiate the frequency and timing of data submittals. The Proposed Rule would have required the reporting of data at or near real-time. In response, commenters such as AWEA and Iberdrola note that some power production forecasts use archived time series data that may be compiled and transmitted to public utility transmission providers at a significant costs savings when compared to the ongoing reporting of data at or near real-time, whereas NorthWestern suggests that data could be provided on a ten-minute or longer basis. Based on comments received, the Commission concludes it is more appropriate for the frequency and timing data submittals to be negotiated by the parties to ensure that the reporting of data is consistent with the type of power production forecasting being deployed by the public utility transmission provider. The Commission revises Article 8.4 of the *pro forma* LGIA accordingly.

181. In the Proposed Rule, the Commission sought to require the reporting of forced outages of 1 MW or more for 15 minutes or more. In response, commenters disagree as to the relevant level of granularity for outage data. Rather than establish a specific megawatt reporting threshold or frequency that could result in the reporting of data that are not used by the public utility transmission provider, the Commission concludes it is more appropriate for the public utility transmission provider and interconnection customer to negotiate the exact specifications of forced outage data to be provided, taking into account the size and configuration of the VER, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area. As noted in the Proposed Rule, this will provide the flexibility necessary to ensure that the reporting of forced outage data is commensurate with the power production forecasting being employed by the public utility transmission provider, consistent with any regional practices that may exist. Therefore, the Commission modifies the Proposed Rule to align the reporting of forced outages with the power production forecasting being employed by the public utility transmission provider. The Commission also declines to adopt alternative minimum thresholds or pre-define forced outages for purposes of reporting requirements as requested by some commenters.

182. Some commenters request that the Commission standardize protocols for reporting meteorological or forced outage data required by this Final Rule. The Proposed Rule did not contain standard protocols for data reporting and, as a result, the merits of such a requirement have not been fully addressed in the record. Whether standardization of data communications would facilitate or hinder development of power production forecasting may implicate a variety of data and communications issues that would benefit from broad industry input through standards development processes such as those used by NAESB and other organizations.

d. LGIA

183. In order to effectuate the reporting requirements discussed above, the Proposed Rule set forth amendments to the *pro forma* LGIA adding a new section Article 8.4, *Provision of Data from a Variable Energy Resource.*

meteorological towers would increase costs for an interconnection customer. Whether data from a single meteorological tower is sufficient to support the power production forecasting deployed by the public utility transmission provider should be addressed as part of the negotiation of the LGIA.

[208] *See* 16 U.S.C. 824d (2006); 18 CFR 35.13 (2010).

[209] *Id.*

Consistent with the approach of Order Nos. 2003 and 661,[210] the Commission proposed not to require retroactive changes to LGIAs that are already in effect. However, the Commission sought comment as to whether this approach would prevent public utility transmission providers from effectively implementing power production forecasting.[211] The Commission also preliminarily found that the *pro forma* LGIA includes adequate confidentiality protections for sensitive data obtained from VERs.[212]

184. The Commission noted that it was proposing revisions only to interconnection customers whose generating facilities are VERs greater than 20 MW and, as a result, proposing revisions only to the *pro forma* LGIA and not the *pro forma* Small Generator Interconnection Agreement (SGIA). The Commission sought comment on whether the proposed reforms should also apply to interconnection customers whose generating facilities are VERs of 20 MW or less, so as to require revisions to the *pro forma* SGIA.

e. Comments

185. The Commission received a variety of comments on its proposal to not require retroactive changes to LGIAs that are in effect. NaturEner argues that without data from existing resources, power production forecasts would be less reliable or robust, resulting in artificially high required reserves and attendant expenses. AWEA, Clean Line, and Iberdrola state that they would not oppose requiring data from resources that have executed an LGIA, provided that the interconnection customers are only required to report data that are currently gathered by the VER. AWEA explains that data already are being collected by many wind plants deployed since 2005 and that many public utility transmission providers have already imposed reporting requirements. However, Southern MN Municipal asserts that the proposed reforms should not be extended to resources that have already executed an interconnection agreement. Bonneville Power asserts that Articles 9.3 and 9.4 of the LGIA give the transmission provider a unilateral right to update its instructions and operating protocols and procedures regardless of whether the proposed Article 8.4 is applied retroactively.

186. Midwest ISO Transmission Owners request that the Commission address the circumstances under which a VER with an existing interconnection agreement might become subject to the new power production forecasting requirement if it is applied prospectively. Midwest ISO Transmission Owners state that, at the very least, any increase in a facility's generating capacity or material modification that would necessitate a new LGIA should be sufficient to subject the VER generator to the new power production forecasting-related data requirements under the applicable tariff.

187. Some commenters suggest implementing reporting requirements for meteorological and forced outage data through the *pro forma* OATT in order to impose those requirements on existing resources or otherwise allow for changes in reporting requirements over time.[213] AWEA contends that, if the Commission determines to apply the reporting requirements to existing resources, it would be more appropriate to place the requirements in the *pro forma* OATT. Sunflower and Mid-Kansas agree, noting that the *pro forma* LGIA already requires parties to operate their facilities consistent with Applicable Laws and Regulations, including OATT requirements. Large Public Power argues that it is important that all VERs provide the operational information required by a transmission provider and, therefore, also recommends placing reporting requirements in the transmission tariff. Southern California Edison contends that placing reporting requirements in the *pro forma* OATT would allow greater flexibility in structuring agreements by referencing requirements in the California ISO Tariff, as they may change from time to time.

188. Other commenters ask the Commission to allow reporting requirements to be stated in market rules or business practices.[214] ISO New England requests that the Commission afford flexibility for public utility transmission providers to determine the mechanism by which to collect the required VER data. National Grid states that rather than requiring a proscriptive amendment of the *pro forma* LGIA, the Commission should require each region to work with its stakeholders to develop appropriate methods for forecasting the energy output from VERs. Pacific Gas & Electric requests that in its Final Rule the Commission provide latitude for the California ISO and other similarly-situated transmission providers to continue their existing programs for gathering relevant meteorological and operational data, and proposing incremental refinements to them, so long as they conform to the purposes of the Final Rule. Xcel similarly argues that the specific data requirements for individual public utility transmission providers should be identified through a business practice or other OASIS posting to allow adjustments due to changing system operating needs, improvements in meteorological forecasting technologies, or modifications in NERC reliability requirements.

189. With regard to the Commission's question as to whether the *pro forma* SGIA needs to be revised, many parties argue that the provision of data under the SGIA may be appropriate in some instances.[215] PJM and Snohomish County PUD note that the costs of reporting the proposed data to public utility transmission providers by small VERs could be higher than for larger resources. As such, they argue that the Commission should carefully consider these costs when applying reporting requirements. Several other commenters acknowledge difficulties associated with gathering data from resources subject to the SGIA, and propose a variety of thresholds to determine whether reporting requirements should apply to the resource.[216] For example, AWEA states that it makes sense to apply similar data reporting requirements to smaller-scale generators where it can be demonstrated that the data will be used for improving VER forecast accuracy and that the benefits exceed the cost of data collection. Others state that small resources should use alternative reporting requirements.[217] Southern California Edison recommends that the Commission consider an approach that aggregates individual site data from small generators in a geographic area, which reduces cost impacts to smaller projects.

190. Commenters contend that the public utility transmission provider should have the flexibility to identify and require data from small

[210] Order No. 661, FERC Stats. & Regs. ¶ 31,186 at P 120; Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 910.

[211] *See* Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 64.

[212] *Id.* P 60 (citing *Pro Forma* LGIA Article 22, which sets forth the confidentiality provisions applicable to data exchanged through the interconnection process).

[213] *E.g.,* AWEA; Large Public Power; Southern California Edison; Sunflower and Mid-Kansas.

[214] *E.g.,* California PUC; Dominion; ISO New England; National Grid; Pacific Gas & Electric.

[215] *E.g.,* California ISO; EEI; Duke; ISO New England; MidAmerican; NRECA; Pacific Gas & Electric; PNW Parties; Snohomish County PUD; Southern California Edison; Tacoma Power; Xcel.

[216] *E.g.,* AWEA; RenewElec; SEIA; Tacoma Power; Xcel.

[217] *E.g.,* Alstom Grid; RENEW.

generators.[218] For example, Bonneville Power argues that the Commission should require small VERs to provide meteorological and operational data according to the requirements established by their public utility transmission provider. These commenters generally agree that public utility transmission providers may have different forecasting needs, and that they require flexibility to address such issues. NextEra argues that there is no convincing reason to limit the forecasting requirement to resources larger than 20 MW, and that the impact of small VERs on system variability is the same as resources greater than 20 MW. Midwest ISO Transmission Owners note that the Midwest ISO *pro forma* Generator Interconnection Agreement (GIA) applies to all interconnection customers, regardless of size, and as a result any reporting requirements adopted in the GIA should apply to generators with a capacity of less than 20 MW. California PUC asks that the Commission make clear that public utility transmission providers are not prohibited from requesting meteorological and operational data from small VERs. Environmental Defense Fund states that the Commission should host a technical conference to examine issues arising from requiring small generators to contribute information to support power production forecasting.

191. Some commenters address other aspects of the Commission's proposal to amend the *pro forma* LGIA. AWEA questions the Commission's preliminary conclusion that the LGIA provides sufficient confidentiality protection for sensitive operational and meteorological data, stating that vendors providing forecasts to public utility transmission providers must not be allowed to use the data they collect for developing forecasts for the public utility transmission provider for any other purpose without express agreement. MidAmerican asks the Commission to clarify that there will not be any additional penalties for failure to provide accurate meteorological and operational data, other than the contractual remedies for breach already provided for in the *pro forma* LGIA. MidAmerican states that it recognizes that meteorological data are not always available if, for example, communication from a collecting device is interrupted. RenewElec recommends that the Commission set forth a data retention requirement in the new *pro forma* LGIA Article 8.4 that would require public utility transmission providers to maintain data collected from interconnection customers whose generating facilities are VERs for at least 10 years, facilitating follow-up studies to update power production forecasts.

f. Commission Determination

192. The Commission affirms the Proposed Rule and amends the *pro forma* LGIA to include a new Article 8.4 setting forth the reporting requirements adopted in this Final Rule. The Commission directs all public utility transmission providers to file a revised *pro forma* LGIA within 12 months of the effective date of this Final Rule reflecting the revisions adopted herein. As noted below, public utility transmission providers that have already implemented meteorological or forced outage reporting requirements may seek to demonstrate, on compliance, that these existing business practices and market rules adequately satisfy the requirements of this Final Rule.

193. As set forth in the Proposed Rule, Article 8.4 of the *pro forma* LGIA did not state where the meteorological and forced outage data reporting requirements would be specified in an LGIA. The Commission agrees with Bonneville Power that it is appropriate to state reporting requirements for meteorological and forced outage data in Appendix C, Interconnection Details, as this will allow the requirements to be changed from time to time. The Commission therefore revises proposed Article 8.4 to specify that reporting requirements for meteorological and forced outage data would be set forth in Appendix C, Interconnection Details, of an LGIA. A transmission provider with an executed LGIA that seeks reporting of such data may negotiate revisions to Appendix C related to such reporting requirements with the interconnection customer. To the extent the parties mutually agree on changes to Appendix C, such changes to Appendix C need not be submitted to the Commission for review. If the parties are unable to reach agreement on proposed modifications to Appendix C, however, these parties may invoke their rights, as relevant, to modify the LGIA under sections 205 or 206 of the FPA, as appropriate, and pursuant to Article 30.11 of the LGIA.

194. The Commission disagrees with commenters suggesting that flexibility provided by business practices or market rules makes them a superior alternative for implementing the meteorological and forced outage reporting requirements adopted in this Final Rule. The Commission has sought to address public utility transmission providers' need for flexibility by clarifying that reporting requirements are to be set forth in Appendix C to the LGIA, while also addressing interconnection customers' need for certainty in the obligations placed on them. The Commission appreciates that public utility transmission providers in some regions, including RTOs and ISOs, have already implemented meteorological or forced outage reporting under business practices and markets rules. Such public utility transmission providers may seek to demonstrate in their compliance filing how continued use of these existing business practices and market rules is adequate to satisfy the requirements of this Final Rule using the independent entity variation standard set forth in Order No. 2003, if relevant, or by demonstrating variations from the *pro forma* OATT are consistent with or superior to the requirements of this Final Rule.[219]

195. The Commission declines to modify existing LGIAs already in effect to include Article 8.4 of the *pro forma* LGIA as adopted in this Final Rule. The Commission acknowledges that, in some situations, there may be a sufficient amount of VERs already interconnected to the public utility transmission provider's system to make data from those resources useful or even necessary to properly implement power production forecasting. However, several considerations lead us to decline to modify every LGIA in effect on a generic basis. First the Commission believes retroactive changes to every LGIA in effect could be administratively burdensome to public utility transmission providers and interconnection customers, especially where the public utility transmission provider is not engaged in power production forecasting. Second, we note that nothing in the *pro forma* LGIA precludes the parties to an LGIA from mutually agreeing to revise the requirements set forth in Appendix C to reflect the reporting of meteorological and forced outage data. Indeed, we note that Article 9.4 of the *pro forma* LGIA recognizes that Appendix C will be modified to reflect changes to the interconnection customer's requirements as they may change from time to time. Finally, if the parties are unable to agree to modifications of Appendix C, we note that pursuant to Article 30.11 of the *pro forma* LGIA, the transmission provider has the right to make a unilateral filing to the Commission proposing to modify an

[218] *E.g.,* Bonneville Power; Idaho Power.

[219] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 9–10.

existing LGIA under section 205 of the FPA.

196. For similar reasons, the Commission declines suggestions to implement data reporting requirements through the *pro forma* OATT instead of the *pro forma* LGIA or to include the requirements in the *pro forma* SGIA. The effect of relying on the *pro forma* OATT would be to impose the data reporting requirements adopted in this Final Rule on existing interconnection customers retroactively, including those with resources under 20 MW that are subject to the *pro forma* SGIA. Like data from existing resources, data from small resources may be useful or necessary for power production forecasting, yet the record in this proceeding does not demonstrate that the need for data from small resources is so great as to outweigh the potential burden that reporting requirements could impose on smaller resources. Just as the *pro forma* LGIA provides an opportunity for public utility transmission providers to mutually agree with interconnection customers regarding reporting requirements, nothing in the *pro forma* SGIA precludes the transmission provider from negotiating with the owners and operators of small VERs to update their SGIAs to provide for the reporting of meteorological and forced outage data that are necessary for public utility transmission providers to employ power production forecasting. As with the *pro forma* LGIA, section 12.12 of the *pro forma* SGIA provides an opportunity for parties to an SGIA to bring any disagreement to the Commission for resolution.

197. In response to Midwest ISO Transmission Owners, the Commission notes that the extent to which a new LGIA is necessitated by a new Interconnection Request or Material Modification is governed by the *pro forma* LGIA and Commission precedent. To the extent a new LGIA is warranted, the VER interconnection customer would be subject to the relevant requirements of this Final Rule in effect at the time. Public utility transmission providers may seek to demonstrate in their compliance filings how continued use of existing tariffs, business practices and/or market rules is adequate to satisfy the requirements of this Final Rule using the independent entity variation standard set forth in Order No. 2003, if relevant, or by demonstrating variations from the *pro forma* OATT are consistent with or superior to the requirements of this Final Rule.[220]

198. With regard to AWEA's concern regarding the confidentiality of data, the Commission agrees that meteorological and forced outage data can be commercially sensitive, but concludes that the Article 22 of the *pro forma* LGIA provides adequate safeguards for reported data.[221] Any vendor providing forecasts to a public utility transmission provider would be an agent of the public utility transmission provider subject to the confidentiality obligations of the *pro forma* LGIA. With regard to MidAmerican's concern regarding penalties for failure to provide accurate meteorological and forced outage data, the Commission notes that the extent to which penalties beyond those set forth in the *pro forma* LGIA might be appropriate for failing to satisfy data reporting requirements will necessarily depend on the facts and circumstances surrounding each instance of failed reporting. The Commission appreciates that unforeseen circumstances may impair an interconnection customer's ability to report data and that the impact of failed reporting may in many instances be *de minimus.* However, it would not be appropriate for the Commission to conclude generically that in no circumstance would additional penalties beyond those remedies set forth in the *pro forma* LGIA be appropriate for failure to comply with the data reporting requirements of an executed LGIA.

199. Finally, the Commission declines to impose special retention requirements for reported meteorological and forced outage data as requested by RenewElec. The time period over which a public utility transmission provider would need to retain meteorological or forced outage data will be a function of the type of power production forecasting being employed by the public utility transmission provider.

2. Definition of VER

a. Commission Proposal

200. In the Proposed Rule, the Commission sought to modify the *pro forma* LGIA to include a new definition for Variable Energy Resource in Article 1. The proposed definition identified a Variable Energy Resource as a device for the production of electricity that is characterized by an energy source that: (1) Is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator.[222] The Commission stated that it believed the proposed definition was consistent with NERC's characterization of variable generation.[223]

b. Comments

201. EEI supports the Commission's proposed definition without modification. California ISO supports the definition's focus on source of energy, but suggests that the phrase ''by an energy source that'' be replaced with ''by a fuel source that.'' California ISO states that this change would make clear that the three conditions that follow pertain to the fuel source and not the nature of the facility itself.

202. Other commenters disagree with the focus on the source of energy, arguing that a VER should be defined by reference to its operating characteristics, including the ability to control output.[224] BrightSource states that this would allow for comparison between facilities with different fuel sources on standard operational and reliability time-frames and also avoid confusion about types of plants that combine renewable and conventional fuel sources, such as solar-gas hybrids. Joined by SEIA, BrightSource argues that a plant able to maintain a high level of operational control comes close to fulfilling the operational characteristics of a non-VER generation and should be treated as such for purposes of the Proposed Rule's requirements. NextEra agrees, stating that some resources can control the variability of their facility by adjusting output through feathering blades, self-curtailment, or similar measures. SEIA suggests that the Commission consider alternative criteria that could provide a distinction between VERs with a high level of control and VERs without such controls, such as if actual production can remain within some statistical measure of forecast accuracy during its operating hours. MidAmerican similarly requests that the Commission adopt a definition based on physical electrical generation output characteristics rather than input attributes such as fuel type, suggesting that whether energy sources qualify as ''renewable'' varies among states that have developed their own renewable resource regulations.

[220] *See Id.* P 910.

[221] Article 22 of the *pro forma* LGIA defines Confidential Information to include, among other things, all information relating to a Party's technology, research and development, business affairs, and pricing. Each party to an LGIA must hold in confidence and may not disclose to any person Confidential Information during the term of an LGIA and for a period of three years after the expiration or termination of an LGIA.

[222] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 64.

[223] *Id.* (citing NERC, *Accommodating High Levels of Variable Generation* 13–14 (2009), *available at http://www.nerc.com/files/IVGTF_Report_041609.pdf*).

[224] *E.g.,* AWEA; BrightSource; NaturEner; NextEra; RenewElec; SEIA.

203. Several of these commenters question the applicability of the proposed definition to resources that use energy storage to control output. NaturEner provides a hypothetical example of a plant coupled with storage and asks that the Commission provide clarification regarding the impact of such pairing on capacity reserve obligations. BrightSource asks the Commission to modify the definition to address how much storage results in a plant not being considered a VER for purposes of the Proposed Rule and any future rules. AWEA and NextEra request clarification that the proposed definition would not prevent VERs from electing to maintain VER status even if they use energy storage, other firming technologies, or otherwise have the ability to adjust output. RenewElec and SEIA argue that, regardless of the Commission's determination on the storage issue for VERs, such resources should not be exempt from reporting meteorological data to their public utility transmission provider. BrightSource and SEIA state that the applicability of the proposed definition is sufficiently important that the Commission should consider a technical conference on the issue.

204. Some commenters focus on the applicability of the proposed definition to particular types of resources, such as tidal, run-of-river hydro, conduit hydro, co-generation, or biomass.[225] Snohomish County PUD argues that, although such facilities would appear to satisfy the proposed definition, they should not be required to report the proposed data to public utility transmission providers because the data reporting would provide minimal benefit to grid operators while imposing a significant burden on these resources. Focusing on run-of-river hydro, Snohomish County PUD contends that whether such a facility is available at any given moment has no impact on the extent to which a sudden wind ramp might change production on the grid. NorthWestern and Pacific Gas & Electric agree, arguing that run-of-river hydro is much more predictable than wind or solar generation on a short-term basis and, as a result, there would be little benefit to collecting the meteorological data from such resources. In contrast, Entergy argues that the proposed definition and associated reporting requirements should be imposed on Qualifying Facilities to avoid gaps in forecasting and to allow public utility transmission providers to accommodate the variability that exists with both Qualifying Facilities and VERs.

205. Other commenters question the application of the proposed definition to solar resources.[226] California ISO explains that while solar thermal resources store solar thermal heat, they do not store solar irradiance itself, which is the energy source for the solar thermal facility. California ISO asks the Commission to clarify that a solar thermal facility would fall under the proposed definition. BrightSource contends that the storage and variability elements of the proposed definition appear to overlap functionally for a solar thermal plant, given that variability during the operating day could be controlled in many ways by the facility. BrightSource requests clarification regarding whether a VER would have to meet both or just one of these elements to fall within the definition.

206. ISO New England and NorthWestern offer opposing views on application of the proposed definition and associated reporting requirements on behind-the-meter generation. ISO New England recommends that all distributed or behind-the-meter generation should be required to provide to the balancing and transmission entities in its area, at a minimum, specification of the technology and precise location of the installed resource so that a forecast of output can be developed on an aggregate scale to include in the balancing area forecast.

207. California State Water Project argues that its wholesale participating load resource also meets the definition of a VER. California State Water Project explains that participating load's primary purpose is not the provision of services to the grid, but rather water management, and that the load is subject to variability for reasons beyond California State Water Projects' control, such as competing environmental and water management requirements. Accordingly, California State Water Project requests that consideration be given to expanding the VERs definition to include large wholesale demand response resources that bid into markets not through a baseline mechanism, but rather on a basis comparable to generation.

208. ISO New England requests that the Commission afford flexibility for entities to use existing, superior definitions of VERs. The ISO New England Tariff already uses the term ''Intermittent Power Resources'' for wind, solar, run-of-river hydro and other renewable resources that do not have control over their net power output. As such, ISO New England requests that the Commission allow entities to use existing, superior approaches to the extent these are consistent with the objectives of the proposed reforms. ISO New England states that adding another term to its tariff could potentially lead to confusion, and therefore, argues that the region should be afforded the opportunity to consider the existing terminology in the ISO New England Tariff, and determine whether any changes are warranted.

209. Bonneville Power states that, in light of its position that the *pro forma* LGIA provides transmission providers with the authority to update operational requirements for VERs, the Commission's proposed definition is unnecessary. However, Bonneville Power nonetheless states that it supports the inclusion of the proposed definition in all new VER interconnection agreements.

c. Commission Determination

210. The Commission adopts the Proposed Rule's definition of VER and, accordingly, amends Article 1 of the *pro forma* LGIA to include the following definition:

> Variable Energy Resource shall mean a device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator.

The Commission finds it necessary to define VERs in the *pro forma* LGIA in order to identify those resources that are required to provide to their public utility transmission provider meteorological and forced outage data necessary to enable the public utility transmission provider to develop and deploy power production forecasting. The Commission therefore declines to define VERs by their operating characteristics as suggested by BrightSource and MidAmerican or by reference to their lack of ability to store output, self-curtail production, or otherwise firm deliveries as suggested by BrightSource, NextEra and others. The Commission also declines to define VERs by their fuel type as suggested by California ISO, because fuel type is an unduly restrictive subset of energy type.[227]

211. As noted elsewhere in this Final Rule, power production forecasting

[225] *E.g.,* Grays Harbor PUD; NorthWestern; Pacific Gas & Electric; Snohomish County PUD.

[226] *E.g.,* BrightSource; California ISO.

[227] ''Fuel'' is defined as a material used to produce heat or power by burning. *See Merriam Webster, http://www.Merriam-Webster.com,* 2011. (November 4, 2011).

allows the public utility transmission provider to understand the characteristics of the input energy source for particular resources, to use those characteristics to predict how the resources will operate, and in turn to determine whether and to what degree the public utility transmission provider will need to reserve capacity to manage variability in generation output. Therefore, it is the variability of the energy source, not the operating characteristics of the plant or nature of output, that are critical to identifying the set of resources that must be subject to the meteorological and forced outage data requirements adopted above. Defining VERs by reference to operating characteristics or level of storage could limit the reporting of data in ways that undermines that ability of public utility transmission providers to engage in power production forecasting.

212. The Commission declines to establish an exemption to the data reporting requirements in this Final Rule for VERs utilizing energy storage or other firming technologies. Not only would this exemption inhibit the public utility transmission provider's capacity to predict how the VER resources will operate, but there is also insufficient evidence in this record to identify an objective threshold for exemption. The Commission clarifies that the purpose of this definition is to identify the resources that are required by this Final Rule to provide to their public utility transmission provider meteorological and forced outage data; the purpose is not, as suggested by NaturEner, to assign capacity reserve obligations or other charges. Nor does this definition supersede those created by other entities for purposes outside this rule, such as tax benefit purposes or renewable energy credits.

213. For similar reasons, the Commission declines to limit the VER definition in the *pro forma* LGIA to solar and wind resources so as to exclude run-of-river hydro, tidal, or other new and emerging VER technologies. Although the Commission anticipates that public utility transmission providers initially will engage in power production forecasting predominantly for wind and solar VERs, we leave to the public utility transmission providers to determine whether their individual systems necessitate power production forecasting for other types of VERs. Categorically excluding other types of resources would undermine the flexibility being provided in this Final Rule. At the same time, we decline to establish minimum reporting requirements for non-wind and non-solar VERs and leave to the public utility transmission providers and VERs to negotiate what data are necessary for developing and deploying power production forecasting for these resources, taking into account the size and configuration of the VER, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area.[228] Because such requirements will vary system by system, it is not necessary to hold a technical conference to explore generic application of the VER definition as suggested by BrightSource and SEIA.

214. In response to California State Water Project, the Commission clarifies that VERs are not defined herein to include demand response resources. A demand response resource is not a device for the production of electricity and, therefore, would not fall within the VER definition adopted in the *pro forma* LGIA.[229] In response to ISO New England and NorthWestern, the definition potentially could apply to behind-the-meter generation, although such resources would only be subject to data reporting requirements adopted in this Final Rule to the extent they enter into a new LGIA or materially modify an existing LGIA after the effective date of this Final Rule.

215. ISO New England inquires as to the impact of the VER definition on other definitions in a public utility transmission provider's existing tariff. As noted above, public utility transmission providers that are RTOs or ISOs may seek to demonstrate in their compliance filing how existing tariffs, business practices or market rules are adequate to satisfy the requirements of this Final Rule using the independent entity variation standard set forth in Order No. 2003, if relevant, or by demonstrating variations from the *pro forma* OATT are consistent with or superior to the requirements of this Final Rule.

216. With regard to Entergy's request that the Commission apply the proposed outage reporting requirement to Qualifying Facilities, we clarify that the data-reporting requirements under this rule apply to interconnection customers whose generating facilities are VERs as defined herein. Specifically, when an electric utility purchases an interconnected Qualifying Facility's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs. But when an electric utility interconnecting with a Qualifying Facility does not purchase all of the Qualifying Facility's output and instead transmits the Qualifying Facility power in interstate commerce to another purchaser, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.[230] Thus, for a Qualifying Facility that is a VER, when the interconnected Qualifying Facility is selling its total output to an electric utility, the meteorological and forced outage reporting requirements of this Final Rule do not apply. However, when an electric utility interconnecting with a Qualifying Facility does not purchase all of the Qualifying Facility's output and instead transmits the Qualifying Facility power in interstate commerce to another purchaser, the meteorological and forced outage reporting requirements of this Final Rule are applicable.

3. Data Sharing

a. Commission Proposal

217. In the Proposed Rule, the Commission sought comment on whether public utility transmission providers should be allowed or required to share VER-related data received from interconnection customers with other entities, like the source or sink balancing authority area for a transaction, or a government agency, such as NOAA, assuming confidentiality is protected.[231]

b. Comments

218. Clean Line and RenewElec state that operational and meteorological data should be made public to the maximum extent possible. RenewElec argues that there is a significant lack of operational data available to researchers in the area of VERs integration, and asks that the Commission require that: (1) VER data be made public within six months of the date on which such data is submitted by the interconnection customer, and (2)

[228] If parties are unable to reach an agreement the public utility transmission provider may submit a filing requesting the data and demonstrating how it will be used for power production forecasting pursuant to section 205 of the FPA.

[229] A demand response resource may use behind-the-meter generation, potentially including VERs, to facilitate the provision of demand response. Such use, however, does not mean that such behind-the-meter generation is itself a demand response resource.

[230] Order No. 2003, FERC Stats. & Regs. ¶ 61,103 at P 813. The Commission regulations governing the exemptions enjoyed by Qualifying Facilities are codified at 18 CFR Part 292, Subpart F (18 CFR 292.601–292.602 (2011)). Limited exemptions from sections 205 and 206 of the FPA apply to certain sales of energy and capacity made by Qualifying Facilities. *See also Terra-Gen Dixie Valley, LLC,* 132 FERC ¶ 61,215, at PP 45–46 (2010).

[231] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 63.

operational data, including VER data, used by transmission providers to develop VER power production forecasting be made available to interested parties.

219. While generally stating support for the sharing of data, some commenters raise confidentiality concerns and point out the commercially-sensitive nature of data subject to the reporting requirements contemplated in the Proposed Rule.[232] For example, Southern California Edison supports sharing VER-related data for the purposes of increasing forecasting accuracy, as long as the data are not proprietary data that the public utility transmission provider is prohibited from disclosing to other parties. Bonneville Power and a few others contend that while sharing data from individual VERs poses confidentially issues, sharing aggregate VER data does not pose the same problems.[233] Sunflower and Mid-Kansas state that, within RTOs, the stakeholders should decide which entities should be provided VER data. Western Farmers request that the Commission confirm that, where the transmission provider is not the balancing authority, the data should also be provided to the relevant balancing authority. NextEra and AWEA only support sharing data with other balancing authorities when the resource is being dynamically scheduled or dispatched into that balancing authority. Bonneville Power suggests that, at a minimum, the Commission should allow public utility transmission providers and balancing authorities to share aggregate forecasts for VER output with all parties to an e-tag.

220. Several commenters support sharing VER-related meteorological data with NOAA, including having the data incorporated into foundational models run by NOAA.[234] Commenters, including NOAA, request that the Commission require VERs to submit meteorological data to NOAA for the purpose of improving atmospheric characterization and forecast accuracy.[235] In response to confidentiality concerns, NOAA states that private sector proprietary data can be protected from distribution and anonymized in the analysis and generation of forecasts, which would then allow improved predictions to be available for the private sector to incorporate into power production forecasts.

c. Commission Determination

221. The Commission declines to expand the Proposed Rule to require public utility transmission providers to share VER related data with other entities such as a balancing authority area or NOAA. However, the Commission strongly encourages the voluntary sharing of data where appropriate. Many commenters assert that significant benefits might flow from VERs sharing data with entities such as a balancing authority area or NOAA. The Commission finds that VERs are in the best position to negotiate what data are needed and to weigh the benefits that may be expected as a result of providing such data. In addition, negotiating directly with other entities will allow VERs to ensure that adequate confidentiality protections are in place for information that they may consider to be commercially sensitive or otherwise confidential. If helpful to industry participants, the Commission will consider making staff available to work through issues and, if appropriate, take additional steps to facilitate the voluntary sharing of information.

4. Cost Recovery

a. Commission Proposal

222. In the Proposed Rule, the Commission refrained from proposing a single method of cost recovery for the development and implementation of power production forecasts. Instead, the Commission sought comments on how public utility transmission providers may recover costs incurred to develop and deploy power production forecasting tools.[236]

b. Comments

223. Among those seeking flexibility, AWEA states that the Commission is correct to not propose a single uniform method for allocating these costs, and instead should defer to public utility transmission providers and others to determine how these costs should be allocated. Several commenters request that the Final Rule provide flexibility to public utility transmission providers and/or regions to propose cost recovery approaches.[237] For example, EEI contends that generally no interconnected resource should be exempt from the responsibility for costs that it causes to be incurred, but asks that the Commission not mandate how costs should be allocated at this time, allowing regions to develop appropriate cost-recovery solutions.

224. Some commenters recommend that the cost of forecasting be spread among all transmission customers.[238] Independent Power Producers Coalition-West argues that forecasting tools will ultimately reduce costs to utilities and generators, and will ultimately be a small cost of doing business in a world where forecasting can and should be a constant element of the power scheduling process. Public Interest Organizations state that the costs of centralized forecasting infrastructure should be spread across all those who benefit from the improved accuracy and decreased costs, provided those costs are demonstrated to be just and reasonable. Joined by NextEra, Public Interest Organizations argue that the broad benefits of forecasting justify the sharing of related costs across the transmission system(s) that benefit.

225. Iberdrola contends that there is no difference in the costs incurred to develop and deploy power production forecasting tools and the costs of developing and implementing other market design features. Iberdrola states that these types of costs typically are not directly assigned to one set of market participants, but are spread to all users of the transmission system because they benefit all users of the system. Iberdrola states that the costs incurred to develop and deploy power production forecasting tools should similarly be spread to all system users.

226. Exelon recommends recovering the cost of forecasting within administrative charges, the approach taken by PJM and ERCOT. Exelon provides an example of ERCOT's handling of the costs: the cost of developing the ramp probability tool was a one-time investment that was recovered by the transmission provider in uplift to the market. The ongoing cost of using the tool is also spread across the market. Exelon states that this approach avoids the problem of free-ridership by future market participants that would occur if these costs were recovered solely from existing market participants.

227. Other commenters argue either that the VERs, or the beneficiaries of VERs, should be financially responsible for the costs of forecasting.[239] These

[232] *E.g.,* CGC; California PUC; EEI; NextEra; PJM; SMUD; ISO New England.

[233] *E.g.,* Bonneville Power; California ISO; Exelon; SEIA.

[234] *E.g.,* AWEA; Bonneville Power; CGC; Iberdrola; ISO New England; MidAmerican; NaturEner; NOAA.

[235] *E.g.,* Bonneville Power; Iberdrola; NOAA.

[236] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 57.

[237] *E.g.,* AWEA; California PUC; Duke; ISO New England; MidAmerican; Pacific Gas & Electric.

[238] *E.g.,* Iberdrola; Independent Power Producers Coalition-West; NextEra; Public Interest Organizations; Exelon.

[239] *E.g.,* Bonneville Power; ELCON; Large Public Power Counci; MidAmerican; Midwest ISO Transmission Owners; Montana PSC; NorthWestern; NRECA; Oregon & New Mexico PUC;

commenters generally contend that public utility transmission providers should be able to recover the costs incurred to develop and deploy power production forecasting by imposing a fee or rate upon the VERs causing the costs to be incurred. For example, NRECA argues that non-VER transmission customers are neither causing nor benefiting from the enhancements to power production forecasting and, therefore, should not be forced to subsidize its costs, citing *Northern States Power Company*.[240] Montana PSC suggests that all VERs of 1 MW or greater should be responsible for power production forecasting costs. Pacific Gas & Electric notes the approach taken in the California ISO's Participating Intermittent Resources Program, in which the California ISO charges a fee to VERs to recover costs to develop and deploy power production forecasts.

228. ELCON and Tacoma Power argue that any resource, whether or not it is a VER, should be held fully accountable for the costs it causes the transmission provider to incur on its behalf. ELCON argues that meteorological forecasting is simply a cost of doing business for wind energy, just as a nuclear power plant must pay for storage of spent fuel. ELCON argues that these costs should not be recovered in uplift charges in regions served by ISOs or RTOs, or allocated to non-customers of VER transactions.

229. SEIA recommends that the Commission examine whether there may be market entities that would consider contributing to the costs of the forecast service providers in the non-organized market regions, *e.g.,* power traders may be willing to pay for the aggregate day-ahead and hour-ahead forecasts across such regions. SEIA states that these revenues could be used to develop aggregated forecasts for more geographical areas within a region that could further reduce integration costs.

230. Duke argues that the Commission should allow public utility transmission providers to update any costs associated with the Proposed Rule's reporting and power production forecasting requirements without triggering a general rate case. Duke suggests that one possible option would be through a formula rate that is updated periodically for changes in costs related to forecasting and data reporting.

231. Finally, some commenters request that the Commission recognize that the costs of centralized forecasting go beyond the expense of forecasting tools.[241] These additional costs include gathering data, installing and operating onsite telemetry, equipment to record meteorological data, and data management. Southern California Edison points out that data and telemetry are only as good as the personnel assessing the information.

c. Commission Determination

232. The Commission finds that it is not necessary to prescribe a single method of cost recovery for developing and implementing power production forecasting, as it is likely that not all public utility transmission providers will develop power production forecasting, given regional differences in the types and penetration of VERs. Moreover, the record in this proceeding demonstrates that the circumstances under which a public utility transmission provider may decide to develop and deploy power production forecasting may vary by system. In some instances, public utility transmission providers might develop and employ power production forecasting in order to manage more effectively the commitment of reserves associated with the provision of generator regulation service, as discussed in other sections of this Final Rule. In other circumstances, public utility transmission providers might develop and employ power production forecasting to manage reserve costs recovered under other ancillary services. In addition, public utility transmission providers may seek to recover costs associated with power production forecasting in different ways, as cost recovery may be sought via a general rate case, formula rate, or other mechanism. Given the myriad of factors that may be relevant to the allocation and recovery of such costs, the Commission finds it appropriate to evaluate requests for the recovery of costs incurred to develop and deploy power production forecasts on a case-by-case basis consistent with FPA section 205 and Commission precedent.

C. Generator Regulation Service-Capacity

233. In the Proposed Rule, the Commission preliminarily found that clarifying the manner by which public utility transmission providers may recover the costs associated with fulfilling their obligation to offer generator regulation service would remove barriers to the integration of VERs by eliminating public utility transmission providers' uncertainty regarding cost recovery.[242] As discussed below, the Commission concludes that adoption of this reform could inhibit the flexibility to design capacity services that align with the operational practices or needs of a particular public utility transmission provider. The Commission therefore declines to adopt a generic Schedule 10 for generation regulation service this reform and instead provides guidance to assist public utility transmission providers and their customers in the development and evaluation of proposals related to recovering the costs of regulation reserves associated with VER integration.

1. Schedule 10—Generator Regulation and Frequency Response Service

234. In the Proposed Rule, the Commission proposed incorporating into the *pro forma* OATT a new ancillary service schedule for Generator Regulation and Frequency Response Service. The Commission introduced this proposal with a review of the adoption in Order Nos. 888[243] and 890[244] of ancillary services schedules for Regulation and Frequency Response Service (regulation service), energy imbalance service, and generator imbalance service.[245] The Commission repeats that introduction here for background.

235. Regulation service, offered under Schedule 3 of the *pro forma* OATT, provides the capacity reserve necessary for the continuous balancing of resources (generation and interchange) with load to maintain a scheduled interconnection frequency of 60 cycles per second (60 Hz).[246] In Order No. 888, the Commission required public utility transmission providers to offer regulation service for transmission service within or into the public utility transmission provider's balancing authority area to serve load in that area.[247] However, the Commission did not require public utility transmission providers to offer regulation service for transmission service out of or through the public utility transmission provider's balancing authority area to

PNW Parties; SMUD; Southern California Edison; Tacoma Power.

[240] NRECA (citing *N. States Power Co.,* 64 FERC ¶ 61,324, at P 63,379 (1993)).

[241] *E.g.,* Pacific Gas & Electric; Southern California Edison; NorthWestern.

[242] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 87.

[243] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,703–04.

[244] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 627.

[245] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at PP 66–71.

[246] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,707–08.

[247] *Id.* at 31,717.

serve load in another balancing authority area.[248]

236. Energy imbalance service, offered under Schedule 4 of the *pro forma* OATT, accounts for hourly energy deviations between a transmission customer's scheduled delivery of energy and the actual energy used to serve load.[249] In Order No. 888, the Commission required public utility transmission providers to offer energy imbalance service for transmission service within and into the public utility transmission provider's balancing authority area to serve load in that area.[250] Like regulation service, the Commission did not require public utility transmission providers to offer energy imbalance service for transmission service being used to serve load in another balancing authority area.

237. Regulation service and energy imbalance service, while different in function, are complementary services through which public utility transmission providers maintain their systems' balance and recover both the capacity (regulation service) and energy (energy imbalance service) costs of doing so from transmission customers serving load on their systems. At the time of Order No. 888, the Commission believed that it was reasonable to provide only standardized ancillary service schedules for transmission used to service load because load (rather than generation) exhibited the greatest amount of variability.[251] The Commission noted that generators should be able to deliver scheduled hourly energy with precision and that the requirements for generators to meet their schedules should be contained in interconnection agreements.

238. In Order No. 890, the Commission noted that the existing energy imbalance charges were the subject of significant concern and confusion in the industry.[252] The Commission expressed concern about the variety of different methodologies used for determining imbalance charges and whether the level of the charges provided the proper incentive to keep schedules accurate without being excessive.[253] Such concerns led the Commission to revise existing *pro forma* energy imbalance service provisions and require public utility transmission providers to offer a new service, generator imbalance service, to account for hourly energy deviations between a transmission customer's scheduled delivery of energy from a generator and the amount of energy actually generated.[254] The Commission found that formalizing generator imbalance provisions in the *pro forma* OATT would standardize future treatment of such imbalances, thereby lessening the potential for undue discrimination, increasing transparency, and reducing confusion in the industry that resulted from the then current plethora of different approaches.

239. While the *pro forma* generator imbalance service provides a mechanism for public utility transmission providers to recover the cost of providing the energy needed to manage hourly generator imbalances, it does not provide a mechanism for public utility transmission providers to recover the costs of holding reserve capacity associated with providing generator imbalance energy.[255] Although the Commission in Order No. 890 did not create a new rate schedule to expressly account for these capacity costs, it acknowledged the likelihood that such costs would be incurred in connection with the provision of generator imbalance service.[256] Accordingly, the Commission provided a mechanism by which public utility transmission providers could recover these costs, explaining that ''[t]o the extent a [public utility] transmission provider wishes to recover costs of additional regulation reserves associated with providing imbalance service, it must do so via a separate FPA section 205 filing demonstrating that these costs were incurred correcting or accommodating a particular entity's imbalances.'' [257] In Order No. 890–A, the Commission clarified that public utility transmission providers may propose to assess regulation charges to generators selling in the balancing authority area, as well as generators selling outside the balancing authority area, and that the Commission will consider such proposals on a case-by-case basis.[258]

a. Commission Proposal

240. In the Proposed Rule, the Commission sought to add a new rate schedule to the *pro forma* OATT that complements the generator imbalance service provided under Schedule 9 of the *pro forma* OATT. The Commission noted that, in order to meet their obligations to offer generator imbalance service under Schedule 9, public utility transmission providers must hold unloaded resources in reserve to respond to moment-to-moment variations attributable to generation. The Proposed Rule recognized this *de facto* obligation and proposed to establish a generic rate schedule (Schedule 10—Generator Regulation and Frequency Response Service) through which public utility transmission providers may recover the costs of providing this service. The Commission preliminarily found that clarifying the manner by which public utility transmission providers may recover the costs associated with fulfilling their obligation to offer this service will remove barriers to the integration of VERs by eliminating public utility transmission providers' uncertainty regarding cost recovery.[259]

241. In the Proposed Rule, the Commission stated that Schedule 10 is modeled on Schedule 3—Regulation and Frequency Response Service of the *pro forma* OATT. Where Schedule 3 allows public utility transmission providers to recover the costs of regulation reserves associated with variability of load within its balancing authority area, proposed Schedule 10 would provide a mechanism through which public utility transmission providers can recover the costs of providing regulation reserves associated with the variability of generation resources both when they are serving load within the public utility transmission provider's balancing authority area and when they are exporting to load in other balancing authority areas.[260]

242. The Commission proposed that, consistent with Order No. 890, public utility transmission providers would not be permitted to charge transmission customers for regulation reserves under both Schedule 3 and Schedule 10 for the same transaction.[261] The Commission

[248] *Id.*

[249] *Id.* at 31,708.

[250] *Id.* at 31,717.

[251] In 1996, when Order No. 888 was developed and issued, wind generation was not a significant energy source, with a total capacity of approximately 1,698 MW. *See Imbalance Provisions for Intermittent Resources; Assessing the State of Wind Energy in Wholesale Electricity Markets,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,581, at P 7 (2005).

[252] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 634.

[253] *Id.*

[254] *Id.* P 663.

[255] *Id.* P 689 (''The Commission concludes that excluding additional regulation costs as a general matter is appropriate because much of those costs would be demand costs.'').

[256] *Id.* P 690.

[257] *Id.* at P 689 & n.401 (referring to costs associated with capacity used to provide generator imbalance service that otherwise are not recovered through Schedule 3).

[258] Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 313.

[259] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 87.

[260] *Id.* P 88.

[261] *Id.* P 89 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 690 (requiring transmission

emphasized that in establishing Schedule 10, it was not changing the nature of the services that a public utility transmission provider must offer its transmission customers. The Commission stated that nothing in the Proposed Rule would affect the manner in which balancing authorities are required to maintain balanced systems that are operated in a safe and reliable fashion, consistent with NERC Reliability Standards. The Commission explained that it simply proposed to establish a generic cost recovery mechanism for a service that public utility transmission providers already are obligated to offer customers taking transmission service within their balancing authority area.[262]

243. In the Proposed Rule, the Commission explained that public utility transmission providers are not permitted to disclaim the obligation to offer to provide transmission customers with the capacity reserves associated with the provision of generator imbalance service.[263] Therefore, the Commission proposed that, under Schedule 10, a public utility transmission provider must offer generator regulation service to the extent it is physically feasible to do so from its resources or from resources available to it, to transmission customers using transmission service to deliver energy from a generator located within the public utility transmission provider's balancing authority area.[264]

b. Comments

i. Proposed Schedule 10

244. Although several commenters support the Commission's proposal to establish a schedule for the recovery of capacity costs for regulation reserves, much of that support is tempered by concern about the scope and design of proposed Schedule 10, as well as the flexibility afforded public utility transmission providers to design services relevant to recover all costs associated with the integration of VERs under proposed Schedule 10.[265] For example, while EEI indicates that it supports the establishment of a cost recovery mechanism for regulation reserves from transmission customers as promoting rate certainty and transparency, it also cautions the Commission that the proposal may unduly condition cost recovery and may not encompass all cost incurred by the transmission provider. While Independent Power Producers Coalition—West supports the concept of a generic generator imbalance tariff to bring certainty to disparate tariffs that must now be negotiated in WECC, it contends that the Commission should require utilities to revise operating agreements, business practices or other procedures such that independently owned generator resources are available to balancing authorities in the WECC to reduce generator imbalance costs for VERs. Large Public Power Council supports the new Schedule 10 provided it is implemented in a way that allows transmission providers to receive full compensation for providing the service.

245. NRECA indicates that it also supports the cost recovery proposal embodied in proposed Schedule 10; however, it expresses concern that Schedule 10 should not be limited to just the recovery of regulation costs, and should instead be expanded to allow public utility transmission providers the opportunity to demonstrate that additional VER integration costs should be recovered through individual Schedule 10s. According to NRECA, such costs may include the following: (1) Intra-hour schedule implementation costs; (2) power production forecasting implementation costs; or (3) other various costs such as load-following service, ramping costs, out-of-merit dispatch costs, and additional spinning and supplemental reserves, among other things.

246. Public Power Council and Puget express similar concerns that the proposed Schedule 10 would not allow for full recovery of all costs of balancing and integrating VERs. According to Public Power Council, Schedule 3 recovers the costs of balancing reserves deployed for frequency and regulation control, which in turn leads Schedule 10 to only recover the costs of regulation (capacity following near instantaneous changes in generation) but not the costs arising from either load following capacity (capacity used minute-to-minute over approximately a 10-minute period) or capacity needed to make up a variable generator's schedule error for the scheduling period. Public Power Council also argues that Schedule 10 charges should include the costs of power production forecasting systems as these would not be needed but for the integration of variable generation. The PNW Parties agree and suggest that Schedule 10 should be expanded further to allow for the recovery of all costs incurred by the public utility transmission provider in providing regulating reserves that are not recoverable through the generation imbalance rate, including but not limited to, extra energy costs and operation and maintenance costs.

247. Southern states that the capacity required to provide generator imbalance service or otherwise respond to operational challenges presented by substantial swings in output from generators (particularly VERs) may mostly be conceptualized as providing a ''regulation'' service, but it should be understood that some public utility transmission providers may also incur additional costs that may implicate other ancillary services, such as reactive power and load following, if not contingency response. Southern asserts that the Commission should not categorically foreclose or limit in advance the right of public utility transmission providers under section 205 to file tariffs or tariff amendments on a case-by-case basis to recover any and all additional reasonable costs specific to VER-related regulation reserve requirements. Southern requests that the Commission confirm that the invitation in Order No. 890 for public utility transmission providers to file rate schedules and amendments to address costs of generator imbalances on a case-by-case basis remains open.

248. Public Interest Organizations contend that it may be unjust and unreasonable to charge VERs regulation rates for capacity requirements that can be addressed by less expensive ancillary services. Public Interest Organizations state that the Commission could address this problem either by reforming Schedule 10 into a slower service akin to load-following or non-spinning reserves, or by clarifying that Schedule 10 is designed to compensate only for the moment-to-moment balancing associated with generation variability, and not for VER variability that affects the system beyond the balancing timeframe.

249. AWEA suggests that the Commission focus on such longer-term variability, requesting that the Commission reformulate proposed Schedule 10 as a system non-spinning service to accommodate the aggregate system variability that is not accommodated through other ancillary services. AWEA states that this type of service would benefit all users of the system by providing inexpensive reserves to accommodate all types of gradual variability on the power system, including changes driven by inaccurate

providers to demonstrate that any proposals to recover capacity costs associated with Generator Imbalance Service do not lead to double recovery); *Entergy Serv., Inc.,* 120 FERC ¶ 61,042, at PP 62–66 (2007); *Sierra Pac. Res. Operating Cos.,* 125 FERC ¶ 61,026 (2008); *Westar Energy Inc.,* 130 FERC ¶ 61,215, at P 4 (2010)).

[262] *Id.* P 91.

[263] *Id.* P 84 (citing *NorthWestern, Corp.,* 129 FERC ¶ 61,116, at P 27 (2009)).

[264] *Id.* P 89.

[265] CMUA at 10–11; EEI at 25–33; Midwest ISO at 14; NRECA at 23–24; Organization of Midwest ISO States at 8–9.

load forecasts, changes in demand driven by large electricity users, as well as aggregate changes of many small users. AWEA notes that wind and solar exhibit little variability over the regulation time period while variability over the course of an hour can be more significant. AWEA argues that a system non-spinning service would be well-suited for accommodating the incremental increase in system variability caused by the addition of such resources.

250. Similarly, Iberdrola recommends the Commission structure Schedule 10 as a following reserves service rather than regulation reserve, arguing that the rate of change associated with wind ramps is not instantaneous but rather occurs over longer time periods within the hour and often for multiple hours. To the extent that the Commission does not reformulate Schedule 10 in this way, Iberdrola requests that the Commission convene a technical conference that focuses on the ancillary services needed to support VERs. NextEra agrees that the Commission should convene a technical conference to address what kind of ancillary services should be developed to complement the growth of VERs, among other things.

251. Duke suggests that the Commission should unbundle regulation and frequency response service into separate ancillary service schedules. In support, Duke points to such industry activities as NERC developing a revision to Frequency Response Reliability Standard BAL–003–0, which will prescribe specific amounts of frequency response that each balancing authority must procure; the Commission report prepared by the Lawrence Berkeley National Laboratory, which discusses operational characteristics and distinctions of primary and secondary frequency control reserves (Docket No. AD11–8–000); and the Commission's Notice of Proposed Rulemaking in Docket Nos. RM11–7–000 and AD10–11–000, which also distinguishes frequency response from regulation.

252. American Clean Skies argues that the Proposed Rule should require RTOs to offer additional ancillary services, such as load following (on a minute-to-minute basis), reactive power and other comparable backup capabilities. Coalition for Green Capital similarly asks the Commission to encourage the development of power and ancillary services products that match the technical and commercial capabilities of VERs to allow VERs to integrate into the bulk power grid at rates and on terms and conditions that are just and reasonable and not unduly discriminatory or preferential. Independent Energy Producers assert that, while it is critical that ancillary service products be identified and developed to permit VERs to be integrated, it is equally critical that the necessary compensation measures be developed to ensure that dispatchable generation is available when and where it is needed to support the ancillary services products, particularly within the California ISO market.

253. With regard to charging transmission customers under both Schedule 3 and the proposed Schedule 10, Bonneville Power agrees with the Commission's decision in Order No. 890 regarding the potential for double recovery if energy settlement charges (under Schedules 4 and 9 of the OATT) are imposed on both the generator and load when they reside in the same balancing authority, but argues that there are significant differences between energy settlement charges and capacity charges recovered under Schedule 3 and Proposed Schedule 10. Bonneville Power states that the public utility transmission provider must maintain balancing reserve capacity for movement of both the load and the generators located in its balancing authority area because the deviations from schedule for the load and generation move independently from one another, and that the transmission provider should be allowed to recover costs for capacity it is providing to both generation and load.

254. Duke similarly argues that the Commission should allow the public utility transmission provider to recover both Schedule 3 and 10 costs if both services are utilized by the transmission customer. Duke contends that it is appropriate in some circumstances to charge a load for Schedule 3, and a generator for Schedule 10, even if they are owned by the same party. According to Duke, unless the generator is coupled to the load by an energy management system (i.e., the generator is controlling to the load), or the generator is dynamically serving a load (i.e., where its output can be controlled to match the load it serves), a public utility transmission provider should be permitted to charge for both Schedule 3 and Schedule 10 as they are two different services which can be provided at the same time (e.g., where a load serving entity owns load within a control area, as well as a generator).

255. Finally, several commenters contend that Schedule 10 is not necessary in organized markets.[266] PJM interprets Schedule 10 as optional and seeks clarification that this interpretation is correct. Sunflower and Mid-Kansas submit that the SPP market rules already are consistent with or superior to the *pro forma* OATT as the Commission proposed to amend it in the Proposed Rule and believes it is highly likely that all of the other RTOs' rules are also superior to what has been proposed. Clean Line contends that the potential of double recovery exists for generators receiving compensated through organized market mechanisms. AWEA contends that the Commission should clarify that the creation of Schedule 10 service should apply only in areas of the country that do not have functioning ancillary services markets. Likewise, Iberdrola explains that a Schedule 10-type product is not necessary in organized markets, as most organized markets balance the system's energy and reserve requirements through use of simultaneously co-optimized Security Constrained Unit Commitment and Security Constrained Economic Dispatch algorithms that clear and dispatch energy and reserves.

ii. Obligation To Offer Generator Regulation Service

256. Several commenters seek clarification regarding the extent to which the public utility transmission provider must provide generator regulation service. NaturEner states that public utility transmission providers should not be able to avoid providing regulating reserves based upon claims that they themselves do not own generation in sufficient amounts to supply the service. Xtreme Power asks that the Commission make clear that, in the event that a public utility transmission provider's existing resources are not adequate to meet the obligation to provide generator regulation service and new resources are needed to accommodate additional variability, the public utility transmission provider is obligated to procure a sufficient quantity of the appropriate resources.

257. Grant PUD asks whether a public utility transmission provider must procure additional regulation resources if the demand for these services exceeds the contractual and owned resources available to the public utility transmission provider that can provide regulation service at the time of the request for service. NorthWestern requests that the Commission clarify

[266] *E.g.,* AWEA; California ISO; Iberdrola; ISO New England, New York ISO; Sunflower and Mid-Kansas.

that the phrase ''or from resources available to it'' refers to acquisition of generator regulation service from third parties and is not intended to mean that, if the utility does not have access to its own resource or resources from the market, the utility must build generation for Schedule 10 service. Independent Power Producers Coalition—West states that transmission providers should not be permitted to charge VERs for generator imbalance services unless they provide VERs with the capability to obtain those services from third parties on a non-discriminatory basis. If a public utility transmission provider does not have access to its own resources or resources from the market and chooses to build new generation to offer Schedule 10 service, EEI asks the Commission to clarify that these costs can be recovered from the resources that trigger the need to build. EEI also states that the language ''or from resources available to it'' could be read to require the public utility transmission provider to violate reliability standards by using resources set aside for contingency reserves to support generation regulation service.[267] EEI requests that the Commission clarify the statement as follows: ''a public utility transmission provider must offer generator regulation service; to the extent it is physically feasible to do so from its existing resources or from resources currently available to it, without violating applicable reliability standards.'' [268]

258. Puget asks that the Commission clarify that public utility transmission providers are only required to provide Schedule 10 service within a defined confidence interval commensurate with the public utility transmission provider's level of regulation capacity set aside for cost recovery under the Schedule 10. If those resources' capabilities are exceeded or if system conditions otherwise warrant, Puget suggests that the public utility transmission provider should retain the right to curtail generation production or export schedules to preserve reliability. Public Power Council and Bonneville Power also question whether the obligation to provide generator regulation service is unlimited, suggesting that such service could require firming of every generation delivery, which would be extremely expensive. Bonneville Power contends that the source balancing authority should have the ability to offer a base level quantity of balancing reserve capacity and should have the right to use operational tools to limit the deployment of reserves to that quantity. In support, Bonneville Power explains that it has developed Dispatcher Standing Order 216 (DSO 216) to require reductions in wind generation or changes to wind generators' transmission schedules when the schedule error of the wind fleet exhausts the total amount of balancing reserve capacity that Bonneville Power has made available for wind and load.

259. Bonneville Power states that it is currently providing enough balancing reserve capacity to meet the needs of the wind fleet in its balancing authority during 99.5 percent of the forecast VER variability events. Bonneville Power describes the remaining 0.5 percent as representing the most extreme variability in VER generation (i.e., ''tail events''). Because of the substantial wind generation exports from Bonneville Power's balancing authority area, Bonneville Power explains that it needs a mechanism to ''clip the tails'' of wind ramps when they exhaust the total amount of balancing reserve capacity that Bonneville Power makes available for wind and load. Bonneville Power states that DSO 216 allows it to establish the amount of balancing reserve capacity that will be deployed and, because there is a set limit, it is able to quantify its obligation and risks for rate setting, system planning, and reliability purposes. Bonneville Power contends that a requirement to maintain balancing reserve capacity at all times to manage tail events would be significantly expensive.

260. Bonneville Power also asks the Commission to clarify that the public utility transmission provider is required to offer to provide Schedule 10 service only to the extent it can do so without harming system reliability or risking non-compliance with state and Federal law and other non-power requirements that affect system operations. Snohomish County PUD and Grays Harbor PUD similarly ask the Commission to clarify that Bonneville Power should not be required to offer capacity from the Federal System to meet demand for services under Schedule 10 where that capacity is not available due to statutory and regulatory obligations that limit the availability of the Federal System's capacity. Grays Harbor PUD adds that the Commission should make clear that, during periods when Bonneville Power's system is limited by statutory and regulatory constrains, it is not ''physically feasible'' for Bonneville Power to use that capacity to support integration of VERs and, therefore, during those periods is exempt from requirements to do so. Bonneville Power further requests that the Commission clarify that the public utility transmission provider is obligated to provide generator regulation service pursuant to Schedule 10 and generator imbalance service pursuant to Schedule 9 only to the extent that balancing reserve capacity is made available pursuant to Schedule 10. In addition, Bonneville Power suggests that the Commission should address the pricing policy articulated in the *Avista* line of cases, which restricts public utility transmission providers that are not in organized markets to recovering cost-based rates for ancillary services, to ensure public utility transmission providers have the ability to obtain the necessary balancing reserve capacity.[269] Tres Amigas concurs with Bonneville Power and suggests that the Commission alter its approach so that these services can be bought and sold competitively outside of organized RTO markets as they are in most RTOs.

iii. Self-Supply of Generator Regulation Service

261. First Wind asks the Commission to clarify that Schedule 10 charges would be imposed on VERs only to the degree they take transmission service or otherwise elect to take Schedule 10 service. AEP contends that the Proposed Rule contains a loophole in that purchasers of VER energy outside of the resource's native balancing authority's footprint would be able to avoid any ancillary service charges caused by their purchase and transport of energy. Other commenters discuss how the balancing authority into which generation is dynamically scheduled would be compensated for providing regulation service.[270] These commenters contend that because the sink balancing authority is providing the regulation service for that generator in these situations, it should be clear in Schedule 10 that the sink balancing authority will be paid for providing that service.

262. Commenters address the option for transmission customers to self-supply generator regulation service. Bonneville Power states that it recognizes that VERs may find it economical to self-supply balancing reserve capacity to provide balancing service and asks the Commission to clarify in Schedule 10 that a customer electing to self-supply is subject to the public utility transmission provider's requirements for Schedule 10 service

[267] EEI at 32.

[268] *Id.*

[269] Bonneville Power (referencing *Avista Corp.*, 87 FERC ¶ 61,223 (1999); *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities,* Order No. 697, 119 FERC ¶ 61,295 (2007) (Order No. 697)).

[270] *E.g.,* Duke; EEI; Exelon.

and the transmission provider's reliability and operational protocols, including any transmission curtailments and generation limitations in the event the self-supplying VER fails to meet the transmission provider's standards. Powerex agrees that the public utility transmission provider should have discretion to decide whether a method of self-supply is acceptable but argues that the public utility transmission provider should be required to describe what it considers to be acceptable comparable arrangements in posted business practices.

263. Xtreme Power similarly contends that, in order for self-supply or third-party procurement of generator regulation service to be a viable option, the public utility transmission provider must specify how a customer's generator regulation service requirements are determined and how the requirements may be satisfied through self-supply or third-party procurement. NaturEner contends that the self-supply provision should be administered on a flexible basis and this could include use of self-curtailment, carrying of a portion of the regulating reserve capacity on a dynamic basis, and carrying of a varying level of regulating reserves because a constant level is not necessary. Independent Power Producers Coalition—West argues that public utility transmission providers should only be permitted to charge VERs for generator imbalance services if they provide VERs with the capability to obtain those services from third parties on a non-discriminatory basis.

264. Beacon Power indicates that entities subject to Schedule 10 should be allowed to work with public utility transmission providers in non-RTO/ISO markets to determine different volumes of self-supplied regulation reserve capacity required based on the ramp-rate capability of its regulation resource(s). CESA agrees that, if a transmission customer subject to the Schedule 10 chooses to self-supply its regulation reserve capacity, the amount of capacity self-supplied should account for the fact that a MW of reserve capacity from a fast-ramping resource provides more regulation value to the grid per MW than a slow-ramping resource. NEMA indicates that some resources that provide generator regulation service, such as batteries and flywheels, can dampen variations much more quickly than can traditional generators. Therefore, NEMA contends that the generator regulation service requirements should be based on the amount of generator regulation service actually *provided,* rather than solely the *capacity* of regulation service. A123 recommends that the Commission clarify the phrase ''alternative comparable arrangements'' to include resources that may differ in MW capacity but supply equivalent or superior regulation performance when compared to the public utility transmission provider's default service.

265. Powerex asks that the Commission confirm that self-supply includes the ability of the transmission customer to self-supply by purchasing regulation reserve capacity from third parties.[271] Powerex states that it could be helpful for the Commission to provide guidance on what should qualify as an ''alternative comparable arrangement.'' SEIA supports providing transmission customers with the opportunity to avoid regulation service costs through dynamic scheduling or self-supply arrangements, but ask the Commission to clarify how self-supply would allow solar plants to avoid regulation reserve requirements, which SEIA believes would assign a constantly varying share of the Schedule 10 requirement to a solar plant capable of providing regulation service. The Federal Trade Commission asserts that the self-supply option under Schedule 10 is vague and should recognize that VERs could address their regulation requirements by matching their generation variability to demand variability.

266. Other commenters request that additional requirements be included in Schedule 10 with regard to self-supply. CGC states that the Proposed Rule fails to require public utility transmission providers to provide dynamic transfer capability out of their balancing authority area or provide an ancillary services market through which a generator could self-supply generator regulation service. CGC asks the Commission to require all public utility transmission providers, either by themselves or in association with other public utility transmission providers, to provide access to a fully functioning competitive ancillary services market and/or dynamic transfer capabilities. ELCON asserts that the Commission should specify that public utility transmission providers must consider using dispatchable demand response resources to provide Schedule 10 service. CESA recommends that FERC allow Schedule 10 self-supply requirements to vary based on the ramp-rate of the resources providing the service, offering that faster-acting resources provide more ACE correction than slower resources.

[271] Powerex at 22.

c. Commission Determination

267. The Commission declines to amend the *pro forma* OATT to include a standardized ancillary services schedule for generator regulation services as proposed in the Proposed Rule. As indicated above, the Commission intended for proposed Schedule 10 to be a clearly defined mechanism for public utility transmission providers to recover the costs of capacity held in reserve to provide generator imbalance service under Schedule 9 of the *pro forma* OATT, while also providing customers with certainty as to the rates they will be required to pay when taking this service. The Commission also sought to confirm the right of public utility transmission providers to recover the reasonably incurred costs of providing this capacity service and to distinguish, where appropriate, among classes of customers who cause such costs to be incurred.

268. In response to the Proposed Rule, the Commission received numerous comments urging flexibility in the design of capacity services needed to integrate VERs into transmission systems, suggesting that the proposed *pro forma* generator regulation service may not be the most efficient and economical service with which to integrate VERs. For example, Southern notes that the recovery of capacity costs incurred to provide Schedule 9 generator imbalance service could implicate a range of services, from regulation to load following, depending on how the public utility transmission provider conceptualizes the service provided. Iberdrola suggests that VER integration has more significant implications for within hour spinning and non-spinning capacity than moment-to-moment regulation capacity. In light of these comments, the Commission concludes that the adoption of a standardized *pro forma* Schedule 10 could inhibit the flexibility commenters seek to design capacity services that align with the operational needs of a particular public utility transmission provider. Accordingly, the Commission declines to adopt the proposed Schedule 10 component of the Proposed Rule and will continue to evaluate proposals to recover capacity costs incurred to provide Schedule 9 generator imbalance service on a case-by-case basis. In this way, public utility transmission providers will remain free to propose capacity services that best respond to the needs of their customers and will not have to expend resources adopting the one-size-fits-all generator regulation service discussed in the

Proposed Rule, even in situations where some other service or rate design may be more appropriate.

269. To be clear, the Commission emphasizes that our decision not to implement a generic rate schedule for generator regulation service should not be interpreted as an unwillingness to consider individual proposals brought by public utility transmission providers. The Commission recognizes that a public utility transmission provider may incur capacity costs associated with fulfilling obligations to provide Schedule 9 generator imbalance service and that existing rate mechanisms may be inadequate for some public utility transmission providers to properly allocate and recover those costs. For many years, the Commission has evaluated proposals to recover such capacity costs on a case-by-case basis in light of the specific facts and circumstances in each case.[272] The Commission concludes that continuation of this case-by-case approach is more appropriate to tailor the particular capacity services needed by a public utility transmission provider to its operations. At the same time, the Commission is sensitive to commenter requests to provide guidance regarding the proper design of a generator regulation service charge should a public utility transmission provider desire to propose one. In the section that follows, the Commission provides a framework that can be used for those public utility transmission providers seeking to develop a proposal to recover capacity costs incurred to provide Schedule 9 generator imbalance service.[273]

270. Before turning to the mechanics of a generator regulation service charge, the Commission clarifies in response to comments that our decision not to adopt a generic Schedule 10 does not relieve public utility transmission providers of obligations under the *pro forma* OATT to provide Schedule 9 generator imbalance service. This in turn requires the public utility transmission provider to maintain sufficient capacity to provide that service.[274] However, as the Commission explained in Order No. 890–A, if it is not physically feasible for a transmission provider to offer generator imbalance service using its own resources, either because they do not exist or they are fully subscribed, the public utility transmission provider must attempt to procure alternatives to provide the service, taking appropriate steps to offer an option that customers can use to satisfy their obligation to acquire generator imbalance service as a condition of taking transmission service.[275] The Commission explained that each transmission provider can state on its OASIS the maximum amount of generator imbalance service it is able to offer from its resources, based on an analysis of the physical characteristics of its system. Alternatively, a public utility transmission provider may consider requests for generator imbalance service on a case-by-case basis, performing, as necessary, a system impact study to determine the precise amount of additional generation it can accommodate and still reliably respond to the imbalances that could occur.[276]

271. Because a proposal for generator regulation service would be associated with generator imbalance service, it follows that the public utility transmission provider would use a similar analysis to identify any limitations on its ability to offer either service.[277] Just as it can for generator imbalance service, the public utility transmission provider could explain on its OASIS the maximum amount of generator regulation service it is able to offer after having attempted to procure alternative resources to provide the service. Alternatively, the public utility transmission provider could perform a system impact study to determine the precise amount of generator regulation service it can provide. In response to NorthWestern, this Final Rule does not place any obligation on the public utility transmission provider to build generation.

272. With regard to comments regarding self-supply of ancillary services, the Commission acknowledges that self-supply may come from many sources, including purchased capacity and the use of non-generation resources, as suggested by ELCON. The option to self-supply certain ancillary services has been in place since Order No. 888, and the Commission declines here to specify any particular requirements for self-supply arrangements for generator regulation service proposals. To do so could restrict flexibility to develop competitively priced options tailored to particular customer needs. As suggested by some commenters, such options could include the use of faster ramping resources to provide the service.

273. In response to Powerex, the Federal Trade Commission and others, the Commission does not believe that the self-supply option is vague or that additional guidance is necessary on what should qualify as an ''alternative comparable arrangement.'' The Commission notes that public utility transmission providers already are obligated to post on their public Web sites all rules, standards, and practices, to the extent they exist, that relate to transmission service.[278] The provision of ancillary services is necessary to accomplish transmission service and, therefore, we conclude this posting obligation applies equally to ancillary services.[279] Public utility transmission providers must post any rules, standards, and practices regarding self-supply requirements pursuant to their obligation to allow self-supply of ancillary services.[280] The Commission declines to adopt further requirements at this time regarding the self-supply of ancillary services.[281]

274. In response to the Federal Trade Commission, the Commission encourages transmission providers, generators, and transmission customers to work together to explore options to find the least cost methods of balancing the system as a whole and to provide maximum flexibility for products and services that meet the needs of the customers and the transmission

[272] *See Florida Power Corp.,* 89 FERC ¶ 61,263, at 61,765 (1999) (*Florida Power*) (''The Commission concludes that a generator imbalance capacity obligation is imposed on the transmission provider for export transactions, and therefore the Commission accepts Florida Power Corp's Generator Regulation Service as a reasonable proposal in those circumstances where the service is not already covered in an interconnection agreement or a separate generator tariff.''); *Entergy,* 120 FERC ¶ 61,042 at PP 62–66 (accepting a generator regulation service rate schedule for independent power producers selling out of the control area that retained charges that had been previously negotiated between Entergy and the relevant independent power producers); *Sierra Pac. Res. Operating Cos.,* 125 FERC ¶ 61,026, at P 10 (2008) (accepting a generator regulation service rate schedule to provide the capacity necessary to follow the moment-to-moment changes caused by generators selling outside of the transmission provider's control area).

[273] *See infra* § IV.C.2 (Mechanics of a Generator Regulation Charge). While this section is framed primarily in terms of a generator regulation service, the principles discussed would also apply more broadly to other capacity services designed to recover capacity costs incurred to provide Schedule 9 generator imbalance service.

[274] *NorthWestern Corp.,* 129 FERC ¶ 61,116, at P 24 (2009), *order denying reh'g,* 131 FERC ¶ 61,202, at PP 17–18 (2010).

[275] Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at PP 289–90.

[276] *Id.* P 289.

[277] In the unlikely event that there are no additional resources available to enable the public utility transmission provider to meet its obligation to offer generator regulation service, the public utility transmission provider must accept the use of dynamic scheduling with a neighboring control area. *See id.* P 290.

[278] Order No. 890, FERC Stats.& Regs. ¶ 31,241 at P 1652.

[279] The Commission notes that this obligation is subject to audit as are all other OATT requirements.

[280] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,705.

[281] *Id.*

providers alike. This includes, for example, evaluating the extent to which regulation service obligations can be addressed by matching generation variability to demand variability, as suggested by the Federal Trade Commission. Indeed, in Order No. 888, the Commission stated that the pricing of ancillary services should include the amount of each ancillary service that the transmission customer must purchase, self-supply, or otherwise procure and must be readily determinable from the transmission provider's tariff and comparable to obligations to which the transmission provider itself is subject.[282] The Commission also specified that the transmission provider is required to identify the regulating margin requirements for transmission customers serving loads in its balancing authority area and to develop procedures by which customers can avoid or reduce such requirements.[283]

275. For reasons explained elsewhere in this Final Rule, the Commission declines to adopt CGC's suggestion to require transmission providers to provide dynamic transfer capability out of their balancing authority area or mandate the creation of an ancillary services market through which a generator could self-supply generator regulation service.[284]

2. Mechanics of a Generator Regulation Charge

276. The Proposed Rule stated that, as with Schedule 3, the proposed Schedule 10 charge would be the product of two components: a per-unit rate for regulation reserve capacity, and a volumetric component for regulation reserve capacity.[285] The Commission proposed to require each public utility transmission provider to submit a compliance filing that includes the addition of a Generator Regulation and Frequency Response rate schedule to the OATT that includes the same per unit rate from their currently effective Regulation and Frequency Response rate schedule and a blank or unfilled volumetric component.[286]

277. The Commission preliminarily found that the per-unit rate for service under proposed Schedule 10 should be the same as the rate for service under existing Schedule 3.[287] The Commission explained that Schedule 3 and the proposed Schedule 10 are both designed to recover the costs of holding regulation reserve capacity to meet system variability. Because the service provided under both schedules is functionally equivalent, the Commission proposed to find that it is just and reasonable to use the same rate currently established in a public utility transmission provider's Schedule 3 when charging transmission customers under Schedule 10. The Commission stated that, for a public utility transmission provider to apply a different rate under the proposed Schedule 10, the public utility transmission provider would have to demonstrate that the per-unit cost of regulation reserve capacity is somehow different when such capacity is utilized to address system variability associated with generator resources. The Commission also noted that the use of a common rate is consistent with Commission policy utilizing the same rate structure for energy and generator imbalance service, as well as the generator regulation rate that the Commission accepted in *Westar Energy Inc.*[288]

278. With regard to the volumetric component of the Schedule 10 rate, the Commission proposed to provide each public utility transmission provider with the opportunity to justify a proposal: (1) To require all transmission customers who are delivering energy from generators to purchase, or otherwise account for, the same volume of generator regulation reserves; or (2) to require transmission customers who are delivering energy from VERs to purchase, or otherwise account for, a different volume of generator regulation reserves than it proposes to charge transmission customers delivering energy from other generating resources.[289] The transmission provider's proposal would be made in a section 205 filing after the acceptance of its compliance filing.

279. Where a public utility transmission provider proposes the same volume of generator regulation reserves for all generators, the Commission proposed that it demonstrate that the volume of regulation reserves required of transmission customers delivering energy from generators located within its balancing authority area be commensurate with their proportionate effect on net system variability, taking account of diversity benefits.[290] The Commission stated that such a filing must show that the public utility transmission provider has fully implemented (or been granted waiver from) the intra-hourly scheduling requirement set forth in the Proposed Rule.[291] The Commission recognized that a public utility transmission provider with few VERs located in its balancing authority area may choose to apply only one volumetric regulation requirement for all generating resources in its balancing authority area. The Commission noted that this also may be the case to the extent the impact of VERs on a public utility transmission provider's system is minimal and the public utility transmission provider, in its judgment, deems the administrative burden of justifying two separate volumetric regulation requirements is uneconomic.[292]

280. The Commission proposed that where a public utility transmission provider proposes to require transmission customers who are delivering energy from VERs to purchase, or otherwise account for, a different volume of generator regulation reserves than it proposes to charge transmission customers delivering energy from other generating resources, the Commission proposed that it demonstrate that the volumes of regulation reserves required of those subsets of transmission customers delivering energy from generators located within its balancing authority area are commensurate with their proportionate effect on net system

[282] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,721.

[283] *Id.* at 31,717. Order No. 890 did not alter the requirements of Order No. 888 in this regard, but did clarify that regulation and frequency response, as well as imbalance energy, may be provided by public utility transmission providers or through self-supply using generating units as well as other non-generation resources such as demand resources where appropriate. Order No. 890, FERC Stats. & Regs. ¶ 21,241 at P 888.

[284] *See supra* IV.A.1 (Intra-Hour Scheduling Requirement).

[285] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 92. The Commission is exploring potential reforms to ancilliary services pricing in other proceedings. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Notice of Proposed Rulemaking, 139 FERC ¶ 61,245 (2012) (NOPR).

[286] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 101.

[287] *Id.* P 94.

[288] *Id.* P 93 (citing *Westar Energy Inc.,* 130 FERC ¶ 61,215 (2010) (*Westar*)).

[289] The Commission noted its expectation that, in any subsequent filing to establish a volumetric component in Schedule 10, public utility transmission providers would address how Schedule 10 and Schedule 3 work together to allow for the recovery of total regulation reserve costs. *Id.* P 105 & n.206.

[290] The Commission explained that diversity benefits result from the aggregation of the variations of all resources such that one resource's negative deviation can offset some or all of another resource's positive deviation. The Commission stated that, when the transactions of two customers result in diversity benefits, it is incorrect to say that one customer is benefitting the other but not vice versa. Instead, the Commission preliminarily found that diversity benefits would result from both transactions and that sharing of these benefits among the customers would be reasonable. *Westar,*130 FERC ¶ 61,215 at P 37.

[291] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 105.

[292] *Id.* P 94.

variability and taking account of diversity benefits.[293] That is, any proposal for different volumes of generator regulation reserves based on the generating resource would need to be supported by data showing that, on the public utility transmission provider's system, VERs have a different per unit impact on overall system variability than conventional generating units.[294] The Commission proposed that such a filing must also show that the public utility transmission provider has fully implemented (or been granted waiver from) the intra-hourly scheduling requirement set forth in the Proposed Rule and has developed and deployed power production forecasting for VERs.[295]

281. Specifically, the Commission proposed that any filing by public utility transmission providers including different volumetric requirements for different subsets of transmission customers must be supported with actual data collected over a one-year period subsequent to the deployment of power production forecasting for VERs and the implementation of intra-hourly scheduling at 15-minute intervals. The Commission acknowledged that this proposal could delay a public utility's ability to recover the cost associated with providing generator regulation service. The Commission further acknowledged that there may be alternative methods for developing the data necessary to support different volumetric requirements for different subsets of transmission customers. The Commission sought comment as to such methods of demonstration, how they could support a Commission finding that the Schedule 10 filing is just and reasonable, and ways in which these methods of demonstration may be preferable to this aspect of the Commission's proposal.[296]

282. In the Proposed Rule, the Commission stated that the increased use of power production forecasts in transmission systems where VERs are located can provide transmission providers with improved situational awareness, enable transmission providers to utilize existing system flexibility through the unit commitment and dispatch processes, and, ultimately, lead to a reduction in the amount of reserve products needed to maintain system reliability. The Commission also recognized that, in areas of the country with very limited production from VERs, the implementation of power production forecasting for VERs could be less useful.[297] The Commission sought comment in the Proposed Rule on the manner by which a public utility transmission provider should be required to show it has developed and deployed power production forecasts to support a proposal to require a differentiated volumetric component of rates for generator regulation reserves under proposed Schedule 10.[298]

a. Comments

i. General

283. Invenergy Wind requests that the Commission clarify that, in requiring initial Schedule 10 charges to adopt the utility's then-effective Schedule 3 charges, the application of the rate will be consistent. Invenergy Wind states that Schedule 3 charges are typically applied on the basis of a percentage of the customer's schedule. Beacon Power questions the reliance on existing regulation service charges, stating that a transmission provider in non-RTO/ISO markets could optimize the performance of its existing fleet to potentially lower costs to customers under Schedule 3 or 10. Beacon Power requests that the Commission encourage such transmission providers to evaluate the technologies and benefits they provide. Xtreme Power agrees, asking the Commission to require public utility transmission providers to make a showing that the rates proposed for Schedule 10 are based on an appropriate type and quantity of resources needed, considering the technologies available in the market today rather than using dated rates from Schedule 3. CESA suggests that the reforms proposed for Schedule 3 in the Commission's Frequency Regulation Notice of Proposed Rulemaking be included in Schedule 10 for RTO and ISO markets.[299]

284. Some commenters suggest that public utility transmission providers be permitted to recover opportunity costs associated with providing generator regulation service.[300] For example, the Large Public Power Council states that, consistent with the decision in *Puget,* generator regulation service rates should be fully compensatory, and may legitimately reflect a utility's full opportunity cost.[301] According to Puget, there may also be lost opportunity costs associated with reserving unloaded generation capacity during peak market conditions. NRECA argues the integration of a significant amount of VERs will cause the Schedule 3 rate to rise as Schedule 10 demand increases particularly in regions with a lot of hydropower, where the additional VERs cause the need for more thermal reserves, which are more expensive than the existing reserve rate base.

ii. Quantity of Reserves

285. Some commenters request further direction from the Commission regarding the calculation of the volumetric component of Schedule 10, i.e., the quantity of reserves transmission customers are required to purchase or otherwise account for.[302] For example, the California PUC asserts that the Commission should recommend or require that a public utility transmission provider consider the system's resource mix and the amount of operational flexibility of the transmission system's generation fleet to develop the volumetric component of Schedule 10. LADWP indicates that measures of alleged diversity benefits may lead to unintended results if significant diversity occurs in one part of a year and forms the basis for a smaller volumetric component than is necessary for another part of the year.

286. Some commenters question whether the Commission should allow public utility transmission providers the opportunity to file for differentiated volumetric rates under Schedule 10. AWEA contends that it would be unjust and unreasonable and break with Commission precedent to allocate to generators the costs of Schedule 10, whether kept as a regulation reserve or reformulated to a system non-spin service, while allocating other ancillary services costs broadly to load. AWEA states that all users of the grid add variability and uncertainty and that all benefit when the grid is better able to accommodate variability and uncertainty. AWEA also argues that the capacity used to provide Schedule 10 service would be available to provide a number of other ancillary services, not to mention to the public utility transmission provider to meet peak demand.

287. Western Grid states that the integration costs of other types of generation are largely ignored and the

[293] *Id.* P 106.

[294] *Id.* P 95.

[295] *Id.* P 106.

[296] *Id.* P 107.

[297] *Id.* P 55 n.125.

[298] *Id.* P 106.

[299] CESA; *See also Notice of Proposed Rulemaking on Frequency Regulation Compensation in the Organized Wholesale Electric Markets,* 134 FERC ¶ 61,124 (2010) (Frequency Regulation NOPR); *Frequency Regulation Compensation in the Organized Wholesale Power Markets,* Order No. 755, 76 FR 67260 (Oct. 31, 2011), FERC Stats. & Regs. ¶ 31,324 (2011), *reh'g denied,* Order No. 755–A,138 FERC ¶ 61,123 (2012).

[300] *E.g.,* SMUD; WUTC; EEI; Large Public Power Council; Puget.

[301] *E.g.,* Large Public Power Council (citing *Puget Sound Energy,* 132 FERC ¶ 61,128 (2010)).

[302] *E.g.,* CPUC; LADWP; SEIA.

regulation and frequency costs imposed by large loads are broadly socialized. Western Grid therefore contends that grid integration costs related to VERs should be recovered in a manner comparable to the way grid integration costs imposed by large conventional generators are recovered. Argonne National Lab argues that calculating the net impact of VERs on regulation service needs is likely to be difficult and contentious and that to ensure just and reasonable treatment of all resources, the Commission should be careful in imposing specific requirements on VERs without considering the specific impacts on system reliability and operating reserve costs from other generating resources as well. Similarly, the Federal Trade Commission recommends that the Commission consider whether the costs of imbalance services provided to other types of generators can readily be identified and charged to the responsible parties.

288. Some commenters support the proposal to condition the implementation of differentiated volumetric rates on whether that transmission provider has implemented power production forecasting and intra-hour scheduling reforms.[303] AWEA states that Schedule 10 should not be charged at all until a transmission provider has fully implemented the Efficient Dispatch Toolkit and the Commission's proposed sub-hourly scheduling and variable energy forecasting operating reforms. Clean Line states that implementation of forecasting should be required before any special charges are assigned to renewable generators. Clean Line argues that, before transmission providers can charge a just and reasonable rate to recover ancillary service costs, they must use reasonable means to minimize those costs—such as forecasting.

289. Some commenters suggest that differentiated volumetric rates should be conditioned on implementation of additional reforms beyond those set forth in the Proposed Rule.[304] For example, Environmental Defense Fund maintains that a public utility transmission provider should not be permitted to establish different volumetric reserve requirements for VERs unless it has demonstrated to the Commission that the balancing authority area is optimally sized or cooperating with other balancing authority areas. Oregon & New Mexico PUC similarly state that Schedule 10 charges for VERs should be conditioned on a demonstration by the public utility transmission provider regarding the measures it has considered to increase cooperation with other balancing authorities to lower the cost of integrating wind and solar. First Wind argues that public utility transmission providers should only be permitted to charge for generator regulation service once they have implemented procedures for dynamic transfers in addition to intra-hour scheduling. CESA contends that, before imposing any generator regulation costs on VERs, public utility transmission providers should first implement fast intra-hour markets and intra-hourly scheduling; a robust ancillary services market; the option for third-party or self supply of ancillary services; dynamic transfer capability out of the balancing authority area; and Area Control Error (ACE) diversity interchange or an energy imbalance service market.

290. In contrast, ELCON asserts that Schedule 10 as proposed is a mechanism for the socialization of costs that should be directly assigned to VERs or their customers. Grant PUD argues that variable loads and variable resources should be charged differently for regulation service according to the nature of the different costs placed on the public utility transmission provider. A number of other commenters agree, objecting to any delay in cost recovery associated with providing generator regulation service.[305] For example, Pacific Gas & Electric and Idaho Power argue that public utility transmission providers incur costs to provide generator regulation service regardless of whether they are employing intra-hourly scheduling and, thus, preventing recovery of generator regulation service costs shifts those costs to other customers in violation of cost causation principles.

291. EEI opposes requiring a public utility transmission provider to commit specific actions before seeking rate recovery under section 205, particularly when such actions violate cost causation principles. EEI states that as articulated by the Commission in *Northern States Power Company,* ''[t]he *fundamental* theory of Commission ratemaking is that costs should be recovered in the rates of those customers who utilize the facilities and thus cause the cost to be incurred.'' [306] According to EEI, the D.C. Circuit echoed this sentiment in *KN Energy, Inc.* v. *FERC,* ''[s]imply put, it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.'' [307] EEI and others state that, to the extent the Commission conditions generator regulation service cost recovery on implementing the Proposed Rule's reforms, the Commission should explain how such a limitation does not effectively force public utility transmission providers to waive their sections 205 and 206 rights under the FPA in contravention of *Atlantic City Electric Company.*[308]

292. Southern opposes conditioning public utility transmission providers' rights to recover rates under section 205 of the FPA for generator regulation and frequency response service on the implementation of such reforms. Southern argues that utilities have a statutory right to establish just and reasonable rates under sections 205 and 206 of the FPA. If the Commission pursues these limitations, Southern asks the Commission to explain how such a limitation does not effectively force public utility transmission providers to waive their section 205 and 206 rights.

293. LADWP argues that the proposed requirements would place public utility transmission providers in a defensive role. LADWP states that presuming a public utility transmission provider makes a sufficient showing that it implemented intra-hour scheduling and deployed power production forecasting for VERs, a transmission provider is further compelled to demonstrate the basis for any difference in regulating reserves between VER transmission customers and non-VER transmission customers. LADWP argues that this could put the public utility transmission providers in a defensive role of justifying the findings and conclusions within a system impact study report, in

[303] *E.g.,* AWEA; BP Energy; Iberdrola; Independent Power Coalition West; NextEra; Oregon & New Mexico PUC; Public Interest Organizations; Vestas.

[304] *E.g.,* Iberdrola; First Wind; Oregon & New Mexico PUC; Environmental Defense Fund.

[305] *E.g.,* Tacoma Power; Montana PSC; Pacific Gas & Electric; PNW Parties; NV Energy; Public Power Council; Natural Gas; WUTC.

[306] EEI at 29 (citing *N. States Power Co.,* 64 FERC ¶ 61,324, at P 13 (1993) (emphasis supplied) (citations omitted)).

[307] EEI at 29 (citing *KN Energy, Inc.* v. *FERC,* 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Alcoa Inc.* v. *FERC,* 564 F.3d 1342, 1346 (D.C. Cir. 2009); *Illinois Commerce Commission* v. *FERC,* 576 F.3d 470, 476 (7th Cir. 2009); *Pub. Serv. Comm. of Wisc.* v. *FERC,* 545 F.3d 1058, 1067 (D.C. Cir. 2008); *Pac. Gas & Electric Co.* v. *FERC,* 373 F.3d 1315, 1320 (D.C. Cir. 2004)).

[308] EEI at 27–28 (citing *Atlantic City Elec. Co.,* 295 F.3d 1, 10 (2002) (finding that the Commission lacks the authority to require public utility transmission providers to cede their rights under section 205 of the FPA); MidAmerican at 26; Puget at 17 (questioning whether whether requiring one-year of data reporting interferes with a public utility transmission provider's rights under section 205 of the FPA); WUCT at 7 (questioning whether requiring 15-minute scheduling and one-year of data reporting interfere with a public utility transmission provider's rights under section 205 of the FPA)).

the event performed by the public utility transmission provider.

iii. Power Production Forecasting

294. Some commenters state specific opposition to linking power production forecasting to the implementation of differentiated volumetric rates under Schedule 10.[309] Southern argues the Commission would exceed its statutory authority if it required implementation of power production forecasting. Southern states courts have recognized that the Commission ''is a 'creature of statute,' having no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress.'' [310] Southern contends that, because the FPA never mentions meteorological forecasting, it is beyond the scope of the Commission's authority. Southern explains that public utilities have long engaged in meteorological forecasting for load forecasting and dispatch purposes; however, there never has been an indication that such practices were within the scope of the Commission's jurisdiction, and the advent of VER generation has not added such forecasting to the scope of the Commission's authority.

295. While Bonneville Power acknowledges that centralized power production forecasts will facilitate system-wide benefits, Bonneville Power disagrees that such forecasts should be a prerequisite to the cost recovery of balancing reserve capacity used to provide generator regulation reserve-type services. Bonneville Power believes that such a requirement would shift costs to other users of the transmission system that would not be otherwise incurred but for the VER generation. Puget believes that requiring transmission providers to implement power production forecasting as a precondition to Schedule 10 cost recovery inappropriately shifts the costs of integrating VERs from the VER to the balancing authority. Southern argues that meteorological forecasting issues are business decisions that are best left to the transmission providers and the market. EEI states that it is not convinced that the power production forecasting requirements are necessary to support requiring a higher volumetric amount of Schedule 10 regulation service. According to EEI, the data necessary to substantiate a higher volumetric charge can be derived by analyzing the deviation between a VER's scheduled versus actual production. EEI, therefore, claims that requiring a public utility transmission provider to implement power production forecasting prior to establishing a higher volumetric rate creates a barrier to cost recovery.

296. Montana PSC notes that the Proposed Rule's data reporting requirements to support power production forecasting would only apply to generators that are 20 MW or larger. Montana PSC argues that conditioning differentiation of volumetric rates on the implementation of power production forecasting could unduly restrict application of Schedule 10 generation regulation charges to smaller resources. Montana PSC argues that all VERs one MW or greater should be responsible for Schedule 10 services that they cause.

297. Other commenters ask the Commission to mandate use of power production forecasting by all public utility transmission providers with significant amounts of VERs instead of relying on the public utility transmission owner's decision to charge differentiated Schedule 10 rates.[311] The ISO/RTO Council argues that, while transmission providers in areas with low to moderate levels of VER interconnection may be able to manage variability on their systems without using power production forecasting, areas with larger levels of VERs should be required to adopt power production forecasting tools to ensure that conditions affecting generation output can be anticipated and managed appropriately. SEIA suggests that each transmission provider that provides interconnection to or has interconnections with more than 50 MW of VERs should be required to develop a power production methodology to accommodate integration of VERs. First Wind contends that power production forecasting should be mandatory for public utility transmission providers with five percent of VER resources on their system. CPUC asks that the Commission clarify that any public utility transmission provider may require power production forecasting if VERs are currently or anticipated to become significant.

298. Some commenters support the Commission's recognition that certain regions may not have a need for VER power production forecasting because of a low likelihood of VERs development.[312] For example, Bonneville Power states that the requirement to implement centralized forecasting should not apply if the penetration of VERs is less than 10 percent of load served. Puget argues that it should not be required to use power production forecasting because it only serves one exporting VER in its region.

299. Several commenters provide detailed discussions of the various activities that public utility providers should be required to undertake in order to show power production forecasting is in use. Public Interest Organizations suggest that the Commission require public utility transmission providers to demonstrate that VER power production forecasts are incorporated into unit commitment, scheduling, and dispatch efforts. Oregon & New Mexico PUC state that at a minimum, a public utility transmission provider needs to demonstrate that it has requested meteorological and operational data from wind and solar generators and has integrated forecast information into control room operations.

300. Some commenters contend that the public utility transmission provider should demonstrate that it is using the VER forecast to efficiently and reliably commit and dispatch resources. These parties offer various criteria regarding costs, accepted industry practices, and performance metrics that should be required of public utility transmission providers in order to be deemed compliant with the Final Rule.[313] The California PUC states that, while it does not recommend that the Commission set specific minimum quality standards or cost maximums for VERs forecasts at this time, the Commission should monitor results of public utility transmission providers' assessments. If the quality of forecasts varies significantly among public utility transmission providers, the Commission may determine that minimum quality standards or maximum cost limits for VERs forecasts are necessary to prevent unjust, unreasonable, or unduly discriminatory rates.

301. Other commenters argue that the Commission should ensure that the risks associated with inaccurate schedules or resource specific forecasts remain with the VER.[314] Montana PSC states that the forecasting requirement should be the responsibility of VER instead of the public utility transmission provider. NorthWestern states that it is inappropriate to make

[309] *E.g.,* Bonneville Power; Montana PSC; Natural Gas; Public Power Council; Puget Sound Energy; NV Energy.

[310] Southern (citing *Cal. Indep. Sys. Operator Co.* v. *FERC,* 372 F.3d 395, 398 (D.C. Cir. 2004) (citing *Atlantic City Elec. Co.* v. *FERC,* 295 F.3d at 8)).

[311] *E.g.,* CPUC; ISO RTO Council; Midwest ISO; SEIA.

[312] *E.g.,* Bonneville Power; NextEra; PNW Parties.

[313] *E.g.,* AWEA; California PUC; Iberdrola; NaturEner.

[314] *E.g.,* AEP; Large Public Power Council; Midwest ISO Transmission Owners; Montana PSC; NorthWestern.

the public utility transmission provider responsible for forecasting the VER power output when it is the responsibility of the VER to provide its schedule. NorthWestern points out that, if the public utility transmission provider provides a forecast of the VER power production, as proposed by the Proposed Rule, and the VER submits a different schedule, Control Performance Standard 2 violations may occur that would not have occurred if an accurate power production forecast had been submitted by the VER. NorthWestern argues that the forecasting requirement would place the balancing authority in an unacceptable position if the forecast or power production data is inaccurate. Midwest ISO Transmission Owners state that regardless of whether the public utility transmission provider requires VERs to provide meteorological data or employs other tools in order to increase the effectiveness of scheduling and dispatching activities, all generation resources must retain the ultimate responsibility for determining their unit's deliverability; accordingly, variations from scheduled deliveries must remain the responsibility of the generating resource, including VERs.

302. Bonneville Power argues that, if the Commission requires centralized power production forecasts for public utility transmission providers with significant amounts of VERs on their systems that intend to differentiate their Schedule 10 pricing, it is preferable that the Commission also require all VERs to schedule according to the centralized forecast component for each plant. Puget explains that, if the public utility transmission provider's forecast sets the schedule, then there could be a perverse incentive for public utility transmission providers to generate inaccurate forecasts and collect larger generator imbalance charges under Schedule 9; however, if the VER is permitted to set its own schedule that differs from the public utility transmission provider's forecast, it remains unclear how the public utility transmission provider is supposed to manage and deploy its resources—according to its own forecast or to the VER's schedule. Puget requests that these questions be clarified before the Commission implements a power production forecasting requirement for public utility transmission providers, whether as a stand-alone mandate or as a precondition to Schedule 10 cost recovery.

303. Invenergy argues that the Final Rule should hold public utility transmission providers: (1) Accountable for the accuracy of the forecasts that they use to determine regulation capacity requirements; and (2) to performance levels that current technology supports. Invenergy states that ISOs and RTOs that have implemented centralized wind forecasting are generally realizing accuracy rates of 89 percent or greater. Invenergy argues that the Final Rule should require the public utility transmission provider to provide customers with forecasting performance metrics on a periodic basis and, if forecasts do not prove to be reliable, require the public utility transmission provider to take immediate steps (including improving its forecasting systems and equipment or relinquishing responsibilities to an independent third party) to ensure that future forecasts are accurate.

304. Commenters state that in RTO regions, the RTO would be the more appropriate entity to conduct power production forecasting. National Grid asks the Commission to clarify who the ''transmission providers'' are that will undertake the energy forecasting responsibility. National Grid states that the role of developing and implementing energy forecasting tools is well suited to a centralized entity with existing capabilities in data collection, region wide system forecasting and centralized dispatch responsibilities such as RTOs and ISOs. National Grid requests that the Commission clarify that for the purposes of its data forecasting Final Rule the term ''transmission provider'' means the ISOs or RTOs in those regions, as this avoids confusion where the term ''transmission provider'' can refer to either the ISO or its members.

305. Some commenters point out that many regions are currently undertaking their own forecasting and data gathering initiatives or programs to integrate VERs, and request that the Commission allow for regional flexibility.[315] Pacific Gas & Electric requests that individual public utility transmission providers be given flexibility on how to implement that requirement. Pacific Gas & Electric requests that in its Final Rule the Commission provide latitude for the California ISO and other similarly situated transmission providers to continue their existing programs to gather the relevant meteorological and operational data, and to propose incremental refinements to them, so long as the programs maintained by these transmission providers can accomplish the purposes set forth in the Proposed Rule for gathering this information.

[315] *E.g.,* Massachusetts DPU; Pacific Gas & Electric; Midwest ISO.

iv. One Year Data Requirement

306. Some commenters contend that the proposal to require public utility transmission providers to collect power production forecasting data for one year prior to instituting a differentiated regulation requirement for VERs violates cost causation principles and imposes costs of balancing reserve capacity needed for VERs on other customers.[316] Such commenters maintain that the one-year data collection requirement unreasonably delays public utility transmission providers from demonstrating that they are entitled to recover different volumetric amounts associated with providing generator regulation service from different types of generators.[317] Bonneville Power argues that there may be sound economic and operational bases for providing or procuring differential quantities of incremental and decremental balancing reserve capacity. Western Farmers suggest that the Commission allow public utility transmission providers to propose the volumetric component of the Schedule 10 charge along with the proposed rates in their initial Schedule 10 compliance filing. Natural Gas and Puget similarly argue that public utility transmission providers should have an opportunity to allocate ancillary service costs as soon as they are justifiably able to do so. MidAmerican contends that the one-year data collection requirement is inconsistent with the *Westar* precedent.

307. Some commenters suggest that public utility transmission providers should be permitted to establish rates using historical data, subject to adjustment as necessary over time.[318] For example, Bonneville Power states that rates can be updated as public utility transmission providers gain experience with reductions in the need for balancing reserve capacity requirements associated with intra-hourly scheduling, centralized forecasting and any other initiatives. Similarly, Puget suggests that reductions in the VERs volumetric component could be incorporated into a subsequent rate filing after implementation of 15-minute scheduling and power production forecasting by the utility. NorthWestern suggests that, just as the Commission routinely allows a proposed rate to take effect on an interim basis subject to refund until final approval is received, the Commission likewise should consider

[316] *E.g.,* Bonneville Power; Puget; MidAmerican; Southern California Edison; Natural Gas.

[317] *E.g.,* EEI; MidAmerican; Puget; WUTC.

[318] *E.g.,* Bonneville Power; Southern California Edison; California PUC; EEI; NorthWestern.

applying a similar principle in allowing interim regulating service cost recovery. Pacific Gas & Electric proposes that until one year's worth of data are available, public utility transmission providers should be able to use simulated data to estimate the relative contribution of load, imports, VERs and other generation for the overall need for generator regulation reserves.

308. In contrast, Vestas argues that public utility transmission providers should be required to implement the two operational changes immediately and then collect data over at least the next 12 months regarding the levels of schedule deviations on their systems for all types of generation. According to Vestas, the Commission should require the submission of that data to the Commission and take comments from interested market participants on the appropriate rate mechanism to permit the recovery of any costs incurred to address remaining variations between generator schedules and generator output.

309. Organization of Midwest ISO States asks the Commission to require public utility transmission providers with significant VER capacity, such as three percent or more of total capacity, to submit statistical data on the variability of generation across the different types of generation resources and load. If there is a significant difference between types of resources, Organization of Midwest ISO States contends that the public utility transmission provider should be required to allocate the costs of increased regulation and other ancillary services developed in the future to the generation resources causing those costs.

v. Other

310. Some commenters express concern about the static nature of the rates and volumes in Schedule 10.[319] SEIA argues that public utility transmission providers who have selected a methodology and begun to apply different Schedule 10 rates for different categories of customers should be required to revisit their forecasting methodologies and rates on a regular basis. RenewElec notes that data collected over a one-year period that may feature anomalies (e.g., wind droughts). RenewElec suggests that the Commission require transmission providers to retain data provided under the new *pro forma* LGIA Article 8.4 for at least 10 years and commit to performing annual follow-up studies over a period of not less than five years that update power production forecasts with new data received. RenewElec suggests that the Commission include a biannual re-opener provision for VER-specific Schedule 10 charges, or through other review and implementation combinations.

311. NaturEner asserts that an annual re-evaluation of the integration charge needs to be undertaken to take into account the impact of increased diversity, improved operations, market innovations and other changed circumstances, as well as to correct any inaccuracy in the original (or immediately prior) assessment. NaturEner also requests clarification regarding whether a VER transmission customer could be required to pay a VER integration charge in arrears if a public utility transmission provider is subsequently permitted to levy the charge.

312. Some commenters oppose the Commission's proposal to group resources together for the purpose of allocating Schedule 10 volumes.[320] For example, BrightSource states that assigning all VERs the same regulation requirement could distort the incentives created by the cost allocation if they are evaluated as a single, undifferentiated class. First Wind asserts that the rate should be designed to recognize the actual variability of output of the resource paying the rate because two wind generation projects of the same installed capacity and energy production might have different levels of variability due to factors such as local differences in the variability of the ''wind resource'' (the relative wind generating value of the location); the number, size, and manufacturer of the wind turbines; and differences in distances between wind turbines. RenewElec offers that high capacity wind generation units have a disproportionally smaller impact on variability than lower capacity units. According to AWEA, the variability of resources within a category cancels each other out to the benefit of those resources in that category, imposing a disadvantage on customers that are grouped in smaller categories.

313. Snohomish County PUD questions whether it is appropriate to apportion any volume of generator regulation reserves to behind-the-meter generation. Snohomish County PUD contends that variations in output from the behind-the-meter generator are, from the perspective of the public utility transmission provider, indistinguishable from variations in the distribution utility's load. Accordingly, Snohomish County PUD asks the Commission to clarify that behind-the-meter generators—those that are interconnected directly to and consumed by the load of the local distribution utility rather than a transmission utility—will not be required to purchase generator balancing capacity from the public utility transmission provider in the absence of a voluntary agreement between the public utility transmission provider and the generator to install appropriate metering that measures the variability of the generator and to pay the Schedule 10 charges justified by that variation.

314. Several commenters suggest that the Commission convene a technical conference or require other processes to determine the appropriate per-unit and volumetric rates under the proposed Schedule 10.[321] AWEA states that a technical conference would be appropriate to establish consistent principles for determining the methodology that should be used for calculating and allocating Schedule 10 costs. Some commenters request that the Commission require stakeholder involvement in connection with the development of Schedule 10 volumes.[322] For example, First Wind requests that the Commission require RTOs to conduct a robust and transparent stakeholder process which attempts to reach consensus prior to them making an allocation filing, and that non-RTO public utility transmission providers conduct public workshops prior to any allocation filing.

b. Commission Determination

315. For the reasons discussed above, the Commission is not implementing a generic Schedule 10 to the *pro forma* OATT for generator regulation service. Instead, the Commission takes this opportunity to respond to the individual commenter concerns regarding the proper design of a generator regulation service charge in order to provide guidance in the development of proposals for such services.

316. In response to the Large Public Power Council and Puget, those public utility transmission providers that choose to propose a rate schedule for generator regulation service may include opportunity costs for generator regulation service in certain circumstances. Such resources are often dispatched in the middle of their operating range to allow the generator to provide regulation-up as well as

[319] *E.g.,* SEIA, RenewElec, NaturEner.

[320] *E.g.,* BrightSource; FirstWind; RenewElec; AWEA.

[321] *E.g.,* AWEA; BrightSource; EPSA; SEIA.

[322] *E.g.,* California PUC; First Wind; SEIA.

regulation-down and as a result forego other opportunities. Not to allow compensation would create a barrier to the provision of services by frustrating the recovery of legitimate costs.

317. A number of commenters question the appropriate design of the volumetric component of Schedule 10 rates, i.e., the component in the Proposed Rule that allowed public utility transmission providers to require different transmission customers (or generator classes) to purchase or otherwise account for different quantities of regulation reserves based on cost causation principles. The Commission agrees that calculating the relative impact of individual customers or customer classes on a public utility transmission provider's overall generation regulating reserve needs and allocating those costs accordingly can be a difficult and complex determination. However, the Commission believes that the complexity of these proceedings can be mitigated where entities take note of, and incorporate, the following principles.

318. First, public utility transmission providers seeking to distinguish customers into classes for the purpose of requiring them to purchase or otherwise account for different quantities of generation regulating reserves should do so only to the extent such classes and distinctions among classes are reasonably related to operational similarities and differences among those resources.[323]

319. Second, to the extent a public utility transmission provider proposes to break customers into specific groups based on operational characteristics, we expect public utility transmission providers to provide detailed explanations as to why such classifications are appropriate if and when they propose to allocate different generating regulation reserve obligations to different customer classes. The Commission has required that overall generator regulation requirements be established by taking diversity benefits into account. Diversity benefits result from aggregating the variations of all resources so that one resource's negative deviation can offset some or all of another resource's positive deviation. When the transactions of two customers result in diversity benefits, it is incorrect to say that one customer is benefitting the other but not vice versa. Instead, the diversity benefits result from both transactions and sharing of these benefits among the customers is reasonable. In *Westar,* the Commission found that this portfolio-wide approach to assessing generator regulation charges appropriately shares diversity benefits among generators and load.[324] Ultimately, this concept will need to be reconciled with any customer classifications proposed by the public utility transmission provider in a way that prevents any over-recovery of these capacity costs.

320. Third, to the extent a public utility transmission provider proposes to differentiate among customers (or customer classes) in determining their relative regulating reserve responsibilities, the public utility transmission provider must demonstrate that the overall quantity of regulating reserve it requires of its transmission customers accounts for diversity benefits among all resources and loads, and the allocations to individual customers (or customer classes) of their proportionate share is based on the operational characteristics of such customers (or customer classes).

321. Fourth, weather events such as droughts may affect the required quantity of generator regulating reserves that the public utility transmission provider must have in reserve more or less during one portion of the year versus another portion of the year. In such cases, these diversity events, though perhaps characterized as anomalies, should be included in the data set so that the quantity and costs of such reserves are more reflective of actual system operations.

322. Fifth, there is a relationship between the use of intra-hour scheduling by transmission customers and the quantity of reserves needed to provide Schedule 9 generator imbalance service. In other sections of this Final Rule, the Commission requires all public utility transmission providers to offer transmission customers the option of using more frequent transmission scheduling intervals within each operating hour, at 15-minute intervals, noting that over time public utility transmission providers will be able to rely more on planned scheduling and dispatch procedures and less on reserves to maintain overall system balance. In the Proposed Rule, the Commission sought comment on whether to condition the ability of public utility transmission providers to require different transmission customers to purchase or otherwise account for different quantities of generator regulating reserves on the implementation of intra-hour scheduling reforms. Given that such reforms are mandated in this Final Rule, the Commission concludes that condition to be satisfied.[325] In designing any proposals for generator regulation service charges, a public utility transmission provider should consider the extent to which transmission customers are using intra-hour scheduling in evaluating whether to require different transmission customers to purchase or otherwise account for different quantities of generator regulating reserves.

323. Sixth, there also is a relationship between the use of power production forecasting and the allocation of generator regulation reserve quantities to a particular class of customers. The record in this proceeding demonstrates that the quantity of reserves used to provide generator regulation service can be most efficiently managed with the implementation of power production forecasting (as well as intra-hour scheduling) by public utility transmission providers. While commenters disagree on the extent to which power production forecasting may affect reserve commitments, the Commission finds that power production forecasts can provide public utility transmission providers with advanced knowledge of system conditions needed to manage the variability of VER generation through the unit commitment and dispatch process, rather than through the deployment of reserve services, such as regulation reserve. Without the increased situational awareness of projected variability provided by power production forecasts, the public utility transmission provider's ability to commit or de-commit resources providing regulation reserves efficiently can be constrained. This lack of situational awareness potentially can result in rates for generator regulation service that are unjust and unreasonable or unduly discriminatory.

324. We recognize that conditioning the allocation of different quantities of regulation reserves to different transmission customers on the public utility transmission provider developing and deploying power production forecasting is contentious. On one hand certain public utility transmission providers believe that they should either be able to use historical data or make other approximations to establish the quantity of regulation reserves to be required of a given transmission customer or class of customers. On the other hand, transmission customers that are VERs contend that the Commission has not gone far enough and that additional reforms are necessary to

[323] *See Westar,* 137 FERC ¶ 61,142 at PP 27–28.

[324] *See Westar,* 130 FERC ¶ 61,215 at PP 37–38.

[325] *See supra* IV.A.1 (Intra-Hour Scheduling Requirement).

ensure that VERs do not disproportionately bear the burden of the cost of regulating reserves. The Commission believes that public utility transmission providers need an effective opportunity to file for cost recovery, while VERs need assurance that they are not unduly assigned costs.

325. Accordingly, while the Commission reserves judgment as to the appropriate power production forecasting requirements for a particular public utility transmission provider, we expect that the implementation of power production forecasting will be addressed in any proposal to require different transmission customers to purchase or otherwise account for different quantities of generator regulating reserves. For example, a public utility transmission provider could demonstrate that it is utilizing power production forecasts (or other comparable technique) to manage system operating costs and/or to improve reliability by enabling the more efficient commitment and dispatch of resources. The Commission agrees with the California PUC that, as part of such a demonstration, the public utility transmission provider should explain how the data required from VERs are incorporated into the power production forecast and how the resulting forecast is used to support the management of operating costs and/or reserves or otherwise ensure that capacity costs incurred to provide Schedule 9 service are prudently incurred.

326. The Commission declines to require the additional forecasting-related showings suggested by NaturEner and others. The technologies and techniques for power production forecasting are still being refined and may differ from region to region. While the recommendations made by AWEA, Iberdrola, and NaturEner may be appropriate benchmarks for power production forecasts utilizing today's technology, the Commission believes that pre-defining these additional criteria would not provide the flexibility needed for public utility transmission providers to adopt new forecasting techniques or technologies as they are developed. The Commission also declines to adopt the further recommendations of the California PUC and others to include monitoring and reporting requirements for public utility transmission providers that engage in power production forecasting. The Commission finds adopting these requirements to be unnecessary at this time.

327. However, the Commission agrees with Iberdrola and others that the public utility transmission provider should make the results of any centralized forecast used by the public utility transmission provider available through a secure information exchange to VER generators providing related data. The Commission believes that the VERs should be able to access the results of the public utility transmission provider's forecast in order to ensure that the forecasting service is producing accurate results. Thus, public utility transmission providers proposing to require different transmission customers to purchase or otherwise account for different quantities of generator regulating reserves should explain in their proposals how forecasting results will be shared.

328. In response to comments regarding forecasting risk, the Commission clarifies that the transmission customer is responsible for the accuracy of transmission schedules and the public utility transmission provider is responsible for the reliability of its system. Therefore, the public utility transmission provider would utilize the power production forecast to identify the necessary amount of reserves and to use those reserves to maintain reliability of the transmission system. The obligation of the transmission customer is to submit schedules for deliveries. Power production forecasting is intended to inform the transmission provider regarding aggregate system variability that results from having VERs on its system, not to replace transmission schedules from transmission customers delivering from VERs. Public utility transmission providers using power production forecasts should do so to manage uncertainty in the same manner they use other forecasts of uncertainty for the transmission system. For example, despite service agreements to serve load, public utility transmission providers develop and use load forecasts to assure load can be met reliably and efficiently. Similarly, despite transmission schedules to deliver from a VER, public utility transmission providers should use power production forecasts to assure energy can be provided to load in a reliable and efficient manner.

329. Therefore, the Commission agrees with NorthWestern and others that the transmission customer maintains responsibility for the accuracy of its transmission schedule. However, we disagree with NorthWestern's interpretation concerning NERC Control Performance Standard 2 violations. A public utility transmission provider is not responsible for submitting a transmission schedule on behalf of a VER. As explained above, power production forecasting would be utilized to identify and acquire the appropriate amount of reserves needed to integrate VERs reliably. Nothing in this Final Rule alleviates the public utility transmission provider's obligations under NERC Reliability Standards.

330. The Commission declines to require transmission customers delivering from a VER to submit transmission schedules according to the public utility transmission provider's forecast, as suggested by Bonneville Power. While the public utility transmission provider is able to forecast the *aggregate* variability of the system with greater accuracy through centralized power production forecasting, the individual VER may be better able to produce the most accurate schedule for its particular facility. Requiring a transmission customer to submit transmission schedules for VER deliveries according to a centralized forecast would cloud the delineation between the obligations of the VER and the obligations of the public utility transmission provider with respect to the provision of transmission service.

331. The Commission disagrees with Puget's example, and clarifies that the public utility transmission provider's obligation should be to deploy its resources according to its own forecast in order to maintain the reliability of the system. The public utility transmission provider retains the risk and responsibility for inaccurate procurement of reserve requirements while the transmission customer retains the financial risk and responsibility for inaccurate schedules. The Commission finds that the incentive to avoid Schedule 9 generator imbalance penalties and any relevant charges for generator regulation service provides sufficient incentive for VERs to submit an accurate schedule.

332. The Commission agrees with National Grid and others that, as the entity providing transmission service under an OATT, the ISO or RTO would engage in power production forecasting within its region. In response to Pacific Gas & Electric and others requesting flexibility to implement power production forecasting, the Commission finds that the guidance provided affords sufficient flexibility to allow public utility transmission providers to tailor their forecasting programs to meet their needs, whether for the purpose of developing proposals for generator regulation charges or otherwise.

333. The Commission emphasizes that the foregoing discussion is intended to provide a framework to assist public utility transmission providers in

developing proposals for generator regulation service should they desire to do so. The Commission does not intend this guidance to preclude a public utility transmission provider from making an alternative proposal under section 205 of the FPA. However, it does provide guidance to public utility transmission providers regarding the facts and circumstances that the Commission may find relevant in evaluating such proposals.

334. A number of commenters challenged the Commission's proposal to condition proposals that require different transmission customers to purchase or otherwise account for different quantities of generator regulating reserves on performance of the activities discussed above. These arguments have largely been rendered moot by the Commission's decision not to adopt the Proposed Rule in that regard. Even as applied to the guidance provided above, the Commission disagrees that a future decision by the Commission to condition proposals that require different transmission customers to purchase or otherwise account for different quantities of generator regulating reserves on the performance of certain actions would violate cost causation principles or otherwise would preclude public utility transmission providers from recovering prudently incurred costs. In reviewing any future proposal to allocate a greater quantity of capacity costs to a particular set of transmission customers, it would be reasonable for the Commission to consider whether the public utility transmission provider has taken steps to mitigate such costs. This does not mean, as some commenters imply, that the public utility transmission provider has no other means to recover its costs. The public utility transmission provider could continue to rely on existing rate mechanisms to recover reserve costs or may propose to require a uniform quantity of generation regulating reserves from all transmission customers that is commensurate with transmission customers' proportionate effect on net system variability and taking diversity benefits into account.

335. The Commission agrees with commenters that implementing other reforms, such as consolidating balancing authority areas or implementing an ancillary services market, may be beneficial to the reliable and efficient integration of VERs. However, the Commission is not persuaded that these additional reforms are a necessary precondition to proposals that require different transmission customers to purchase or otherwise account for different quantities of generator regulating reserves. As noted in the Proposed Rule, many of these additional reforms are being discussed in other forums. The Commission will continue to monitor these proposals as they develop and modify our approach to this issue as appropriate as conditions develop.

3. Use of Contingency Reserves

a. Commission Proposal

336. In the Proposed Rule, the Commission sought comments from NERC and industry stakeholders on the steps needed to resolve confusion regarding the use of contingency reserves to manage extreme ramp events of VERs.[326] The Commission also sought comments from NERC and industry stakeholders on the extent to which some additional type of contingency reserve service (beyond the services provided under Schedule 5 and 6 of the *pro forma* OATT) would ensure that VERs are integrated into the interstate transmission system in a non-discriminatory manner while remaining consistent with NERC Reliability Standards.[327]

b. Comments

337. NERC indicates that large wind ramping events are similar to conventional generator contingency events in that they are large and relatively infrequent, yet they differ in that wind ramps are much slower than instantaneous contingency events and may be possible to forecast. NERC states that the use of contingency reserves to address wind ramps is similar to what is used to address large, relatively infrequent wind ramps because contingency reserves are seldom deployed, yet long ramp durations can make it difficult to include wind ramps as actual contingencies. NERC explains that Resource and Demand Balancing (BAL) Reliability Standard BAL–002 (Disturbance Control Performance) requires ACE to be restored 15 minutes following the disturbance (R4) and the contingency reserves to be restored within 105 minutes (90 minutes after the 15 minute disturbance recovery period—R6). NERC states that both of these requirements can be problematic for wind ramps because they can be longer than the disturbance recovery period as well as the reserve restoration period.

338. Still, NERC indicates that it may be appropriate to use contingency reserves in response to a portion of a wind ramp. NERC states that shared contingency reserves could be used to initiate the response, allowing time for alternate supply (or load reduction) to be implemented. NERC suggests that the industry consider developing rules governing reserve deployment and restoration, similar to those that currently address conventional contingencies.

339. Other commenters express openness to using contingency reserves for wind events.[328] Commenters indicate that there are discussions in the Northwest Power Pool (NWPP) about the use of contingency reserves for wind events.[329] AWEA contends that contingency reserves should be used for the initial period of an extreme wind ramp because both contingency events and extreme wind ramp events are very infrequent, and therefore, the use of contingency reserves for extreme wind ramp events would be highly unlikely to coincide with a need to use those reserves for a conventional generator's contingency event. NextEra urges the Commission to convene a technical conference to address how to deploy contingency reserves to address ramp events in a manner that will promote reliability.

340. Xcel indicates that there is confusion regarding the use of contingency reserves to manage extreme ramping events. Xcel states that the confusion arises as entities attempt to define the allowable triggering events for the activation of contingency reserves. Xcel recommends that the standard for contingency reserve activation include disturbances related to less-than-anticipated VER (e.g., wind) production, sudden drop-off of VER production, or associated ramp limitations on balancing resources due to forecast errors. Xcel contends that ramp events related to VERs are not necessarily caused by the sudden failure of generation, but instead may be due to an incorrect wind forecast or limited dispatchable generation response. For these reasons, Xcel recommends: (1) Expanding the definition of disturbances to include ramp events which may occur over a half-hour time frame; (2) including a measurement technique related to a ramp event in BAL–002; (3) identifying a specific

[326] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 100 (citing Schedule 5 (Operating Reserve—Spinning Reserve Service) and Schedule 6 (Operating Reserve—Supplemental Reserve Service) respond to contingency events. Spinning Reserve Service is used to serve load ''immediately in the event of a system contingency'' whereas Supplemental Reserve Service ''is not available immediately to serve load but rather within a short period of time.'').

[327] *Id.* P 100.

[328] *E.g.,* Powerex; NaturEner; California PUC; MidAmerican.

[329] *E.g.,* Powerex; Tacoma Power.

restoration period in BAL–002 (e.g., 45 minutes) related to contingency reserves that were deployed for ramping events; and (4) identifying compliance metrics and other issues related to deployment of contingency reserves for ramp-limited events. Xcel recommends that the Commission request that NERC begin a standards drafting process to consider revisions to the existing BAL–002 standard to address the issues discussed by Xcel.

341. Other commenters express reservations with using contingency reserves in response to wind events is an improper use of contingency reserves.[330] Duke indicates to the extent that there is a need for a new service to address VER ramp rates, a new rate schedule should be developed for such a service. Pacific Gas & Electric states that there may be a need for new integration services to incorporate VERs into the reliable operation of the grid. Pacific Gas & Electric submits that various industry activities are already underway to consider these issues, and the Final Rule should endorse their continued efforts.

c. Commission Determination

342. Based on comments received, the Commission concludes that the issues related to the appropriate use of contingency reserves under NERC Reliability Standards need further study and vetting before any action is considered. Indeed, comments range from expressing confusion over what would constitute an extreme VER event to asking the Commission to define ''ramp'' with some specificity. Rather than opining on any of the comments and risk providing guidance without the benefit of more information, the Commission finds that the better course of action is to allow industry to continue its work and direct our staff to monitor those efforts and engage industry as appropriate.

V. Other Issues

1. Regulatory Text

a. Commission Proposal

343. As part of the Proposed Rule, the Commission sought comment on a minor revision to 18 CFR 35.28. To date, when amending its regulations concerning the open access requirements of the *pro forma* OATT, the Commission has listed by name Commission rulemaking proceedings promulgating and amending the *pro forma* OATT when explaining the details of a public utility transmission provider's obligation to have an OATT on file with the Commission. The Commission proposed to no longer explicitly reference, by name, prior Commission rulemaking proceedings promulgating and amending the *pro forma* OATT in its regulations. Likewise, the Proposed Rule included a similar change with respect to a public utility transmission provider's obligation to have standard generator interconnection procedures and agreements and standard small generator interconnection procedures and agreements on file with the Commission.[331]

b. Comments

344. No comments were received on this aspect of the Proposed Rule.

c. Commission Determination

345. The Commission adopts its proposed minor revision to 18 CFR 35.28. We find that the existing process for amending regulations concerning the *pro forma* OATT, which necessitates listing by name Commission rulemaking proceedings promulgating and amending the *pro forma* OATT when explaining the details of a public utility transmission provider's obligation to have an OATT on file with the Commission, is increasingly cumbersome and provides little, if any, benefit. Thus, the Commission will no longer explicitly reference, by name, prior Commission rulemaking proceedings promulgating and amending the *pro forma* OATT in its regulations. Likewise, the Final Rule adopts a similar change with respect to a public utility transmission provider's obligation to have standard generator interconnection procedures and agreements and standard small generator interconnection procedures and agreements on file with the Commission.

2. Market Mechanisms

a. Comments

346. Several commenters ask the Commission to revise specific RTO and ISO market rules not at issue in the Proposed Rule, while other commenters seek to have the Commission address additional market mechanisms for the non-RTO and ISO areas. For example, Environmental Defense Fund states that the Proposed Rule does not reform the day-ahead market to increase VER participation and decrease the amount of costly out-of-market commitments, leading to unjust and unreasonable rates, and undue discrimination against VERs. In addition, ACSF asserts that scheduling in the day-ahead market and in the unit commitment process should be reformed. ACSF states that the technology that makes 15-minute schedules feasible in the spot market also makes reforms possible in these other areas. According to ACSF, it is important to prevent the least clean and efficient generation from dominating dispatch at all hours, especially in the unit commitment process.

347. Environmental Defense Fund further states that because VERs are only permitted to bid a portion of their capacity into the market, they generally receive a lower price. According to Environmental Defense Fund, many capacity markets require bidders to also participate in the day-ahead market, which most VERs do not do because of the financial risk associated with failing to meet day-ahead obligations. Thus, Environmental Defense Fund argues that the Commission must consider the available options to facilitate VER participation in capacity markets.

348. With regard to non-RTO regions, EPSA states that the Proposed Rule does not sufficiently address the lack of market mechanisms available in non-RTO regions to conventional generation resources, which have the ability to contribute to VERs integration. EPSA suggests that possible market mechanisms and other competitive options for integrating VERs in the non-RTO regions should be considered as part of the technical conference that EPSA has requested. Similarly, Independent Power Producers Coalition—West states that without an organized ISO or RTO market, public utilities must face regulatory pressure to advance their integration of VERs and sharing of data, otherwise the utilities have little incentive to move toward better integration between transmission providers and balancing authorities. Independent Power Producers Coalition—West contends that the lack of a competitive ancillary services market that would allow independent power producers the opportunity to provide generator imbalance services in WECC results in unjust and unreasonable rates.

349. Tres Amigas contends that Order Nos. 888 and 890 have left little room for a market to develop balancing services outside of an ISO/RTO, because the primary provider of these services, the balancing authority, has to acquire the capability to provide the ancillary services on behalf of all its transmission customers and then sell the services at cost-based rates. Tres Amigas states that the Commission should have a two-fold objective: (1) Determining how market

[330] *E.g.,* Tacoma Power; ENBALA; Grant PUD; California ISO; Duke; Pacific Gas & Electric.

[331] Proposed Rule, FERC Stats. & Regs. ¶ 32,664 at P 12 & n.29.

forces can identify and competitively price the resources that will be used by balancing authorities for balancing; and (2) establishing appropriate mechanisms for allocating the costs incurred by balancing authorities to acquire these resources in the marketplace. Further, Tres Amigas asserts that the Commission should grant market-based rates to new entrants in order to promote formation of a vibrant market for balancing services that includes participation by new technologies. Tres Amigas states that the balancing authorities should then file proposals to allocate the costs incurred to balance the system among load and generation (including generation within the control area that is scheduled to another control area). According to Tres Amigas, these cost allocation proposals should take into account the extent to which different market participants contribute to the costs of acquiring balancing services and benefit from such services.

350. Recycled Energy urges the Commission to consider implementing various payments designed to compensate efficient gas generators and combined heat and power facilities for the flexibility they provide to utilities. In addition, Recycled Energy asserts that the Commission could improve the grid's reliability and efficiency by encouraging the placement of distributed generators in ways that reduce line losses and obtain ancillary benefits. Similarly, Business Council asserts that the OATT should be revised to ensure that flexible resources (such as natural gas and pumped storage facilities) are better able to provide their services to system operators who integrate VERs, and that these services are properly valued. Business Council explains that flexible generation resources should be given more opportunities to sell their balancing services to transmission providers and should be paid a just and reasonable rate for these services. Business Council argues that if the Commission adopts a universal requirement for 15-minute scheduling, it should make clear that generators should be able to supply balancing services on the same 15-minute (or less) basis.

b. Commission Determination

351. The *pro forma* OATT terms and conditions of service create the platform by which the public utility transmission provider makes available non-discriminatory open, access transmission service. Since the issuance of Order No. 888, the Commission has taken numerous actions to ensure that the principles enunciated in that rule continue to remain true, allowing all types of resources—existing and new—access to the grid for the benefit of developing competitive markets. In response to commenters like Independent Power Producers-West, EPSA and Tres Amigas who assert that the Commission should take various steps to establish a competitive ancillary services market or other market mechanisms, we believe that the reforms in this Final Rule continue to facilitate the development of competitive markets without imposing any particular type of structure for doing so. The Commission allows third party sellers to make sales of ancillary services at market-based rates, requires all public utility transmission providers to offer open access transmission service and undertake open and transparent transmission planning, and allows transmission customers to self-supply their own ancillary services. The Commission has long-standing precedent on cost allocation and has long supported reserve sharing and power pooling arrangements. Nothing in this rule is intended to prevent or create a barrier to the further development of competitive markets. Indeed, we think that the reforms adopted herein should help to facilitate the further development of competitive markets by allowing transmission customers to tailor their transmission schedules and, in turn, better manage generator imbalance and ancillary services costs. As the liquidity of intra-hour energy products stabilizes, market participants also may begin to commit or otherwise acquire fewer reserves in advance, with the knowledge that they can purchase additional reserves on an as-needed basis from third parties. Requiring public utility transmission providers to offer intra-hour scheduling is a necessary predicate to facilitate these market opportunities.

352. For similar reasons we decline the request from Recycled Energy and Business Council to expand the scope of this rulemaking proceeding to include additional payments to flexible generation. Both commenters urge the Commission to adopt mechanisms that would increase payments to flexible generation resources, such as high-efficiency natural gas facilities, so as to properly value the flexibility they provide to transmission providers. The Commission has already addressed, in the context of the organized markets, compensation for resources providing frequency regulation and is currently exploring a similar issue in bilateral markets outside of RTOs and ISOs.[332] In this proceeding, the Commission is primarily concerned with providing reforms that will provide public utility transmission providers with greater awareness of the variability experienced on their systems, as well as providing transmission customers with a tool to manage imbalances from schedules by providing for 15-minute adjustments to schedules. How these public utility transmission providers choose to provide this service is beyond the scope of this inquiry.

353. With regard to commenters that request additional changes to the RTO and ISO day-ahead and capacity markets to facilitate VER integration, we fail to see the direct connection between the specific reforms of the Commission's Proposed Rule and the reforms requested. Commenters did not establish that connection and failed to demonstrate that the Commission's proposed reforms are unjust and unreasonable without the additional requested reforms. Instead, these commenters merely asked that the Commission extend the scope of the rule. As such, we find that commenters' requests that we require additional reforms to RTO/ISO day-ahead, residual unit commitment, and capacity market rules are beyond the scope of this proceeding.

354. Finally, we cannot allow sales of energy or capacity at unchecked rates, even by new entrants, as suggested by Tres Amigas.[333] As noted above, the Commission allows for sales at market-based rates upon a showing of lack of market power and is in the process of considering ways to streamline the market-based rate showing for certain ancillary services.[334]

c. Pipeline Transportation Nomination Procedures

i. Comments

355. Some commenters assert that if the Commission requires transmission providers to allow intra-hour transmission scheduling to accommodate VERs, the Commission must also consider the impact of such requirements on the operation of natural-gas-fired electric generation

[332] *See Frequency Regulation Compensation in the Organized Wholesale Power Markets,* Order No. 755, 76 FR 67260 (Oct. 31, 2011), FERC Stats. & Regs. ¶ 31,324 (2011); *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies,* 139 FERC ¶ 61,245 (NOPR).

[333] *See Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities,* Order No. 697, 72 FR 39904 (July 20, 2007), FERC Stats. & Regs. ¶ 61,295, at P 320 (2007).

[334] *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, 139 FERC ¶ 61,245 (NOPR).

units, and the concomitant need to modify pipeline transportation service nomination procedures to calibrate gas transportation and usage more closely with the operation of natural gas-fired electric generation units to support VERs.[335] Specifically, APPA contends that despite access to real-time electronic metering and flow control and technological advances that enable the electronic submission of gas nominations, the current time period used to process pipeline transportation service nominations and to schedule natural gas is the same time period (up to 4 hours) that was adopted over a decade and a half ago. APPA notes that this already substantial disconnect between the nomination and scheduling procedures used in the natural gas and electric power industries will only become more severe if intra-hour scheduling is adopted. Similarly, Joint Parties request that the Commission open a companion docket to examine barriers that may exist in the natural gas industry that inhibit the timely access to natural gas that is needed to ensure the seamless integration of VERs.[336]

356. American Gas and INGAA state that gas transmission systems have developed innovative services to accommodate the needs of gas-fired generators to access gas supplies quickly in response to electric system dispatch orders. American Gas and INGAA explain that these offerings demonstrate that individual, tailored solutions may better address gas-electric coordination concerns than a modification of the gas nomination schedule. For this reason, American Gas encourages the Commission to continue to be open to creative market solutions to meet the needs of gas-fired generators in ways that do not unnecessarily affect existing shippers in adverse ways. American Gas also encourages the Commission to hold a technical conference or other non-NAESB forum to discuss ways in which the natural gas and electric industries can work together.

357. American Gas further contends that the Commission's consideration of gas-electric coordination issues should not focus narrowly on the gas nomination and scheduling cycle as a primary solution to the reliability issues which both industries face. While American Gas believes that a single, nationwide gas nomination schedule is essential to the efficient functioning of the natural gas system, a modification to that schedule alone is not the most effective means to address gas-electric coordination issues.

358. AEP adds that while the proposed scheduling option appears on the surface to be feasible within the power industry, the increased quantity of VERs and subsequent increased ramping capability requirements will further exacerbate the operational difficulties associated with the varied scheduling timelines existing between the gas and power industries. AEP concludes that such discrepancies place the gas-fired generation operators, whose typically superior ramping capabilities will become increasingly beneficial, in a position of speculating on fuel supply needs because they are unsure whether the increase in variable generation will mean an increased need for the faster ramping capabilities of gas.

359. AEP notes that these differences have existed for many years, and managing them has become more challenging with the introduction of RTO-administered markets, as unit commitment is generally made by the RTO, and not the individual asset owner. AEP argues that any proposed scheduling practices related to incremental VER penetration must account for such inter-market dependencies.

360. Spectra Entities notes that the interface issues between the gas and electric industries go beyond revisiting coordinating and the gas/electric scheduling timelines. Spectra Entities argues that there are regulatory policy and market barriers discouraging the electric industry in some markets from contracting for adequate firm gas supply and firm transportation arrangements to serve those generators which must run in order to maintain the reliability of the electric grid. For example, the Commission's ''no-bump'' policy and the need to coordinate scheduling of interruptible services are irrelevant during peak or high load days in natural gas markets, because interruptible capacity is rarely available on the pipeline grid under those conditions. Spectra Entities argue that unless these barrier issues are addressed, any changes to coordination and scheduling or the offering of innovative transportation solutions will not be sufficient to achieve the Commission's goals.

ii. Commission Determination

361. While comments asking the Commission to undertake reforms to natural gas pipeline rules and procedures in order to facilitate greater cross-market coordination are beyond the scope of this proceeding, we agree that the interdependence of these two industries merits careful attention. The Commission has recently addressed proposed changes to the gas pipeline nomination procedures. In the past, the Commission has urged the industry, working through NAESB, to consider changes to its nomination procedures to provide better coordination between gas and electric scheduling.[337] More recently, in Order No. 587–U, the Commission acknowledged that NAESB lacked consensus to implement any such changes and did not find a nationwide scheduling solution in response to concerns over gas pipeline nomination procedures (including the ''no-bump'' rule).[338] While eschewing nationwide changes, Order No. 587–U emphasized that ''individual pipelines may be able to offer special services or increased nomination opportunities that better fit the profile of gas-fired generation.'')[339] In fact, some pipelines have begun to offer special services to facilitate the flexibility needs of gas-fired generation.[340]

362. On March 30, 2012, a number of entities submitted further comments on gas-electric coordination issues in response to a notice issued in Docket No. AD12–12–000 that requested comments in response to a set of questions and other text concerning gas-electric interdependence issued by Commissioner Moeller on February 3, 2012. The Commission is currently evaluating these comments to determine what, if any, additional steps would be appropriate to take to facilitate coordination between the gas and electric industries.

3. Power Factor Design

a. Comments

363. Midwest ISO Transmission Owners state that Order No. 661 exempted wind generators from having to maintain power factor design criteria absent a specific finding in the relevant system impact study that the generator needs to maintain a specific power factor in order to ensure safety and reliability. Midwest ISO Transmission Owners submit that the Commission should convene a technical conference to examine this issue, or allow

[335] *E.g.,* Joint Parties; TVA; Midwest Energy; APPA.

[336] TVA contends that the Commission should reevaluate its policy of not allowing a firm gas transportation holder to take precedence over (i.e., bump) a non-firm customer, because gas-fired generators paying for firm gas transportation service must be able to support electric needs in general and in integrating VERs specifically.

[337] *See Standards for Business Practices for Interstate Natural Gas Pipelines: Standards for Business Practices for Public Utilities,* Order No. 698, FERC Stats, & Regs ¶ 31,251, at P 69 (2007).

[338] Order No. 587–U, FERC Stats. & Regs. ¶ 31,307 at P 27.

[339] *Id.*

[340] *See Texas Gas Transmission LLC,* 138 FERC ¶ 61,176 (2012).

individual transmission providers to file to eliminate this exemption from their *pro forma* LGIAs or generator interconnection agreements. Midwest ISO Transmission Owners explain that wind and other VERs have obtained significant penetration levels in many areas of the country, such that wind is no longer a new technology that needs protection. Midwest ISO Transmission Owners contend that eliminating this exemption will ensure that wind does not receive an unfair competitive basis.

b. Commission Determination

364. Since issuance of the Proposed Rule in this proceeding, the Commission has directed staff to convene a technical conference in Docket No. AD12–10–000 to examine whether the Commission should reconsider or modify the reactive power provisions of Order No. 661–A and examine what evidence could be developed under Order No. 661 to support a request to apply reactive power requirements more broadly than to individual wind generators during the interconnection study process.[341] The Commission concludes that potential issues regarding the exemption provided under Order No. 661–A are better addressed in that proceeding.

VI. Compliance

A. Commission Proposal

365. In the Proposed Rule, the Commission indicated that each public utility transmission provider must submit a compliance filing within six months of the effective date of the Final Rule revising its OATT and LGIA to demonstrate compliance with the Final Rule. The Commission indicated that to demonstrate compliance, a public utility transmission provider must file: (1) Revisions to its OATT to implement 15-minute scheduling; (2) revisions to its LGIA to include a requirement for interconnection customers whose generating facility is a VER to provide data to the public utility transmission provider when the public utility transmission provider is developing and deploying power production forecasting for VERs; and (3) the addition of Schedule 10 to the OATT, which includes the same per unit rate from their currently effective Schedule 3, and a blank or unfilled volumetric component, among other things.

366. The Commission acknowledged that public utility transmission providers may have provisions in their existing OATTs and LGIAs that the Commission has deemed to be consistent with or superior to the *pro forma* OATT and LGIA. The Commission indicated that where these provisions are being modified by the Final Rule, public utility transmission providers must either comply with the Final Rule or demonstrate that these previously-approved variations continue to be consistent with or superior to the *pro forma* OATT and LGIA as modified by the Final Rule.

367. The Commission also proposed that transmission providers that are not public utilities would have to adopt the requirements of the Final Rule as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888.[342]

B. Comments

368. Commenters addressing the six month timeframe generally argue that the proposed compliance deadline does not provide enough time for the industry to implement intra-hour scheduling effectively.[343] Specifically, commenters assert that additional time is needed to allow transmission providers time to: (1) Develop necessary revisions to inter-regional agreements and procedures, and finish ongoing pilot programs; and (2) evaluate all potential impacts to operations and address issues regarding reliability via NERC, and perhaps business standards via NAESB.

369. Southern California Edison argues that regional differences and the need to implement intra-hour scheduling efficiently require careful consideration of each region's scheduling rules. Specifically, Southern California Edison suggests that the Commission provide three years to implement 30-minute scheduling followed by an 18–24 month evaluation period before deciding if 15-minute intra-hour scheduling is necessary. Pacific Gas & Electric recommends that the Commission lengthen the implementation timeline for intra-hour scheduling, so that regional technical conferences on intra-hour scheduling can be convened for affected transmission providers, and so that ongoing pilot studies on intra-hour scheduling may be completed.

370. NorthWestern comments that six months is insufficient time for a compliance filing implementing the intra-hour scheduling requirements of the Proposed Rule. NorthWestern argues that compliance will include, but not be limited to, implementation of software and hardware upgrades, adoption of common regional scheduling practices in the region with jurisdictional and non-jurisdictional balancing authorities, and hiring and properly training of additional staff. NorthWestern encourages the Commission to be flexible and allow balancing authorities the ability to define implementation timeframes, perhaps up to one year before the compliance filing is due.

371. Commenters also point more generally to areas of the Proposed Rule that may require additional time for compliance. Midwest ISO Transmission Owners state, for example, that additional time may be needed to make changes that are highly technical or require an extensive stakeholder process to implement.[344] Midwest ISO suggests that at least 18 months should be allotted for transmission providers to submit compliance filings revising their OATT, LGIA, or other documents.[345] MidAmerican recommends that sufficient time be allocated so that transmission providers may (1) evaluate and address all potential impacts to operations and reliability and (2) be afforded the necessary time to procure resources, develop and adopt administrative processes, conduct training, and perform testing and validation critical to successfully effectuate the proposed reforms.

372. EEI suggests that the Commission not require the changes set forth in the Proposed Rule until the regional planning and cost allocation Final Rules have gone through any rehearing and legal challenges that may develop. On the other hand, Iberdrola supports the Commission's proposal to require a compliance filing within six months; however, if the Commission extends the deadline, Iberdrola recommends that implementation of Schedule 10 occur coincidentally with the implementation of the other two proposed operational changes.

C. Commission Determination

373. The Commission extends the deadline for compliance filings by 6 months so that public utility transmission providers will have 12 months from the effective date of this Final Rule to submit their compliance filings. The Commission also provides the *pro forma* tariff language that public utility transmission providers must include in their OATTs and LGIAs, with modifications to the language based

[341] *Reactive Power Resources,* Notice of Technical Conference, Docket No. AD12–10–000 (issued Feb. 17, 2012).

[342] Order No. 888, FERC Stats. & Regs. at 31,760–763.

[343] *E.g.,* MidAmerican; EEI; FriiPwr; NRECA; Southern California Edison; Pacific Gas & Electric; Grant PUD; NextEra; PNW Parties; Powerex; NV Energy; New York ISO; ISO/RTO Council.

[344] Midwest ISO Transmission Owners at 16.

[345] Midwest ISO at 15.

upon the comments received, as discussed within the body of this Final Rule.[346]

374. Consistent with the discussion in the intra-hourly scheduling section, the Commission requires public utility transmission providers to revise their OATTs to provide an opportunity for transmission customers to submit transmission schedules at 15-minute intervals within 12 months of the effective date of this Final Rule.[347] Public utility transmission providers with provisions in their existing OATTs that the Commission has deemed to be consistent with or superior to the *pro forma* OATT being modified by the Final Rule can seek to demonstrate in their compliance filings that those previously-approved variations continue to be consistent with or superior to the *pro forma* OATT as modified by the Final Rule. In addition, public utility transmission providers may submit alternative proposals that are consistent with or superior to the intra-hour scheduling requirements of this Final Rule and are otherwise just and reasonable and not unduly discriminatory or preferential.[348]

375. Consistent with the discussion in the data reporting section, the Final Rule modifies the compliance obligation set forth in the Proposed Rule and requires public utility transmission providers to modify their *pro forma* LGIAs to effectuate the data reporting requirement within 12 months of the effective date of this Final Rule rather than the six months initially proposed.[349] The Commission adopts proposed Article 8.4 of the *pro forma* LGIA, as modified per the discussion in the data reporting section. The Commission also adopts the proposed definition of VER. The Commission appreciates that public utility transmission providers in some regions, including RTOs and ISOs, have already implemented meteorological or forced outage reporting under relevant tariffs, business practices and/or markets rules. Such public utility transmission providers may seek to demonstrate in their compliance filings how continued use of these existing tariffs, business practices and/or market rules is adequate to satisfy the requirements of this Final Rule using the independent entity variation standard set forth in Order No. 2003, if relevant, or by demonstrating variations from the *pro forma* OATT are consistent with or superior to the requirements of this Final Rule.[350]

376. The Commission concludes that 12 months is a reasonable amount of time to implement the requirements of this Final Rule. Many public utility transmission providers have already implemented some form of sub-hourly scheduling, resolving many of the issues that must be addressed in order to accept transmission schedules on a 15-minute interval. Twelve months also is an adequate amount of time for public utility transmission providers to determine the extent to which meteorological and forced outage data are necessary to support power production forecasting. Although we are extending the compliance deadline to 12 months from the compliance schedule in the Proposed Rule, we do not believe that more than 12 months will be necessary. Therefore, we will not extend the compliance deadline beyond 12 months, nor will we adopt commenters' other proposed recommendations.

377. Finally, the Commission also adopts the proposal that transmission providers that are not public utilities must adopt the requirements of the Final Rule as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888.[351]

VII. Information Collection Statement

378. The Office of Management and Budget (OMB) regulations require approval of certain information collection and data retention requirements imposed by agency rules.[352] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

379. The Commission is submitting the proposed modifications to its information collections to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[353] In the Proposed Rule, the Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. The Commission also included a table that listed the estimated public reporting burdens for the proposed reporting requirements, as well as a projection of the costs of compliance for the reporting requirements.

380. The Commission did not receive any comments specifically addressing the burden estimates provided in the Proposed Rule. However, commenters did respond to questions in the NOPR regarding the specific hardware, software, and personnel changes that are necessary to implement intra-hour scheduling. As noted in Section IV above, some parties argue that the cost to implement intra-hour scheduling will be modest, while other commenters state that implementation costs may be significant. In addition to the Commission's responses to the comments previously provided, the Commission believes that the revised burden estimates below are representative of the average burden on respondents.

381. In the Final Rule, the Commission adds two burden categories that were not included in the Proposed Rule burden estimates. First, the Commission includes a burden estimate for transmission providers who choose to share power production forecast results with VERs. Second, the Commission includes a burden estimate for transmission providers who choose to voluntarily share VER-provided meteorological and forced outage data with third parties. Neither of these additional categories is required under the Final Rule. However, the Commission assumes that all Transmission Providers will implement these changes for the purposes of calculating a burden estimate. The Commission also notes that certain VERs will have increased burden due to submission of intra-hour schedules to transmission providers. However, the Commission assumes that only VERs who choose to participate in intra-hour scheduling are those who will receive at

[346] *See* Appendix A and B for the adopted *pro forma* OATT and LGIA provisions consistent with this Final Rule.

[347] *See* Appendix A for the revised section 13.8 and 14.6 of the *pro forma* OATT provisions consistent with this Final Rule. As *noted supra* § IV.A.1 (Intra-Hour Scheduling Requirement), the implementation of 15-minute scheduling will only apply to intertie transactions in organized wholesale energy markets.

[348] *See supra* § IV.A.1 (Intra-Hour Scheduling Requirement).

[349] *See* Appendix B for the revisions to the *pro forma* LGIA consistent with this Final Rule. Specifically, a new Article 8.4 and a new definition in Article 1 have been added to the *pro forma* LGIA and conforming revisions have been made to the table of contents.

[350] *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 910.

[351] Order No. 888, FERC Stats. & Regs. at 31,760–63.

[352] 5 CFR 1320.11(b).

[353] 44 U.S.C. 3507(d).

least as much benefit as the cost that must be expended. For this reason, the Commission is not including a burden estimate for this category in the table below.

Burden Estimate and Information Collection Costs: The estimated Public Reporting burden and cost for the requirements contained in this Final Rule follow.

Data collection FERC 516 (as contained in Final Rule in RM10–11)	Number and type of respondents (1)	Number of responses per respondent (2)	Hours per response (3)	Total annual hours (1 × 2 × 3)
Conforming tariff changes to require intra-hourly scheduling, waiver, or deviation request; and rate treatment terms for Ancillary Service.	142 Transmission Providers.[354]	1	8 first year only	1,136 first year only.
Implementation of intra-hourly scheduling	142 Transmission Providers.	1	30 reoccurring	4,260 reoccurring.
Conforming changes to LGIA.[355]	142 Transmission Providers.	1	20 first year only	2,840 first year only.
Sharing of power production forecasting results with VER.	142 Transmission Providers.	1	30 reoccurring	4,260 reoccurring.
Sharing of VER provided meteorological and forced outage data with third party entities (e.g. NOAA, balancing authority area).	142 Transmission Providers.	1	30 reoccurring	4,260 reoccurring.
Provision of meteorological and forced outage data to public utility transmission providers for use in power production forecasting.[356]	160 Interconnection Customers with VERs per year.[357]	1	60 reoccurring	9,600 reoccurring.
Totals				26,356 first year + reoccurring.[358]
				22,380 subsequent years.[359]

Cost to Comply: The Commission has projected the total cost of compliance to be $3,004,584 in the first year, and $2,551,330 each year after.

Total Annual Hours in the first year (26,356 hours) @ $114 an hour [average cost of attorney ($200 per hour), consultant ($150), technical ($80), and administrative support ($25)] = $3,004,584.

Total Annual Hours in subsequent years (22,380 hours) @ $114 an hour = $2,551,320.

Title: FERC–516, Electric Rate Schedules and Tariff Filings

Action: Proposed Collection.

OMB Control No. 1902–0096.

Respondents for this Rulemaking: Transmission Providers (an RTO or ISO also may file some materials on behalf of its members) and Variable Energy Resources.

Frequency of Information: As indicated in the table.

Necessity of Information: The Federal Energy Regulatory Commission is adopting these amendments to the *pro forma* OATT to remedy operational challenges related to the increased integration of VERs to the bulk electric system. The purpose of this Final Rule is to strengthen the *pro forma* OATT, so VERs can be reliably and efficiently integrated into the electric grid and to ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential. This Final Rule seeks to achieve this goal by amending the *pro forma* OATT and LGIA to incorporate provisions that require intra-hourly transmission scheduling and require interconnection customers whose generating facilities are VERs to provide meteorological and operational data to public utility transmission providers for the purpose of power production forecasting. The Commission also provides guidance regarding the development of proposals for generator regulation service.

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

382. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], email: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873. Comments concerning the collection of information and the associated burden estimate(s), may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax (202) 395–7285]. Due to security concerns, comments should be sent electronically to the following email address:

[354] The Commission estimated in the NOPR that 134 transmission providers would have additional burdens due to the Proposed Rule. Since then, the Commission has identified eight additional transmission providers who are non-public utilities that file reciprocity open access transmission tariffs that are also expected to voluntarily comply with this rule.

[355] Consistent with the approach taken in Order No. 2003, public utility transmission providers with power production forecasting systems in place via tariff provisions and/or other mechanisms will be required to demonstrate that deviations from the *pro forma* LGIA are consistent with or superior to the *pro forma* LGIA.

[356] Once a data exchange is implemented, the Commission expects that this process will be automated and require little to no day to day burden.

[357] The Commission estimates that there will be approximately 160 VERs that will sign an LGIA each year during the period from July 2012–July 2015 potentially subject to this requirement. This update from the NOPR represents more recent data.

[358] First year hours total 26,356, the sum of first year and reoccurring hours.

[359] Annual hours total 22,380, the sum of all reoccurring hours.

oira_submission@omb.eop.gov. Comments submitted to OMB should include OMB Control No. 1902–0096 and Docket No. RM10–11–000.

VIII. Environmental Analysis

383. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[360] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Rule under § 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.[361]

IX. Regulatory Flexibility Act Analysis

384. The Regulatory Flexibility Act of 1980 (RFA)[362] generally requires a description and analysis of Final Rules that will have a significant economic impact on a substantial number of small entities. This Final Rule applies to public utilities that own, control or operate interstate transmission facilities[363] and to variable energy resources. The total estimated number of small public utility transmission providers[364] impacted by this Final Rule is estimated to be ten. The Commission assumes that the Final Rule will impact all the applicable small transmission providers equally at an average cost of $13,500 per year. The Commission does not consider this to be a significant economic impact. In any event, each of these entities may seek waiver of these requirements.[365] The Commission estimates that all of the applicable VERs (160 per year) are small. Of these 160 entities, approximately 100 that are greater than 20 MW will be required to comply with the Final Rule and approximately 60 that are 20 MW or less will have the option to comply with the rule. The Commission estimates that each VER will have an average cost of $6,800 per year because of the Final Rule. The Commission does not consider this to be a significant economic impact on these small entities. The costs incurred by VERs due to this rule are offset by an expected reduction in energy imbalance penalties that will be assessed to VERs in the future due to improved forecasting and reduced uncertainty across 15-minute scheduling periods compared to hour-long scheduling periods. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

X. Document Availability

385. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

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

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

XI. Effective Date and Congressional Notification

388. These regulations are effective September 11, 2012. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit this Final Rule to both houses of Congress and the Government Accountability Office.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission. Commissioner LaFleur is dissenting in part with a separate statement attached.

Commissioner Clark voting present.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 71–7352.

■ 2. Amend § 35.28 as follows:
■ a. Paragraphs (c)(1) introductory text and (c)(1)(i) through (c)(1)(iii) are revised.
■ b. Paragraphs (c)(1)(v) and (c)(1)(vi) are revised.
■ c. Paragraphs (c)(3) introductory text and (c)(3)(ii) are revised.
■ d. Paragraph (c)(4) is revised.
■ e. Paragraph (d) is revised.
■ f. Paragraphs (e)(1) introductory text, (e)(1)(ii), and (e)(2) are revised.
■ g. Paragraphs (f)(1) introductory text and (f)(1)(i) are revised.
■ h. Paragraphs (f)(1)(ii) through (f)(1)(iv) are removed and reserved.
■ i. Paragraph (f)(3) is revised.
■ j. Paragraph (f)(4) is removed.

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(c) *Non-discriminatory open access transmission tariffs.*

(1) Every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce must have on file with the Commission an open access transmission tariff of general applicability for transmission services, including ancillary services, over such facilities. Such tariff must be the *pro forma* tariff promulgated by the Commission, as amended from time to time, or such other tariff as may be approved by the Commission consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

[360] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[361] 18 CFR 380.4(a)(15) (2010).

[362] 5 U.S.C. 601–612 (2006).

[363] Other than those that have received waiver of the obligation to comply with Order Nos. 888, 889, and 890.

[364] A ''small entity'' as referenced in the RFA refers to the definition provided in section 3 of the Small Business Act where a firm is ''small'' if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

[365] The criteria for waiver that would be applied under this rulemaking for small entities is unchanged from that used to evaluate requests for waiver under Order Nos. 888, 889, and 890.

(i) Subject to the exceptions in paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(iv), and (c)(1)(v) of this section, the open access transmission tariff, which tariff must be the *pro forma* tariff required by Commission rulemaking proceedings promulgating and amending the *pro forma* tariff, and accompanying rates must be filed no later than 60 days prior to the date on which a public utility would engage in a sale of electric energy at wholesale in interstate commerce or in the transmission of electric energy in interstate commerce.

(ii) If a public utility owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce, it must file the revisions to its open access transmission tariff required by Commission rulemaking proceedings promulgating and amending the *pro forma* tariff, pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

(iii) If a public utility owns, controls, or operates transmission facilities used for the transmission of electric energy in interstate commerce, such facilities are jointly owned with a non-public utility, and the joint ownership contract prohibits transmission service over the facilities to third parties, the public utility with respect to access over the public utility's share of the jointly owned facilities must file the revisions to its open access transmission tariff required by Commission rulemaking proceedings promulgating and amending the *pro forma* tariff pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

* * * * *

(v) If a public utility obtains a waiver of the tariff requirement pursuant to paragraph (d) of this section, it does not need to file the open access transmission tariff required by this section.

(vi) Any public utility that seeks a deviation from the *pro forma* tariff promulgated by the Commission, as amended from time to time, must demonstrate that the deviation is consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

* * * * *

(3) Every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce, and that is a member of a power pool, public utility holding company, or other multi-lateral trading arrangement or agreement that contains transmission rates, terms or conditions, must have on file a joint pool-wide or system-wide open access transmission tariff, which tariff must be the *pro forma* tariff promulgated by the Commission, as amended from time to time, or such other open access transmission tariff as may be approved by the Commission consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

* * * * *

(ii) For any power pool, public utility holding company or other multi-lateral arrangement or agreement that contains transmission rates, terms or conditions and that is executed on or before May 14, 2007, a public utility member of such power pool, public utility holding company or other multi-lateral arrangement or agreement that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce must file the revisions to its joint pool-wide or system-wide open access transmission tariff required by Commission rulemaking proceedings promulgating and amending the *pro forma* tariff pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

* * * * *

(4) Consistent with paragraph (c)(1) of this section, every Commission-approved ISO or RTO must have on file with the Commission an open access transmission tariff of general applicability for transmission services, including ancillary services, over such facilities. Such tariff must be the *pro forma* tariff promulgated by the Commission, as amended from time to time, or such other tariff as may be approved by the Commission consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

(i) Subject to paragraph (c)(4)(ii) of this section, a Commission-approved ISO or RTO must file the revisions to its open access transmission tariff required by Commission rulemaking proceedings promulgating and amending the *pro forma* tariff pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

(ii) If a Commission-approved ISO or RTO can demonstrate that its existing open access transmission tariff is consistent with or superior to the *pro forma* tariff promulgated by the Commission, as amended from time to time, the Commission-approved ISO or RTO may instead set forth such demonstration in its filing pursuant to section 206 in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

(d) *Waivers.* A public utility subject to the requirements of this section and Order No. 889, FERC Stats. & Regs. ¶ 31,037 (Final Rule on Open Access Same-Time Information System and Standards of Conduct) may file a request for waiver of all or part of the requirements of this section, or Part 37 (Open Access Same-Time Information System and Standards of Conduct for Public Utilities), for good cause shown. Except as provided in paragraph (f) of this section, an application for waiver must be filed no later than 60 days prior to the time the public utility would have to comply with the requirement.

(e) *Non-public utility procedures for tariff reciprocity compliance.*

(1) A non-public utility may submit an open access transmission tariff and a request for declaratory order that its voluntary transmission tariff meets the requirements of Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

* * * * *

(ii) If the submittal is found to be an acceptable open access transmission tariff, an applicant in a Federal Power Act (FPA) section 211 or 211A proceeding against the non-public utility shall have the burden of proof to show why service under the open access transmission tariff is not sufficient and why a section 211 or 211A order should be granted.

(2) A non-public utility may file a request for waiver of all or part of the reciprocity conditions contained in a public utility open access transmission tariff, for good cause shown. An application for waiver may be filed at any time.

(f) *Standard generator interconnection procedures and agreements.*

(1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard interconnection procedures and

agreement and the standard small generator interconnection procedures and agreement required by Commission rulemaking proceedings promulgating and amending such interconnection procedures and agreements, or such other interconnection procedures and agreements as may be required by Commission rulemaking proceedings promulgating and amending the standard interconnection procedures and agreement and the standard small generator interconnection procedures and agreement.

(i) Any public utility that seeks a deviation from the standard interconnection procedures and agreement or the standard small generator interconnection procedures and agreement required by Commission rulemaking proceedings promulgating and amending such interconnection procedures and agreements, must demonstrate that the deviation is consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending such interconnection procedures and agreements.

* * * * *

(3) A public utility subject to the requirements of this paragraph (f) may file a request for waiver of all or part of the requirements of this paragraph (f), for good cause shown.

* * * * *

Note: The following appendices will not be published in the *Code of Federal Regulations.*

Appendix A: List of Short Names of Commenters on the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking on Integration of Variable Energy Resources—Docket No. RM10–11–000, November 2010

Short name or acronym	Commenter
A123	A123 Systems, Inc.
AEP	American Electric Power Service Corporation
ALLETE	ALLETE Inc.
ACSF	American Clean Skies Foundation
Alstom	Alstom Grid, Inc.
American Gas	American Gas Association
APPA	American Public Power Association
Argonne National Lab	Argonne National Laboratory
Arizona Corporation Commission	Arizona Corporation Commission
Avista	Avista Corporation
AWEA	American Wind Energy Association
Beacon Power	Beacon Power Corporation
Bonneville Power	Bonneville Power Administration
BP Companies	BP Energy Company and BP Wind Energy North America, Inc.
BrightSource	BrightSource Energy, Inc.
Business Council	Business Council for Sustainable Energy
CESA	California Energy Storage Alliance
California State Water Project	California Department of Water Resources State Water Project
California ISO	California Independent System Operator Corporation
California PUC	California Public Utilities Commission
CEERT	Center for Energy Efficiency and Renewable Technologies
Center for Rural Affairs	Center for Rural Affairs
CMUA	California Municipal Utilities Association; Cities of Alameda, Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Corona, Glendale, Gridley, Healdsburg, Hercules, Lodi, Lompoc, Moreno Valley, Needles, Palo Alto, Pasadena, Pittsburg, Rancho Cucamonga, Redding, Riverside, Roseville, Santa Clara, Shasta Lake, Ukiah, and Vernon; the Imperial, Merced, Modesto, and Turlock Irrigation Districts; the Northern California Power Agency; Southern California Public Power Authority; Transmission Agency of Northern California; Lassen Municipal Utility District; Power and Water Resources Pooling Authority; Sacramento Municipal Utility District; the Trinity and Truckee Donner Public Utility Districts; the Metropolitan Water District of Southern California; and the City and County of San Francisco, Hetch-Hetchy
Clean Line	Clean Line Energy Partners, LLC
CGC	Coalition for Green Capital
Defenders of Wildlife	Wilderness Society and Defenders of Wildlife
Detroit Edison	Detroit Edison Company
Dominion	Dominion Resources Services, Inc.
Duke	Duke Energy Corporation
EEI	Edison Electric Institute
ELCON	Electricity Consumers Resource Council
EPSA	Electric Power Supply Association
ENBALA	ENBALA Power Networks
Entergy	Entergy Services, Inc.
Environmental Defense Fund	Environmental Defense Fund
E.ON C&R	E.ON Climate & Renewables North America
Exelon	Exelon Corporation
Federal Trade Commission	Federal Trade Commission
FirstEnergy	FirstEnergy Service Company
First Wind	First Wind Energy, LLC
FriiPwr	FriiPwr USA Ltd
Grant PUD	Public Utility District No. 2 of Grant County, Washington
Grays Harbor PUD	Public Utility District No. 1 of Grays Harbor County, Washington
Iberdrola	Iberdrola Renewables, Inc.
Idaho Power	Idaho Power Company
Independent Energy Producers	Independent Energy Producers Association

Short name or acronym	Commenter
Independent Power Producers Coalition-West	Arizona Competitive Power Alliance; Colorado Independent Energy Association; Independent Energy Producers Association (California); New Mexico Independent Power Producers Coalition; and the Northwest & Intermountain Power Producers Coalition.
INGAA	Interstate Natural Gas Association of America
Invenergy Wind	Invenergy Wind Development LLC
ISO New England	ISO New England Inc. and the New England Power Pool
ISO/RTO Council	Alberta Electricity System Operator; California Independent System Operator; Electric Reliability Council of Texas; Independent Electricity System Operator of Ontario; ISO New England, Inc.; Midwest Independent Transmission System Operator, Inc.; New Brunswick System Operator; New York Independent System Operator, Inc.; PJM Interconnection, L.L.C.; and Southwest Power Pool, Inc.
ITC Companies	ITC*Transmission;* Michigan Electric Transmission Company, LLC; ITC Midwest LLC; and ITC Great Plains, LLC
Joint Parties	Arizona Public Service Company; The Boeing Company, El Paso Electric; New York Independent System Operator; Old Dominion Electric Cooperative; PJM Interconnection, L.L.C.; Salt River Project Agriculture Improvement and Power District; Southwest Power Pool; Tennessee Valley Authority; Tucson Electric Power Company; UNS Gas, Inc.; and the Vermont Department of Public Service
Joint Initiative	Joint Initiative Facilitators
Large Public Power Council	Austin Energy; Chelan County Public Utility District No. 1; Clark Public Utilities, Colorado Springs Utilities; CPS Energy (San Antonio); ElectriCities of North Carolina; Grant County Public Utility District; IID Energy (Imperial Irrigation District); JEA (Jacksonville, FL); Long Island Power Authority; Los Angeles Department of Water and Power; Lower Colorado River Authority; MEAG Power; Nebraska Public Power District; New York Power Authority; Omaha Public Power District; Orlando Utilities Commission; Platte River Power Authority; Puerto Rico Electric Power Authority; Sacramento Municipal Utility District; Salt River Project; Santee Cooper; Seattle City Light; Snohomish County Public Utility District No. 1; and Tacoma Public Utilities
LADWP	Department of Water and Power of the City of Los Angeles
Massachusetts DPU	Massachusetts Department of Public Utilities
MidAmerican	MidAmerican Energy Holdings Company
Midwest Energy	Midwest Energy, Inc.
Midwest ISO	Midwest Independent Transmission System Operator, Inc.
Midwest ISO Transmission Owners	Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri; Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc. (''Hoosier''); Indiana Municipal Power Agency; Indianapolis Power & Light Company (''IPL''); Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc. (''Xcel Energy''); NorthWestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.
M–S–R Public Power Agency	Modesto Irrigation District; City of Santa Clara, California; and City of Redding, California
Montana PSC	Montana Public Service Commission
NEMA	National Electrical Manufacturers Association
National Grid	National Grid USA
NRECA	National Rural Electric Cooperative Association
Natural Gas	Natural Gas Supply Association
NaturEner	NaturEner USA, LLC
NE Conference of PUCs	New England Conference of Public Utilities Commissioners
NESCOE	New England States Committee on Electricity
NV Energy	Nevada Power Company and Sierra Pacific Power Company
New York ISO	New York Independent System Operator, Inc.
NextEra	NextEra Energy, Inc.
NERC	North American Electric Reliability Corporation
NAESB	North American Energy Standards Board
NOAA	National Oceanic and Atmospheric Administration
NorthWestern	NorthWestern Corporation
Organization of Midwest ISO States	Organization of Midwest ISO States
Oregon & New Mexico PUC	Public Utility Commissioners of Oregon and New Mexico and Paul Newman, Arizona Commissioner
Pacific Gas & Electric	Pacific Gas and Electric Company
PNW Parties	Avista Corporation; the Bonneville Power Administration; Idaho Power Company; NorthWestern Corporation, dba NorthWestern Energy; PacifiCorp; Portland General Electric Company; the Public Generating Pool (Tacoma Power, Eugene Water and Electric Board, and Public Utility Districts for Chelan, Clark, Cowlitz, Douglas, Grant, Klickitat, Pend Oreille, and Snohomish counties); the Public Power Council; Puget Sound Energy, Inc.; and Seattle City Light

Short name or acronym	Commenter
PJM	PJM Interconnection, L.L.C.
Powerex	Powerex Corporation
Public Interest Organizations	Alliance for Clean Energy New York; Center for Rural Affairs; Citizens Utility Board of Wisconsin; Climate and Energy Project; Conservation Law Foundation; Defenders of Wildlife; Energy Conservation Council of Pennsylvania; Energy Future Coalition; Environment Northeast; Environmental Defense Fund; Environmental Law & Policy Center; Fresh Energy; Great Plains Institute; Natural Resources Defense Council; Office of the Ohio Consumers' Counsel; Pace Energy and Climate Center; Project for Sustainable FERC Energy Policy; Sierra Club; The Wilderness Society; Union of Concerned Scientists; Western Grid Group; Western Resource Advocates; and Wind on the Wires
Public Power Council	Public Power Council
Puget	Puget Sound Energy, Inc.
Recycled Energy	Recycled Energy Development
RENEW	Renewable Energy New England, Inc.
RenewElec	The RenewElec Project
SMUD	Sacramento Municipal Utility District
San Diego Gas & Electric	San Diego Gas & Electric Company
Snohomish County PUD	Public Utility District No. 1 of Snohomish County, Washington
SEIA	Solar Energy Industries Association and the Large-Scale Solar Association
Southern California Edison	Southern California Edison Company
Southern	Southern Company Services, Inc.
Southern MN Municipal	Southern Minnesota Municipal Power Agency
SWEA	Southwest Energy Alliance
Southwestern	Southwestern Power Administration
Spectra Entities	Spectra Energy Transmission, LLC and Spectra Energy Partners, LP
Sunflower and Mid-Kansas	Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC
TA Miller	T.A. Miller
Tacoma Power	City of Tacoma, Department of Public Utilities, Light Division (Washington)
Tres Amigas	Tres Amigas LLC
TVA	Tennessee Valley Authority
US Bureau of Reclamation	United States Bureau of Reclamation
Utility Economic Engineers	Utility Economic Engineers
Vestas	Vestas-American Wind Technology, Inc.
Viridity Energy	Viridity Energy, Inc.
Vote Solar	Vote Solar Initiative
WUTC	Washington Utilities and Transportation Commission
WestConnect	Arizona Public Service Company; El Paso Electric Company, Imperial Irrigation District; NV Energy, Public Service Company of Colorado; Public Service Company of New Mexico; Sacramento Municipal Utility District; Salt River Project; Southwest Transmission Cooperative, Inc.; Transmission Agency of Northern California; Tri-State Generation and Transmission Association, Inc.; Tucson Electric Power Company and Western Area Power Administration
Western Farmers	Western Farmers Electric Cooperative
Western Grid	Western Grid Group
Xcel	Xcel Energy Services Inc.
Xtreme Power	Xtreme Power Inc.

Appendix B: *Pro Forma* Open Access Transmission Tariff

The Commission amends the following sections of the *pro forma* OATT:

a. Section 13.8

b. Section 14.6

13.8 Scheduling of Firm Point-To-Point Transmission Service: Schedules for the Transmission Customer's Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than 10:00 a.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 10:00 a.m. will be accommodated, if practicable. Hour-to-hour and intra-hour (four intervals consisting of fifteen minute schedules) schedules of any capacity and energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their service requests at a common point of receipt into units of 1,000 kW per hour for scheduling and billing purposes. Scheduling changes will be permitted up to twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next scheduling interval provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour and intra-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14.6 Scheduling of Non-Firm Point-To-Point Transmission Service: Schedules for Non-Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than 2:00 p.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 2:00 p.m. will be accommodated, if practicable. Hour-to-hour and intra-hour (four intervals consisting of fifteen minute schedules) schedules of energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within

the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their schedules at a common Point of Receipt into units of 1,000 kW per hour. Scheduling changes will be permitted twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next scheduling interval, provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour and intra-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

Appendix C: *Pro Forma* Large Generator Interconnection Agreement

The Commission amends and/or adds the following sections of the *pro forma* LGIA:

a. Table of Contents (Add Article 8.4, Provision of Data from a Variable Energy Resource)

b. Article 1 (Add definition of Variable Energy Resource)

c. Article 8.4

Article 1 Definition

Variable Energy Resource shall mean a device for the production of electricity that is characterized by an energy source that: (1) Is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator.

Article 8.4 Provision of Data From a Variable Energy Resource

The Interconnection Customer whose Generating Facility is a Variable Energy Resource shall provide meteorological and forced outage data to the Transmission Provider to the extent necessary for the Transmission Provider's development and deployment of power production forecasts for that class of Variable Energy Resources. The Interconnection Customer with a Variable Energy Resource having wind as the energy source, at a minimum, will be required to provide the Transmission Provider with site-specific meteorological data including: temperature, wind speed, wind direction, and atmospheric pressure. The Interconnection Customer with a Variable Energy Resource having solar as the energy source, at a minimum, will be required to provide the Transmission Provider with site-specific meteorological data including: temperature, atmospheric pressure, and irradiance. The Transmission Provider and Interconnection Customer whose Generating Facility is a Variable Energy Resource shall mutually agree to any additional meteorological data that are required for the development and deployment of a power production forecast. The Interconnection Customer whose Generating Facility is a Variable Energy Resource also shall submit data to the Transmission Provider regarding all forced outages to the extent necessary for the Transmission Provider's development and deployment of power production forecasts for that class of Variable Energy Resources. The exact specifications of the meteorological and forced outage data to be provided by the Interconnection Customer to the Transmission Provider, including the frequency and timing of data submittals, shall be made taking into account the size and configuration of the Variable Energy Resource, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area. All requirements for meteorological and forced outage data must be commensurate with the power production forecasting employed by the Transmission Provider. Such requirements for meteorological and forced outage data are set forth in Appendix C, Interconnection Details, of this LGIA, as they may change from time to time.

LaFLEUR, Commissioner, *dissenting in part:*

I am dissenting in part on this Final Rule.

I strongly support renewable energy, and I have stated many times that I believe one of the most important jobs of this Commission is to support the development of rules to address new power supply choices being made at the state and federal level. For that reason, I support the requirements in the rule for intra-hour scheduling and power production forecasting, as well as the guidance we provide on generator regulation service charges.

I am dissenting on the narrow point of the compliance requirements in the Final Rule. As noted in the rule, we heard from many parties about ongoing efforts to establish intra-hour scheduling and other market improvements in various regions. However, the rule as issued would only allow parties to demonstrate compliance through incremental reforms beyond those already underway, without any explanation of why the ongoing efforts are insufficient. I would give regions more flexibility to demonstrate on compliance that these ongoing efforts meet the objectives of the rule.

Accordingly, I respectfully dissent in part.

Cheryl A. LaFleur,
Commissioner.

[FR Doc. 2012–15762 Filed 7–12–12; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, 431 et al.

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2013, Hospice Quality Reporting Requirements, and Survey and Enforcement Requirements for Home Health Agencies; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, 431, 484, 488, 489, and 498

[CMS–1358–P]

RIN 0938–AR18

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2013, Hospice Quality Reporting Requirements, and Survey and Enforcement Requirements for Home Health Agencies

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the Home Health Prospective Payment System (HH PPS) rates, including the national standardized 60-day episode rates, the national per-visit rates, the low-utilization payment amount (LUPA), and outlier payments under the Medicare prospective payment system for home health agencies effective January 1, 2013. This rule also proposes requirements for the Hospice quality data reporting program. This proposed rule would also establish requirements for unannounced, standard and extended surveys of home health agencies (HHAs) and provide a number of alternative (or intermediate) sanctions that could be imposed if HHAs were out of compliance with Federal requirements. This proposed rule would set forth alternative sanctions that could be imposed instead of or in addition to termination of the HHA's participation in the Medicare program, which could remain in effect up to a maximum of 6 months, until the HHA achieved compliance with the HHA Conditions of Participation (CoPs), or until the HHA's provider agreement was terminated.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 4, 2012.

ADDRESSES: In commenting, please refer to file code CMS–1358–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 instructions under the ''More Search Options'' tab.

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–1358–P, P.O. Box 8016, Baltimore, MD 21244–8016.

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–1358–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

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, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments 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:

Kristine Chu, (410) 786–8953, for information about the HH payment reform study and report.
Robin Dowell, (410) 786–0060, for information about HH and Hospice quality improvement and reporting.
Kim Evans, (410) 786–0009, for information about HH therapy policies.
Mollie Knight, (410) 786–7948, for information about the HH market basket.
Hillary Loeffler, (410) 786–0456, for information about the HH PPS.
Lori Teichman, (410) 786–6684, for information about HHCAHPS.
Patricia Sevast, 410–786–8135 and Peggye Wilkerson, 410–786–4857, for survey and enforcement requirements for HHAs.

SUPPLEMENTARY INFORMATION:

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. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

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Acronyms

In addition, because of the many terms to which we refer by abbreviation in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ACH LOS Acute Care Hospital Length of Stay
ADL Activities of Daily Living
APU Annual Payment Update
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113
CAD Coronary Artery Disease
CAH Critical Access Hospital
CBSA Core-Based Statistical Area
CHF Congestive Heart Failure
CMI Case-Mix Index
CMS Centers for Medicare and Medicaid Services
CoPs Conditions of Participation
COPD Chronic Obstructive Pulmonary Disease
CVD Cardiovascular Disease
CY Calendar Year
DM Diabetes Mellitus
DRA Deficit Reduction Act of 2005, Pub. L. 109–171, enacted February 8, 2006
FDL Fixed Dollar Loss
FI Fiscal Intermediaries
FR **Federal Register**
FY Fiscal Year
HCC Hierarchical Condition Categories
HCIS Health Care Information System
HH Home Health
HHCAHPS Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey
HH PPS Home Health Prospective Payment System
HHAs Home Health Agencies
HHRG Home Health Resource Group
HIPPS Health Insurance Prospective Payment System
IH Inpatient Hospitalization
IRF Inpatient Rehabilitation Facility
LTCH Long-Term Care Hospital
LUPA Low Utilization Payment Amount
MEPS Medical Expenditures Panel Survey
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, enacted December 8, 2003
MSA Metropolitan Statistical Areas
MSS Medical Social Services
NRS Non-Routine Supplies
OBRA Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–2–3, enacted December 22, 1987
OCESAA Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. 105–277, enacted October 21, 1998
OES Occupational Employment Statistics
OIG Office of Inspector General
OT Occupational Therapy
OMB Office of Management and Budget
PAC-PRD Post-Acute Care Payment Reform Demonstration
PEP Partial Episode Payment Adjustment
PT Physical Therapy
QAP Quality Assurance Plan
PRRB Provider Reimbursement Review Board
RAP Request for Anticipated Payment
RF Renal Failure
RFA Regulatory Flexibility Act, Pub. L. 96–354
RHHIs Regional Home Health Intermediaries
RIA Regulatory Impact Analysis
SLP Speech Language Pathology Therapy
SNF Skilled Nursing Facility
UMRA Unfunded Mandates Reform Act of 1995.

I. Executive Summary

A. Purpose

This rule proposes updates to the payment rates for home health agencies (HHAs) for Calendar Year (CY) 2013 as required under section 1895(b) of the Social Security Act (the Act). The proposed update to the prospective payment system addresses the market basket update, case-mix adjustments due to variation in costs among different units of services, adjustments for geographic differences in wage levels, outlier payments, the submission of quality data, and additional payments for services provided in rural areas.

B. Summary of the Major Provisions

In this proposed rule, we use the methods described in the CY 2012 HH PPS final rule (76 FR 68526) to update the prospective payment rates for CY 2013 using a proposed rebased and revised market basket described in section III.C.1 of this rule. This rule discusses the proposed case-mix up-coding adjustment. In addition, we propose additional regulatory flexibility regarding therapy documentation and reassessments as well as face-to-face encounter requirements. We also provide an update on the transition plan for ICD–10 and the home health study concerning home health care access. In addition, this rule proposes new requirements concerning the hospice quality reporting program. Lastly, this proposed rule would establish requirements concerning HHAs.

C. Summary of Costs and Benefits

Provision description	Total costs	Total benefits	Transfers
CY 2013 HH PPS payment rate update.	N/A	The benefits of this proposed rule include paying more accurately for the delivery of Medicare home health services, providing additional regulatory flexibility for HHAs to comply with therapy requirements and face-to-face encounter documentation requirements, and establishing alternative (or intermediate) sanctions that may be imposed when HHAs are out of compliance with Federal requirements.	The overall economic impact of this proposed rule is an estimated $20 million in decreased payments to HHAs.

Provision description	Total costs	Total benefits	Transfers
Survey and Certification Requirements.	The components of the rule which address survey and certification requirements do not represent new costs with the exception of the Informal Dispute Resolution process (IDR). These requirements codify Survey and Certification policies which were implemented between 1987 and 2011. We estimate that the costs associated with the IDRs will not be significantly greater than current actions related to termination actions.	The overall benefit of this rule is the expected increase in provider participation in discussions with the State Survey Agency or CMS Regional Offices related to survey findings via the IDR.	
Enforcement Requirements	We estimate a onetime $2 million expense to modify internal systems to monitor Civil Monetary Penalties. There will also be annual operating expenses associated with maintaining the system, training surveyors and troubleshooting issues of $335,972.	HHAs will be provided incentives to maintain or regain compliance with the HHA Conditions of Participation through measures other than termination.	
CMP Disbursement and Cost of Surveys.	This proposed rule would provide that State Medicaid programs share in the cost of HHA surveys. The cost ratio would be calculated at 63 percent for the Medicare program and 37 percent for the Medicaid program. The projected HHA survey budget for FY 2013 is $39.9 million and FY 2014 at $45.7 million. The anticipated State Medicaid share is $3.7 million and $4.2 million respectively (minus Federal match).	This is in compliance with OMB Circular A-87.	

II. Background

A. Statutory Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted August 5, 1997), significantly changed the way Medicare pays for Medicare HH services. Section 4603 of the BBA mandated the development of the HH PPS. Until the implementation of a HH PPS on October 1, 2000, HHAs received payment under a retrospective reimbursement system.

Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered HH services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Social Security Act (the Act), entitled ''Prospective Payment For Home Health Services''. Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires the following: (1) The computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary; and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix change adjustment factor for significant variation in costs among different units of services.

Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area compared to the applicable national average level. Under section 1895(b)(4)(c) of the Act, the wage-adjustment factors used by the Secretary may be the factors used under section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise paid in the case of outliers due to unusual variations in the type or amount of medically necessary care. Section 3131(b) of the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act) (Pub. L. 111–148, enacted March 23, 2010) revised section 1895(b)(5) of the Act so that total outlier payments in a given year would not exceed 2.5 percent of total payments projected or estimated. The provision also made permanent a 10 percent agency-level outlier payment cap.

In accordance with the statute, as amended by the BBA, we published a final rule in the July 3, 2000 **Federal Register** (65 FR 41128) to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for HH services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental

Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277, enacted October 21, 1998); and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113, enacted November 29, 1999). The requirements include the implementation of a HH PPS for HH services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of HH services under Part A and Part B. For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the HH market basket percentage increase is reduced 2 percentage points. In the November 9, 2006 **Federal Register** (71 FR 65884, 65935), we published a final rule to implement the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i) in accordance with the statute.

The Affordable Care Act made additional changes to the HH PPS. One of the changes in section 3131 of the Affordable Care Act is the amendment to section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) as amended by section 5201(b) of the DRA. The amended section 421(a) of the MMA now requires, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits ending on or after April 1, 2010, and before January 1, 2016, that the Secretary increase, by 3 percent, the payment amount otherwise made under section 1895 of the Act.

B. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment rate that is adjusted for the applicable case-mix and wage index. The national standardized 60-day episode rate includes the six HH disciplines (skilled nursing, HH aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for non-routine medical supplies (NRS) is no longer part of the national standardized 60-day episode rate and is computed by multiplying the relative weight for a particular NRS severity level by the NRS conversion factor (See section II.D.4.e). Payment for durable medical equipment covered under the HH benefit is made outside the HH PPS payment system. To adjust for case-mix, the HH PPS uses a 153-category case-mix classification system to assign patients to a home health resource group (HHRG). The clinical severity level, functional severity level, and service utilization are computed from responses to selected data elements in the OASIS assessment instrument and are used to place the patient in a particular HHRG. Each HHRG has an associated case-mix weight which is used in calculating the payment for an episode.

For episodes with four or fewer visits, Medicare pays national per-visit rates based on the discipline(s) providing the services. An episode consisting of four or fewer visits within a 60-day period receives what is referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the national standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

C. Updates to the HH PPS

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in the **Federal Register**. The August 29, 2007 final rule with comment period set forth an update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for HHAs for CY 2008. The CY 2008 rule included an analysis performed on CY 2005 HH claims data, which indicated a 12.78 percent increase in the observed case-mix since 2000. Case-mix represents the variations in conditions of the patient population served by the HHAs. Subsequently, a more detailed analysis was performed on the 2005 case-mix data to evaluate if any portion of the 12.78 percent increase was associated with a change in the actual clinical condition of HH patients. We examined data on demographics, family severity, and non-HH Part A Medicare expenditures to predict the average case-mix weight for 2005. We identified 8.03 percent of the total case-mix change as real, and therefore, decreased the 12.78 percent of total case-mix change by 8.03 percent to get a final nominal case-mix increase measure of 11.75 percent (0.1278 * (1 − 0.0803) = 0.1175).

To account for the changes in case-mix that were not related to an underlying change in patient health status, we implemented a reduction over 4 years in the national standardized 60-day episode payment rates and the NRS conversion factor. That reduction was to be 2.75 percent per year for 3 years beginning in CY 2008 and 2.71 percent for the fourth year in CY 2011. In the CY 2011 HH PPS final rule (76 FR 68532) we updated our analyses of case-mix change and finalized a reduction of 3.79 percent, instead of 2.71 percent, for CY 2011.

For CY 2012, we published the November 4, 2011 final rule (76 FR 68526) (hereinafter referred to as the CY 2012 HH PPS final rule) that set forth the update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for HH services. In addition, as discussed in the CY 2012 final rule (76 FR 68528), our analysis indicated that there was a 22.59 percent increase in overall case-mix from 2000 to 2009 and that only 15.76 percent of that overall observed case-mix percentage increase was due to real case-mix change. As a result of our analysis, we identified a 19.03 percent nominal increase in case-mix. To fully account for the 19.03 percent nominal case-mix growth which was identified from 2000 to 2009, we finalized a 3.79 percent payment reduction in CY 2012 and 1.32 percent payment reduction for CY 2013.

III. Provisions of the Proposed Rule

A. Case-Mix Measurement

Every year since the HH PPS CY 2008 proposed rule, we have stated in HH PPS rulemaking that we would continue to monitor case-mix changes in the HH PPS and to update our analysis to measure change in case-mix, both real changes in case-mix and changes which are unrelated to changes in patient acuity (nominal). We have continued to monitor case-mix changes, and our latest analysis continues to support the need to make payment adjustments to account for nominal case-mix growth.

Before measuring nominal case-mix growth, we examined the total case-mix growth every year from 2000 to 2010. Our latest analysis indicates that there was about a 1 percent increase in the

average case-mix weight from 2009 to 2010. Specifically, the 2009 average case-mix was 1.3435 and the 2010 average case-mix was 1.3578. We also examined the change in the reporting of secondary diagnoses on OASIS from 2009 to 2010 and have observed an increase in the reporting of secondary diagnoses from 2009 to 2010, thereby contributing to the growth in total case-mix. In addition, we looked at the change in the distribution of episodes by number of therapy visits from 2009 to 2010 and saw that the percentage of non-therapy episodes decreased by 1.56 percentage points and the percentage of episodes with therapy increased at all levels of therapy, thereby contributing to the growth in overall case-mix from 2009 to 2010. Our analysis also showed a continued increase in the percentage of episodes with 14–19 and 20+ therapy visits.

For the remainder of this section, we will discuss our latest analysis of real and nominal case-mix change.

Section 1895(b)(3)(B)(iv) of the Act gives CMS the authority to implement payment reductions for nominal case-mix growth, changes in case-mix that are not related to actual changes in patient characteristics over time. Nominal case-mix growth was assessed and reported in CY 2008, CY 2011, and CY 2012 rulemaking, and payment reductions to the base rate were implemented to account for the nominal case-mix growth observed.

In CY 2008 rulemaking, to assess nominal case-mix growth, we first estimated real case-mix growth, changes in case-mix which are related to changes in patient characteristics, using a regression-based, predictive model of individual case-mix weights. The predictive model contained measures of patients' demographic characteristics, clinical status, inpatient history, and Part A Medicare costs in the time period leading up to their home health episodes. The regression coefficients for the predictive model were developed using 2000 as a base year and were applied to episodes from 2005, allowing for estimation of the change in real case-mix. We then determined the nominal case-mix growth from 2000 to 2005 using the regression model-predicted real case-mix change and the total case-mix change for the time period of interest.

Our analysis indicated that there was a 12.78 percent increase in overall case-mix from 2000 to 2005 and 8.03 percent of that overall observed case-mix change was identified as real case-mix change. As a result of our analysis, we adjusted the 12.78 percent of total change in case-mix downward by 8.03 percent to get a final nominal case-mix change measure of 11.75 percent (0.1278 * (1 − 0.0803) = 0.1175). To account for the 11.75 percent increase in nominal case-mix, we implemented a payment reduction of 2.75 percent each year for 3 years, beginning in 2008, and we planned to implement a payment reduction of 2.71 percent in CY 2011.

Since the publication of the HH PPS CY 2008 proposed rule (72 FR 25395), we have continued to monitor case-mix changes in the HH PPS, and in CY 2011 rulemaking we updated our analysis to measure more recent changes in real and nominal case-mix. In CY 2011 rulemaking, to accommodate the shift to the 153-group system in 2008, we developed two regression-based models to assess nominal case-mix growth from 2000 to 2008. One model was developed using 2000 as a base year and the 80 grouper case-mix system. The regression coefficients in the model were applied to 2007 data to determine the change in real case-mix from 2000 to 2007. The second model was developed using 2008 as a base year and the 153 grouper case-mix system. The regression coefficients in the model were applied to 2007 data to determine the change in real case-mix from 2007 to 2008. The data from both of the models were then used to calculate the overall real case-mix change from 2000 to 2008. Our analysis indicated that there was a 19.40 percent increase in overall case-mix from 2000 to 2008 and 10.07 percent of that overall observed case-mix change was identified as real case-mix change. Consequently, as a result of our analysis, we identified a 17.45 percent nominal increase in case-mix (0.1940 * (1 − 0.1007) = 0.1745) from 2000 to 2008. In other words, there was a growth in case-mix of 17.45 percent that was unrelated to differences in patient characteristics, reflecting changes in coding documentation and other behavioral responses to the home health prospective payment system rather than the treatment of more resource-intensive patients. To fully account for the 17.45 percent nominal case-mix growth identified from 2000 to 2008, in the CY 2011 proposed rule, we proposed a 3.79 percent payment reduction (replacing the planned 2.71 percent payment reduction) in CY 2011 and an additional 3.79 percent payment reduction in CY 2012.

We received many comments on our CY 2011 HH PPS proposed rule that criticized our methodology for assessing real and nominal case-mix change. In the CY 2011 HH PPS final rule, we implemented the proposed payment reduction of 3.79 percent to the national standardized episode rate in CY 2011. However, due to the extensive comments we received, we deferred finalizing a payment reduction for CY 2012 until further study of the case-mix data and methodology was completed.

To assess the validity of the criticisms we received about our models to measure real and nominal case-mix change, we procured an independent review of our methodology by a team at Harvard University led by Dr. David Grabowski. The review included an examination of the predictive regression models and data used in CY 2011 rulemaking, and further analysis consisting of extensions of the model to allow a closer look at nominal case-mix growth by categorizing the growth according to provider types and subgroups of patients.

When reviewing the model, the Harvard team found that overall, our models were robust. However, one area of potential refinement to our models that the Harvard team suggested was to incorporate variables derived from Hierarchical Condition Categories (HCC) data, which is used by CMS to risk-adjust payments to managed care organizations in the Medicare program.

During CY 2012 rulemaking, based on Dr. Grabowski and his team's recommendation and our previous consideration to incorporate HCC data in our models to assess real case-mix change, we explored the effects of adding HCC patient classification data into our models. For our analysis of real and nominal case-mix growth from 2000 to 2009, we incorporated the HCC community scores, HCC demographic variables, and disease indicator variables into our models. It should be noted that we enhanced our models with HCC data starting in 2005 due to the availability of HCC data in our analytic files.

To use the HCC data as well as accommodate the shift to the 153-group system in 2008, we analyzed real case-mix change for 3 different periods, from 2000 to 2005, from 2005 to 2007, and from 2007 to 2009. The real case-mix change from 2000 to 2005 was assessed using the same variables used in the model described in the CY 2011 HH PPS proposed rule (75 FR 43238). The real case-mix change from 2005 to 2007 and from 2007 to 2009 was assessed using the pre-existing variable set plus additional information from the HCC variables. To determine the amount of real case-mix change from 2000 to 2009 (0.0390 case-mix units), we added the measured real change in case-mix units for each of the 3 periods (0.0207 case-mix units for 2000 to 2005, 0.0061 case-mix units for 2005 to 2007, and 0.0122 case-mix units for 2007 to 2009). We

then compared the real change in case-mix (0.0390 case-mix units) for 2000 to 2009 to the total change in case-mix from 2000 to 2009 (0.2476 case-mix units). The total change in case-mix from 2000 to 2009 was calculated as the difference between the average case-mix in 2000 (1.0959) and the average case-mix in 2009 (1.3435). Based on the results from our models, we estimated 15.76 percent (0.0390/0.2476 = 0.1576) of the total case-mix change as real. It should be noted that there is a 0.01 percentage point difference between the calculated and actual value due to the fact that 0.0390 and 0.2476 are rounded figures. When taking into account the total case-mix change from 2000 to 2009 of 22.59 percent ((1.3435 − 1.0959)/1.0959 = 0.2259) and the 15.76 percent of total case-mix change estimated as real from 2000 to 2009, we obtained a final nominal case-mix change measure of 19.03 percent (0.2259 * (1 − 0.1576) = 0.1903) from 2000 to 2009.

This year, we updated our estimates of real and nominal case-mix growth using 2010 data. To determine the amount of real case-mix growth from 2000 to 2010, we needed to obtain an estimate of real case-mix change for 2007 to 2010. We obtained this value using the same model as the one described in CY 2012 rulemaking, which was developed using 2009 data. We note that when developing an estimate of real case-mix change for 2007 to 2010, we used 2010 data for all of the variables in the model except for the living arrangement variables. A crosswalk could not be built from OASIS C to OASIS B1 for the living arrangement variables and therefore we predicted the 2010 value based on trends from 2007 to 2009. After obtaining the estimate of real case-mix change for 2007 to 2010 (0.0150 case-mix units), we added this estimate to the 2000 to 2005 estimate of real case-mix change (0.0207 case-mix units) and the 2005 to 2007 estimate of real case-mix change (0.0061 case-mix units). After adding together the estimated real case-mix change in case-mix units for the three periods, the total estimated change in real case-mix from 2000 to 2010 was 0.0418 (0.0207 + 0.0061 + 0.0150 = 0.0418). Given that the total change in case-mix from 2000 to 2010 was 0.2619 case-mix units (1.3578 − 1.0959 = 0.2619), we estimate that 15.97 percent of the total percentage change in the national average case-mix weight since the interim payment system baseline through 2010 is due to change in real case-mix (0.0418/0.2619 = 0.1597). It should be noted that there is a 0.01 percentage point difference between the calculated and actual value due to the fact that 0.0418 and 0.2619 are rounded figures. When taking into account the total measure of case-mix change (23.90 percent; see Table 1) and the 15.97 percent of total case-mix change estimated as real from 2000 to 2010, we obtained a final nominal case-mix change measure of 20.08 percent from 2000 to 2010 (0.2390 * (1 − 0.1597) = 0.2008). Please see Table 1 for additional information about the calculations used to make the real and nominal case-mix change estimates from 2000 to 2010.

Our estimates of real and nominal case-mix change are consistent with past results. Most of the case-mix change has been due to improved coding, coding practice changes, and other behavioral responses to the prospective payment system, such as increased use of high therapy treatment plans.

TABLE 1—SUMMARY OF REAL AND NOMINAL CASE-MIX CHANGE ESTIMATES: 2000–2010

Measure	Model
Actual case-mix: 2000	1.0959
Actual case-mix: 2010	1.3578
Total change in case-mix	0.2619
Total percentage change	23.90%
Estimated real change in case-mix	0.0418
Percent of total change estimated as real	15.97%
Percent of total change estimated as nominal (creep)	84.03%
Real case-mix percent increase	3.82%
Nominal case-mix percent increase	20.08%

As we described earlier in this proposed rule, our CY 2008 HH PPS final rule finalized a reduction over 4 years in the national standardized 60-day episode payment rates to account for a large increase in case-mix from 2000 to 2005 which we determined was not related to treatment of more intense patients. We implemented a 2.75 percent reduction each year for 2008, 2009, and 2010 and planned to reduce payments by 2.71 percent in 2011. In CY 2011 rulemaking, we updated our analysis of nominal case-mix growth through 2008 and determined that there was 17.45 percent nominal case-mix growth from 2000 to 2008. Therefore, we proposed and finalized an increase in the planned 2.71 percent reduction to 3.79 percent for CY 2011. For the CY 2012 proposed rule, after updating our models to incorporate HCC data, we determined that there was a 19.03 percent nominal case-mix change from 2000 to 2009. To account for the nominal case-mix growth through 2009, we finalized a 3.79 percent payment reduction to the national standardized 60-day episode rates for nominal case-mix change for CY 2012 and a 1.32 percent payment reduction to the rates in CY 2013.

When including the latest data available, we determined that there was a 20.08 percent nominal case-mix change from 2000 to 2010. To fully account for the remainder of the 20.08 percent increase in nominal case-mix beyond that which has been accounted for in previous payment reductions, we estimate that the percentage reduction to the national standardized 60-day episode rates for nominal case-mix change would be 2.18 percent. We considered proposing a 2.18 percent reduction to account for the remaining increase in measured nominal case-mix, and seek comments on that proposal, rather than moving forward with the 1.32 percent reduction promulgated in last year's CY 2012 HH PPS final rule. However for CY 2013, we propose to move forward with the 1.32 percent payment reduction to the national standardized 60-day episode rates as promulgated in the CY 2012 HH PPS Final Rule (76 FR 68532). Analysis, to date, would seem to indicate a high likelihood of continued growth in nominal case-mix going forward. As such, we will continue to monitor both real and nominal case-mix change and make updates as appropriate. CMS will consider any and all analyses as it continues to address the issue of the increase in nominal case-mix in future rulemaking.

B. Outlier Policy

1. Background

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the national standardized 60-day case-mix and wage-adjusted episode payment amounts in the case of episodes that incur unusually high costs due to patient home health (HH) care needs. Prior to the enactment of the Affordable Care Act, this section of the Act stipulated that projected total outlier payments could not exceed 5 percent of total projected or estimated HH payments in a given year. In the July 2000 final rule (65 FR 41188 through 41190), we described the method for determining outlier payments. Under this system, outlier payments are made for episodes whose estimated costs exceed a threshold amount for each Home Health Resource Group (HHRG). The episode's estimated cost is the sum of the national wage-adjusted per-visit payment amounts for all visits delivered during the episode. The outlier threshold for each case-mix group or

partial episode payment (PEP) adjustment is defined as the 60-day episode payment or PEP adjustment for that group plus a fixed dollar loss (FDL) amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated cost beyond the wage-adjusted threshold. The threshold amount is the sum of the wage and case-mix adjusted PPS episode amount and wage-adjusted fixed dollar loss amount. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

2. Regulatory Update

In the CY 2010 HH PPS final rule (74 FR 58080 through 58087), we discussed excessive growth in outlier payments, primarily the result of unusually high outlier payments in a few areas of the country. Despite program integrity efforts associated with excessive outlier payments in targeted areas of the country, we discovered that outlier expenditures still exceeded the 5 percent, target and, in the absence of corrective measures, would have continued do to so. Consequently, we assessed the appropriateness of taking action to curb outlier abuse. To mitigate possible billing vulnerabilities associated with excessive outlier payments and adhere to our statutory limit on outlier payments, we adopted an outlier policy that included a 10 percent agency level cap on outlier payments. This cap was implemented in concert with a reduced FDL ratio of 0.67. These policies resulted in a projected target outlier pool of approximately 2.5 percent. (The previous outlier pool was 5 percent of total HH expenditures.)

For CY 2010, we first returned 5 percent of these dollars back into the national standardized 60-day episode rates, the national per-visit rates, the low utilization payment adjustment (LUPA) add-on payment amount, and the non-routine supplies (NRS) conversion factor. Then, we reduced the CY 2010 rates by 2.5 percent to account for the new outlier pool of 2.5 percent. This outlier policy was adopted for CY 2010 only.

3. Statutory Update

As outlined in the CY 2011 HH PPS final rule (75 FR 70397 through 70399), section 3131(b)(1) of the Affordable Care Act amended section 1895(b)(3)(C) of the Act, ''Adjustment for outliers,'' states that ''The Secretary shall reduce the standard prospective payment amount (or amounts) under this paragraph applicable to HH services furnished during a period by such proportion as will result in an aggregate reduction in payments for the period equal to 5 percent of the total payments estimated to be made based on the prospective payment system under this subsection for the period.'' In addition, section 3131(b)(2) of the Affordable Care Act amended section 1895(b)(5) of the Act by redesignating the existing language as section 1895(b)(5)(A) of the Act, and revising it to state that the Secretary, ''may provide for an addition or adjustment to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. The total amount of the additional payments or payment adjustments made under this paragraph with respect to a fiscal year or year may not exceed 2.5 percent of the total payments projected or estimated to be made based on the prospective payment system under this subsection in that year.''

As such, beginning in CY 2011, our HH PPS outlier policy is that we reduce payment rates by 5 percent and target up to 2.5 percent of total estimated HH PPS payments to be paid as outliers. To get there, we first returned the 2.5 percent held for the target CY 2010 outlier pool to the national standardized 60-day episode rates, the national per visit rates, the LUPA add-on payment amount, and the NRS conversion factor for CY 2010. We then reduced the rates by 5 percent as required by section 1895(b)(3)(C) of the Act, as amended by section 3131(b)(1) of the Affordable Care Act. For CY 2011 and subsequent calendar years we target up to 2.5 percent of estimated total payments to be paid as outlier payments, and apply a 10 percent agency-level outlier cap.

4. Loss-Sharing Ratio and Fixed Dollar Loss (FDL) Ratio

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of episodes that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments for outlier episodes. Alternatively, a lower FDL ratio means that more episodes can qualify for outlier payments, but outlier payments per episode must then be lower.

The FDL ratio and the loss-sharing ratio must be selected so that the estimated total outlier payments do not exceed the 2.5 percent aggregate level (as required by section 1895(b)(5)(A) of the Act). In the past, we have used a value of 0.80 for the loss-sharing ratio, which is relatively high, but preserves incentives for agencies to attempt to provide care efficiently for outlier cases. With a loss-sharing ratio of 0.80, Medicare pays 80 percent of the additional estimated costs above the outlier threshold amount. We are not proposing a change to the loss-sharing ratio in this proposed rule. In the CY 2011 HH PPS final rule (75 FR 70398), in targeting total outlier payments as 2.5 percent of total HH PPS payments, we implemented an FDL ratio of 0.67, and we maintained that ratio in CY 2012. The national standardized 60-day episode payment amount is multiplied by the FDL ratio. That amount is wage-adjusted to derive the wage-adjusted FDL, which is added to the case-mix and wage-adjusted 60-day episode payment amount to determine the outlier threshold amount that costs have to exceed before Medicare will pay 80 percent of the additional estimated costs.

Based on simulations using CY 2010 claims data, we estimate that outlier payments in 2012 will comprise approximately 2.12 percent of total HH PPS payments. Simulations based on CY 2009 claims data completed for the CY 2012 HH PPS final rule (76 FR 68528) suggested that outlier payments in 2011 would comprise approximately 2.14 percent of total HH PPS payments. As such, our simulations suggest outlier payments as a percentage total HH payments holding steady in CY 2009 and CY 2010. However, we are proposing no change to the FDL, in part because we have not been able to verify these projections in our paid claims files since we implemented the 10 percent agency-level cap on outlier payments on January 1, 2010. Two claims processing errors were identified in our implementation of the 10 percent agency-level cap on outlier payments. These errors resulted in inaccuracies in outlier payment amounts in our paid claims files for CY 2010 and 2011. One error allows for certain HHAs to be paid beyond the cap, resulting in overpayments. The other applies the cap to HHAs who have not reached it yet, resulting in underpayments. System changes are currently underway, and thus the CY 2010 data file used in our analysis for this proposed rule reflects outlier payments with these claims processing errors. Furthermore, another consideration in proposing no change to the FDL is our implementation in the CY 2012 HH PPS final rule of changes to the case-mix weights. The changes put more weight on non-therapy cases that typically are more likely to receive outlier payments. The data showing the effects of the changes to the case-mix weights on outlier payments will not be available for analysis until next year. In

the final rule, we will update our estimate of the FDL ratio using the best analysis the most current and complete year of HH PPS data.

5. Outlier Relationship to the HH Payment Study

As we discuss later in this proposed rule, section 3131(d) of the Affordable Care Act requires CMS to conduct a study and report on developing HH payment revisions that will ensure access to care and payment for HH patients with high severity of illness. Our Report to Congress containing this study's recommendations is due no later than March 1, 2014. Section 3131(d)(1)(A)(iii) of the Affordable Care Act, in particular, states that this study may include analysis of potential revisions to outlier payments to better reflect costs of treating Medicare beneficiaries with high levels of severity of illness.

C. CY 2013 Rate Update

1. Rebasing and Revising of the Home Health Market Basket

a. Background

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for CY 2013 be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary.

Effective for cost reporting periods beginning on or after July 1, 1980, we developed and adopted an HHA input price index (that is, the home health ''market basket''). Although ''market basket'' technically describes the mix of goods and services used to produce home health care, this term is also commonly used to denote the input price index derived from that market basket. Accordingly, the term ''home health market basket'' used in this document refers to the HHA input price index.

The percentage change in the home health market basket reflects the average change in the price of goods and services purchased by HHAs in providing an efficient level of home health care services. We first used the home health market basket to adjust HHA cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish reasonable cost home health care. This approach linked the increase in the cost limits to the efficient utilization of resources. For a greater discussion on the home health market basket, see the notice with comment period published in the February 15, 1980 **Federal Register** (45 FR 10450, 10451), the notice with comment period published in the February 14, 1995 **Federal Register** (60 FR 8389, 8392), and the notice with comment period published in the July 1, 1996 **Federal Register** (61 FR 34344, 34347). Beginning with the FY 2002 HH PPS payments, we used the home health market basket to update payments under the HH PPS. We last rebased the home health market basket effective with the CY 2008 update. For more information on the HH PPS home health market basket, see our proposed rule published in the May 4, 2007 **Federal Register** (72 FR 25435–25442).

The home health market basket is a fixed-weight Laspeyres-type price index; its weights reflect the cost distribution for the base year while current period price changes are measured. The home health market basket is constructed in three major steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon the type of expenditure. Then the proportion of total costs that each spending category represents is determined. These proportions are called cost or expenditure weights.

The second step essential for developing an input price index is to match each expenditure category to an appropriate price/wage variable, called a price proxy. These proxy variables are mainly drawn from publicly available statistical series published on a consistent schedule, preferably at least quarterly.

In the third and final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products for all cost categories yields the composite index level in the market basket in a given year. Repeating the third step for other years will produce a time series of market basket index levels. Dividing one index level by an earlier index level will produce rates of growth in the input price index.

We describe the market basket as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. As such, it measures ''pure'' price changes only. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are, by design, not considered.

b. Rebasing and Revising the Home Health Market Basket

We believe that it is desirable to rebase the home health market basket periodically so that the cost category weights reflect changes in the mix of goods and services that HHAs purchase in furnishing home health care. We based the cost category weights in the current home health market basket on CY 2003 data. We are proposing to rebase and revise the home health market basket to reflect CY 2010 Medicare cost report (MCR) data, the latest available and most complete data on the actual structure of HHA costs.

The terms ''rebasing'' and ''revising,'' while often used interchangeably, actually denote different activities. The term ''rebasing'' means moving the base year for the structure of costs of an input price index (that is, in this exercise, we are proposing to move the base year cost structure from CY 2003 to CY 2010) without making any other major changes to the methodology. The term ''revising'' means changing data sources, cost categories, and/or price proxies used in the input price index.

For this proposed rebasing and revising, we modified the wages and salaries and benefits cost categories to reflect revised occupational groupings of BLS Occupational Employment Statistics (OES) data of HHAs. As a result of the revised groupings, we are also proposing changes to the wage and benefit price proxies used in the HH market basket. We are also proposing to break out the Administration and General (A&G), Operations and Maintenance, and All Other (residual) cost category weight into more detailed cost categories, based on the 2002 Benchmark U.S. Department of Commerce, Bureau of Economic Analysis (BEA) Input-Output (I–O) Table for HHAs. We are proposing to revise the price proxies for the Insurance and Transportation cost categories. Finally, we are proposing the use of four new price proxies for the four additional cost categories.

The major cost weights for this proposed revised and rebased home health market basket are derived from the Medicare Cost Reports (MCR) data for freestanding HHAs, whose cost reporting period began on or after January 1, 2010 and before January 1, 2011. Using this methodology allowed our sample to include HHA facilities with varying cost report years including, but not limited to, the Federal fiscal or calendar year. We refer to the market basket as a calendar year market basket because the base period for all price proxies and weights are set to CY 2010.

We propose to maintain our policy of using data from freestanding HHAs because we have determined that they better reflect HHAs' actual cost structure. Expense data for hospital-based HHAs can be affected by the allocation of overhead costs over the entire institution. Due to the method of allocation, total expenses will be correct, but the individual components' expenses may be skewed; therefore, if data from hospital-based HHAs were included, the resulting cost structure could be unrepresentative of the average HHA costs.

Data on HHA expenditures for nine major expense categories (Wages and Salaries, Employee Benefits, Transportation, Operation and Maintenance, A&G, Professional Liability Insurance (PLI), Fixed Capital, Movable Capital, and a residual ''All Other'') were tabulated from the CY 2010 Medicare HHA cost reports. As prescription drugs and DME are not payable under the HH PPS, we excluded those items from the home health market basket and from the expenditures. Expenditures for contract services were also tabulated from these CY 2010 Medicare HHA cost reports and allocated to Wages and Salaries, Employee Benefits, A&G, and Other Expenses. After totals for these cost categories were edited to remove reports where the data were deemed unreasonable (for example, when total costs were not greater than zero), we then determined the proportion of total costs that each category represents. The proportions represent the major rebased home health market basket weights.

Next, we disaggregated the costs for the A&G, Operations and Maintenance and ''All Other'' cost weights using the latest available (2002 Benchmark) U.S. Department of Commerce, Bureau of Economic Analysis (BEA) Input-Output (I–O) Table, from which we extracted data for HHAs. The BEA I–O data, which are updated at 5-year intervals, were most recently described in the Survey of Current Business article, ''Benchmark Input-Output Accounts of the U.S., 2002'' (December 2002). These data were aged from 2002 to 2010 using relevant price changes. The methodology we used to age the data applied the annual price changes from the price proxies to the appropriate cost categories. We repeated this practice for each year. This methodology reflects a slight revision from the methodology used to derive the 2003-based HHA market basket index. For the 2003-based index, we only disaggregated the A&G and ''All Other'' cost categories using BEA I–O data. For the 2010-based index, we are proposing to also disaggregate the Operations and Maintenance cost categories using the BEA I–O data. Our proposal is based on our examination of the MCR data which indicated that some providers may be including some operations and maintenance costs in the A&G category and/or other cost categories. The Operations and Maintenance cost category (which we previously proxied with the CPI for Fuel and Other Utilities) from the MCR showed a decrease in the cost weight obtained directly from the MCR data from 2003 to 2010, despite rapid increases in utility costs over this time period. The revised method would rely on the 2002 I–O data, aged by the relevant price proxy, to determine the Utilities cost weight. The resulting methodology shows an increase in the Utilities cost weight over the same time period, which we believe to be a more reasonable result. We believe this change in the methodology for estimating utility costs for HHAs better reflects the 2010 cost structures of HHAs.

This process resulted in the identification of 16 separate cost categories, which is four more cost categories than presented in the 2003-based home health market basket. The additional cost categories (Administrative and Support Services, Financial Services, Medical Supplies, and Rubber and Plastics) stem from further disaggregating the Other Products and Other Services cost categories presented in the 2003-based index into more detail. The Administrative and Support Services cost weight would include expenses for a range of day-to-day office administrative services including but not limited to billing, recordkeeping, mail routing, and reception services. The Financial Services cost weight would reflect expenses for services including but not limited to banking services and security and commodity brokering. The Medical Supplies cost weight would reflect expenses for medical and surgical instruments as, well as laboratory analysis equipment. The Rubber and Plastics cost weight would reflect expenses for products such as plastic trash cans, and carpeting. We are proposing these additional cost categories in order to proxy price inflation in a more granular fashion. We provide our proposed price proxies in more detail below.

The differences between the major categories for the proposed 2010-based index and those used for the current 2003-based index are summarized in Table 2. We have allocated the Contract Services weight to the Wages and Salaries Employee Benefits, A&G, and Other Expenses cost categories in the proposed 2010-based index as we did in the 2003-based index.

TABLE 2—COMPARISON OF 2003-BASED AND PROPOSED 2010-BASED HOME HEALTH MARKET BASKETS MAJOR COST CATEGORIES AND WEIGHTS

Cost categories	2003-Based home health market basket	Proposed 2010-based home health market basket
Wages and Salaries, including allocated contract services' labor	64.484	66.325
Employee Benefits, including allocated contract services' labor	12.598	12.210
All Other Expenses including allocated contract services' labor	22.918	21.465
Total	100.000	100.000

The complete proposed 2010-based cost categories and weights are listed in Table 3.

TABLE 3—COST CATEGORIES, WEIGHTS, AND PRICE PROXIES IN PROPOSED 2010-BASED HOME HEALTH MARKET BASKET

Cost categories	Weight	Price proxy
Compensation, including allocated contract services' labor	78.535	
Wages and Salaries, including allocated contract services' labor	66.325	Proposed Home Health Occupational Wage Index (2010).
Employee Benefits, including allocated contract services' labor	12.210	Proposed Home Health Occupational Benefits Index (2010).
Operations & Maintenance	1.002	CPI–U Fuel & Other Utilities.
Professional Liability Insurance	0.375	CMS Physician Professional Liability Insurance Index.
Administrative & General & Other Expenses including allocated contract services' labor.	15.381	
Administrative Support	0.699	ECI for Compensation for Office and Administrative Services (Private).
Financial Services	1.398	ECI for Compensation for Financial Services (Private).
Medical Supplies	1.278	PPI for Medical Surgical & Personal Aid Devices.
Rubber & Plastics	1.226	PPI for Rubber & Plastic Products.
Telephone	0.881	CPI–U Telephone Services.
Postage	0.279	CPI–U Postage.
Professional Fees	5.811	ECI for Compensation for Professional and Related Workers (Private).
Other Products	1.439	PPI Finished Goods less Food and Energy.
Other Services	2.370	ECI for Compensation for Service Occupations (Private).
Transportation	2.545	CPI–U Transportation.
Capital-Related	2.162	
Fixed Capital	1.532	CPI–U Owner's Equivalent Rent.
Movable Capital	0.630	PPI Machinery & Equipment.
Total	100.000	**

** Figures may not sum to total due to rounding.

After we computed the CY 2010 cost category weights for the proposed rebased home health market basket, we selected the most appropriate wage and price indexes to proxy the rate of change for each expenditure category. With the exception of the price index for insurance costs, the proposed price proxies are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• *Employment Cost Indexes*—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in skill mix. ECIs are superior to average hourly earnings as price proxies for input price indexes for two reasons: (a) They measure pure price change; and (b) they are available by occupational groups, not just by industry.

• *Consumer Price Indexes*—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Consumer price indexes are used when the expenditure is more similar to that of a purchase at the retail level rather than at the wholesale level, or if no appropriate Producer Price Indexes (PPIs) were available.

• *Producer Price Indexes*—PPIs measures average changes in prices received by domestic producers for their goods and services. PPIs are used to measure price changes for goods sold in other than retail markets. For example, a PPI for movable equipment is used rather than a CPI for equipment. PPIs in some cases are preferable price proxies for goods that HHAs purchase at wholesale levels. These fixed-weight indexes are a measure of price change at the producer or at the intermediate stage of production.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Widely accepted statistical methods ensure that the data were collected and aggregated in way that can be replicated. Low sampling variability is desirable because it indicates that sample reflects the typical members of the population. (Sampling variability is variation that occurs by chance because a sample was surveyed rather than the entire population.) Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly and therefore it is important the underlying price proxies be up-to-date, reflecting the most recent data available. We believe that using proxies that are published regularly helps ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently because we believe that this is an optimal way to stay abreast of the most current data available. Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis. Finally, relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs selected by us to be proposed in this regulation meet these criteria. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

As part of the revising and rebasing of the home health market basket, we are proposing to revise and rebase the home health blended Wage and Salary index and the home health blended Benefits index. We would use these blended indexes as price proxies for the Wages and Salaries and the Employee Benefits portions of the proposed 2010-based home health market basket, as we did in the 2003-based home health market basket. A more detailed discussion is provided below.

c. Price Proxies Used To Measure Cost Category Growth

• *Wages and Salaries* For measuring price growth in the 2010-based home health market basket, we are proposing

to apply six price proxies to six occupational subcategories within the Wages and Salaries component, which would reflect the HHA occupational mix. This is the same approach used for the 2003-based index as there is not a published wage proxy for home health care workers that reflects only wage changes and not both wage and skill mix changes.

The 2003-based blended wage index was comprised of four occupational subcategories proxied by five wage proxies. For the 2010 blended wage index, we are proposing to further disaggregate the service workers occupations into health and social assistance service and other service occupational groups. We are also proposing to explicitly disaggregate professional and technical (P&T) workers into health-related P&T and non health-related P&T workers. We are proposing to continue to use the National Industry-Specific Occupational Employment and Wage estimates for North American Industrial Classification System (NAICS) 621600, Home Health Care Services, published by the BLS Office of Occupational Employment Statistics (OES) as the data source for the cost shares of the home health specific blended wage and benefits proxy. This is the same data source that was used for the 2003-based HHA blended wage and benefit proxies; however, we are proposing to use the May 2010 estimates in place of the November 2003 estimates. Detailed information on the methodology for the national industry-specific occupational employment and wage estimates survey can be found at *http://www.bls.gov/oes/current/oes_tec.htm.*

The needed data on HHA expenditures for the six occupational subcategories (managerial, health-related P&T, non health-related P&T, health and social assistance service, other service occupations, and administrative/clerical) for the wages and salaries component were tabulated from the May 2010 OES data for NAICS 621600, Home Health Care Services. This is a refinement to the four categories used for the 2003-based wage proxy. Table 4 compares the proposed 2010 occupational assignments of the six CMS designated subcategories to the 2003 occupational assignments of the four CMS designated subcategories.

TABLE 4—PROPOSED 2010 OCCUPATIONAL ASSIGNMENTS COMPARED TO 2003 OCCUPATIONAL ASSIGNMENTS FOR CMS HH WAGE COMPOSITE INDEX

2010 Proposed Occupational Groupings		2003 Occupational Groupings	
Group 1	**Management**	**Group 1**	**Management**
11–0000	Management Occupations	11–0000	Management Occupations.
Group 2	**Non-Health Professional & Technical**	**Group 2**	**Professional & Technical**
13–0000	Business and Financial Operations Occupations	13–0000	Business and Financial Operations Occupations.
15–0000	Computer and Mathematical Science Occupations	15–0000	Computer and Mathematical Science Occupations.
17–0000	Architecture and Engineering Occupations	17–0000	Architecture and Engineering Occupations.
19–0000	Life, Physical, and Social Science Occupations	19–0000	Life, Physical, and Social Science Occupations.
23–0000	Legal Occupations	21–0000	Community and Social Services Occupations.
25–0000	Education, Training, and Library Occupations	23–0000	Legal Occupations.
27–0000	Arts, Design, Entertainment, Sports, and Media Occupations.	25–0000	Education, Training, and Library Occupations.
Group 3	**Health-Related Professional & Technical**	27–0000	Arts, Design, Entertainment, Sports, and Media Occupations.
29–1021	Dentists, General	29–0000	Healthcare Practitioners and Technical Occupations.
29–1031	Dietitians and Nutritionists	33–0000	Protective Service Occupations.
29–1051	Pharmacists	35–0000	Food Preparation and Serving Related Occupations.
29–1062	Family and General Practitioners	37–0000	Building and Grounds Cleaning and Maintenance Occupations.
29–1063	Internists, General	41–0000	Sales and Related Occupations.
29–1069	Physicians and Surgeons, All Other	49–0000	Installation, Maintenance, and Repair Occupations.
29–1071	Physician Assistants	51–0000	Production Occupations.
29–1111	Registered Nurses	53–0000	Transportation and Material Moving Occupations.
29–1122	Occupational Therapists.		
29–1123	Physical Therapists.		
29–1125	Recreational Therapists.		
29–1126	Respiratory Therapists.		
29–1127	Speech-Language Pathologists.		
29–1129	Therapists, All Other.		
29–1199	Health Diagnosing and Treating Practitioners, All Other.		
Group 4	**Other Service Workers**	**Group 3**	**Service Workers**
33–0000	Protective Service Occupations	31–0000	Healthcare Support Occupations.
35–0000	Food Preparation and Serving Related Occupations	39–0000	Personal Care and Service Occupations.
37–0000	Building and Grounds Cleaning and Maintenance Occupations.		
39–0000	Personal Care and Service Occupations.		
41–0000	Sales and Related Occupations.		
49–0000	Installation, Maintenance, and Repair Occupations.		
51–0000	Production Occupations.		
53–0000	Transportation and Material Moving Occupations.		

TABLE 4—PROPOSED 2010 OCCUPATIONAL ASSIGNMENTS COMPARED TO 2003 OCCUPATIONAL ASSIGNMENTS FOR CMS HH WAGE COMPOSITE INDEX—Continued

2010 Proposed Occupational Groupings		2003 Occupational Groupings	
Group 5	**Health & Social Service Workers**		
21–0000	Community and Social Services Occupations.		
29–2011	Medical and Clinical Laboratory Technologists.		
29–2012	Medical and Clinical Laboratory Technicians.		
29–2021	Dental Hygienists.		
29–2032	Diagnostic Medical Sonographers.		
29–2034	Radiologic Technologists and Technicians.		
29–2041	Emergency Medical Technicians and Paramedics.		
29–2051	Dietetic Technicians.		
29–2052	Pharmacy Technicians.		
29–2054	Respiratory Therapy Technicians.		
29–2061	Licensed Practical and Licensed Vocational Nurses.		
29–2071	Medical Records and Health Information Technicians.		
29–2099	Health Technologists and Technicians, All Other.		
29–9012	Occupational Health and Safety Technicians.		
29–9099	Healthcare Practitioner and Technical Workers, All Other.		
31–0000	Healthcare Support Occupations.		
Group 6	**Administrative**	**Group 4**	**Administrative**
43–0000	Office and Administrative Support Occupations	43–0000	Office and Administrative Support Occupations.

Total expenditures by occupation were calculated by taking the OES number of employees multiplied by the OES annual average salary. The wage and salary expenditures were aggregated based on the groupings in Table 5. We determined the proportion of total wage costs that each subcategory represents. These proportions listed in Table 5 represent the major rebased and revised home health blended Wage and Salary index weights.

TABLE 5—PROPOSED HOME HEALTH OCCUPATIONAL WAGES AND SALARIES INDEX (WAGES AND SALARIES COMPONENT OF THE PROPOSED 2010 BASED HOME HEALTH MARKET BASKET)

Cost category	2003 Weight	Proposed 2010 weight	Price proxy	BLS Series ID
Health-Related Professional and Technical (P&T).	50.812	33.373	ECI for Wages & Salaries for Civilian Hospital Workers.	CIU102622000000I
Non Health-Related P&T		2.253	ECI for Wages & Salaries in Private Industry for Professional, Specialty & Technical Workers.	CIU202540000000I
Managerial/Supervisory	9.007	8.260	ECI for Wages & Salaries in Private Industry for Executive, Administrative & Managerial Workers.	CIU202000011000I
Administrative/Clerical	7.596	7.720	ECI for Wages & Salaries in Private Industry for Administrative Support, Including Clerical Workers.	CIU202000022000I
Health and Social Assistance Services	32.584	35.772	ECI for Wages & Salaries for Civilian Healthcare and Social Assistance.	CIU102620000000I
Other Service Occupations		12.622	ECI for Wages & Salaries in Private Industry Service Occupations.	CIU202000030000I
Total	100.000	100.000		

A comparison of the yearly changes from CY 2010 to CY 2013 for the 2003-based HH wage and salary blend and the proposed 2010-based home health wage and salary blend is shown in Table 6. The average annual increase in the two price proxies is similar, and in no year is the difference greater than 0.3 percentage point.

TABLE 6—ANNUAL GROWTH IN PROPOSED 2010 HH WAGE BLEND AND 2003 HH WAGE BLEND

	2010	2011	2012	2013
HH Wage Blend 2010	1.6	1.5	2.1	2.7

TABLE 6—ANNUAL GROWTH IN PROPOSED 2010 HH WAGE BLEND AND 2003 HH WAGE BLEND—Continued

	2010	2011	2012	2013
HH Wage Blend 2003	1.5	1.5	1.8	2.4

Source: IHS Global Insight, Inc, 2nd Quarter 2012 forecast with historical data through 1st Quarter 2012.

• *Employee benefits:* For measuring employee benefits price growth in the 2010-based home health market basket, we are proposing to apply applicable price proxies to the six occupational subcategories that are used for the wage blend listed in Table 7. The percentage change in the blended price of home health employee benefits is applied to this component, which is described in Table 7.

TABLE 7—PROPOSED HOME HEALTH OCCUPATIONAL BENEFITS INDEX (EMPLOYEE BENEFITS COMPONENT OF THE PROPOSED 2010-BASED HOME HEALTH MARKET BASKET)

Cost category	2003 Weight	Proposed 2010 weight	Price proxy
Health-Related Professional and Technical (P&T)	50.506	33.506	ECI for Benefits for Civilian Hospital Workers.
Non Health-Related P&T	.....	2.246	ECI for Benefits in Private Industry for Professional, Specialty & Technical Workers.
Managerial/Supervisory	8.766	8.029	ECI for Benefits in Private Industry for Executive, Administrative & Managerial Workers.
Administrative/Clerical	7.698	7.789	ECI for Benefits in Private Industry for Administrative Support, Including Clerical Workers.
Health and Social Assistance	33.024	35.887	ECI for Benefits for Civilian Healthcare and Social Assistance Workers.
Other Service Occupations	.....	12.542	ECI for Benefits in Private Industry Service Occupations.
Total	100.000	100.000	

There is no available data source that exists for benefit expenditures by occupation for the home health industry. Thus, to construct weights for the home health occupational benefits index we calculated the ratio of benefits to wages and salaries for CY 2010 for the six BLS ECI series we are proposing to use in the blended wage and benefit indexes. To derive the relevant benefit weight, we applied the benefit-to-wage ratios to each of the six occupational subcategories from the 2010 OES wage and salary weights, and normalized. For example, the ratio of benefits to wages from the 2010 home health occupational wage and benefit indexes for home health managers is 0.976. We apply this ratio to the 2010 OES weight for wages and salaries for home health managers, 8.260, and then normalize those weights relative to the other five benefit occupational categories to obtain a benefit weight for home health managers of 8.029.

A comparison of the yearly changes from CY 2010 to CY 2013 for the 2003-based HH benefit blend and the proposed 2010-based home health benefit blend is shown in Table 8. The average annual increase in the two price proxies is similar, and in no year is the difference greater than 0.3 percentage point.

TABLE 8—ANNUAL GROWTH IN PROPOSED 2010 HH BENEFITS BLEND AND 2003 HH BENEFITS BLEND

	2010	2011	2012	2013
HH Benefits Blend 2010	2.6	2.7	2.7	2.8
HH Benefits Blend 2003	2.4	3.0	2.5	2.9

Source: IHS Global Insight, Inc, 2nd Quarter 2012 forecast with historical data through 1st Quarter 2012.

• *Administrative and Support:* We are proposing to use the ECI for Compensation for Office and Administrative Support Services (private industry) (BLS series code #CIU2010000220000I) to measure price growth of this cost category. The 2003-based index did not reflect this detailed cost category.

• *Financial Services:* We are proposing to use the ECI for Compensation for Financial Activities (private industry) (BLS series code #CIU201520A000000I) to measure price growth of this cost category. The 2003-based index did not reflect this detailed cost category.

• *Medical Supplies:* We are proposing to use the PPI for Medical Surgical & Personal Aid Devices (BLS series code #WPU156) to measure price growth of this cost category. The 2003-based index did not reflect this detailed cost category.

• *Rubber and Plastics:* We are proposing to use the PPI for Rubber and Plastic Products (BLS series code #WPU07) to measure price growth of this cost category. The 2003-based index did not reflect this detailed cost category.

• *Operations and Maintenance:* We are proposing to use CPI for Fuel and Utilities (BLS series code #CUUR0000SAH2) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.

• *Professional Liability Insurance:* We are proposing to use the CMS Physician Professional Liability Insurance price index to measure price growth of this

cost category. The 2003-based index used the CPI for Household Insurance as the price proxy for this component. We are proposing to revise the price proxy for this category as we believe that it is more technically appropriate to proxy PLI price changes by an index specific to medical liability insurance. CMS currently does not have a PLI index specific to the HHA industry so we are proposing to use the CMS Physician Liability Insurance Index as we believe this would reasonably reflect the price changes associated with medical liability insurance purchased by home health agencies.

To accurately reflect the price changes associated with physician PLI, each year, we solicit PLI premium data for physicians from a sample of commercial carriers. This information is not collected through a survey form, but instead is requested directly from, and provided by (on a voluntary basis), several national commercial carriers. As we require for our other price proxies, the PLI price proxy is intended to reflect the pure price change associated with this particular cost category. Thus, it does not include changes in the mix or level of liability coverage. To accomplish this result, we obtain premium information from a sample of commercial carriers for a fixed level of coverage, currently $1 million per occurrence and a $3 million annual limit. This information is collected for every State by physician specialty and risk class. Finally, the State-level, physician-specialty data are aggregated by effective premium date to compute a national total, using counts of physicians by State and specialty as provided in the AMA publication, *Physician Characteristics and Distribution in the U.S.*

- *Telephone:* We are proposing to use CPI for Telephone Services (BLS series code # CUUR0000SEED) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.
- *Postage:* We are proposing to use CPI for Postage (BLS series code # CUUR0000SEEC01) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.
- *Professional Fees:* We are proposing to use the ECI for Compensation for Professional and Related Workers (private industry) (BLS series code # CIS2010000120000I) to measure price growth of this category. The same proxy was used for the 2003-based market basket.
- *Other Products:* We are proposing to use the PPI for Finished Goods Less Food and Energy (BLS series code #) to measure price growth of this category. For the 2003-based market basket we used the CPI for All Items Less Food and Energy to proxy this category. We believe that the PPI better reflects business input costs than the CPI index which better reflects cost faced by consumers.
- *Other Services:* We are proposing to use the ECI for Compensation for Service Occupations (private) (BLS series code # CIU2010000300000I) to measure price growth of this category. The same proxy was used for the 2003-based market basket.
- *Transportation:* We are proposing to use the CPI for Transportation (BLS series code # CUUR00000SAT) to measure price growth of this category. The 2003-based market basket used the CPI for Private Transportation (BLS series code # CUUS0000SAT1). We are proposing to revise the price proxy to reflect price inflation of both private and public transportation costs. We are proposing this change as further investigation of the MCR instructions request providers to include both private and public transportation costs.
- *Fixed capital:* We are proposing to use the CPI for Owner's Equivalent Rent (BLS series code # CUUS0000SEHC) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.
- *Movable Capital:* We are proposing to use the PPI for Machinery and Equipment (BLS series code # WPU11) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.

As we did in the 2003-based home health market basket, we allocated the Contract Services' share of home health agency expenditures among Wages and Salaries, Employee Benefits, A&G and Other Expenses.

d. Rebasing Results

A comparison of the yearly changes from CY 2010 to CY 2013 for the 2003-based home health market basket and the proposed 2010-based home health market basket is shown in Table 9.

TABLE 9—COMPARISON OF THE 2003-BASED HOME HEALTH MARKET BASKET AND THE PROPOSED 2010-BASED HOME HEALTH MARKET BASKET, PERCENT CHANGE, 2010–2013

	Home health market basket, 2003-based	Proposed home health market basket, 2010-based	Difference (proposed 2010-based less 2003-based)
Historical: CY 2010	1.7	1.8	0.1
Historical CY 2011	2.0	2.0	0.0
CY 2012	1.9	2.1	0.2
CY 2013	2.3	2.5	0.2
Average Change: 2010–2013	2.0	2.1	0.1

Source: IHS Global Insight, Inc, 2nd Quarter 2012 forecast with historical data through 1st Quarter 2012.

Table 9 shows that the forecasted rate of growth for CY 2013, beginning January 1, 2013, for the proposed rebased and revised home health market basket is 2.5 percent, while the forecasted rate of growth for the current 2003-based home health market basket is 2.3 percent. The higher growth rate for the 2010-based HHA market basket for CY 2013 is attributable to the proposed wage and benefit blended price proxies, as well as the relatively faster price growth for the A&G cost category. The revised wage and benefit blended index reflects a larger weight associated with health P&T occupations (which is proxied by the ECIs for Hospital Workers) compared to the 2003-based index. The wage and benefit ECIs for hospital workers are currently projected to grow faster than the other ECIs in the blended indexes.

e. Labor-Related Share

In the 2003-based home health market basket the labor-related share was 77.082 percent while the remaining non-labor-related share was 22.918 percent. In the proposed revised and rebased home health market basket, the labor-related share would be 78.535 percent. The labor-related share includes wages and salaries and employee benefits, as well as allocated

contract labor costs. The proposed non-labor-related share would be 21.465 percent. The increase in the labor-related share using the 2010-based HH market basket is primarily due to the increase in costs associated with contract labor. Table 10 details the components of the labor-related share for the 2003-based and proposed 2010-based home health market baskets.

TABLE 10—LABOR-RELATED SHARE OF CURRENT AND PROPOSED HOME HEALTH MARKET BASKETS

Cost category	2003-based market basket weight	Proposed 2010-based market basket weight
Wages and Salaries	64.484	66.325
Employee Benefits	12.598	12.210
Total Labor-Related	77.082	78.535
Total Non Labor-Related	22.918	21.465

f. Proposed CY 2013 Market Basket Update for HHAs

For CY 2013, we are proposing to use an estimate of the proposed 2010-based HHA market basket to update payments to HHAs based on the best available data. Consistent with historical practice, we estimate the HHA market basket update for the HHA PPS based on IHS Global Insight, Inc.'s (IGI's) forecast using the most recent available data. IGI is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

Based on IGI's second quarter 2012 forecast with history through the first quarter of 2012, the projected HHA market basket update for CY 2013 is 2.5 percent. Therefore, consistent with our historical practice of estimating market basket increases based on the best available data, we are proposing a market basket update of 2.5 percent for CY 2013. Furthermore, because the proposed CY 2013 annual update is based on the most recent market basket estimate for the 12-month period (currently 2.5 percent), we also are proposing that if more recent data are subsequently available (for example, a more recent estimate of the market basket), we would use such data, if appropriate, to determine the CY 2013 annual update in the final rule.

2. CY 2013 Home Health Payment Update Percentage

Section 3401(e) of the Affordable Care Act amended section 1895(b)(3)(B) of the Act by adding a new clause (vi) which states, ''After determining the home health market basket percentage increase * * * the Secretary shall reduce such percentage * * * for each of 2011, 2012, and 2013, by 1 percentage point. The application of this clause may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year, and may result in payment rates under the system under this subsection for a year being less than such payment rates for the preceding year.'' Therefore, the proposed CY 2013 market basket update of 2.5 percent must be reduced by 1 percentage point. Thus, the proposed CY 2013 home health payment update is 1.5 percent.

3. Home Health Quality Reporting Program (QRP)

a. Background and Quality Reporting Requirements

Section 1895(b)(3)(B)(v)(II) of the Act states that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.''

In addition, section 1895(b)(3)(B)(v)(I) of the Act states that ''for 2007 and each subsequent year, in the case of a HHA that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the HH market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points.'' This requirement has been codified in regulations at § 484.225(i). HHAs that meet the quality data reporting requirements are eligible for the full home health market basket percentage increase. HHAs that do not meet the reporting requirements are subject to a 2 percentage point reduction to the home health market basket increase.

Section 1895(b)(3)(B)(v)(III) of the Act further states that ''[t]he Secretary shall establish procedures for making data submitted under sub clause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.''

As codified at § 484.250(a), we established that the quality reporting requirements could be met by the submission of OASIS assessments and Home Health CAHPS. In the CY 2012 HH PPS final rule (76 FR 68576), we listed selected measures for the HH QRP and also established procedures for making the information available to the public by placing the information on the Home Health Compare Web site. The selected measures that are made available to the public can be viewed on the Home Health Compare Web site located at *http://www.medicare.gov/HHCompare/Home.asp.*

In the CY 2012 HH PPS final rule (76 FR 68575), we finalized that we would also use measures derived from Medicare claims data to measure home health quality.

b. OASIS Data Submission and OASIS Data for Annual Payment Update

The Home Health Conditions of Participation (CoPs) at § 484.55(d) require that the comprehensive assessment must be updated and revised (including the administration of the OASIS) no less frequently than: (1) The last five days of every 60 days beginning with the start-of-care date, unless there is a beneficiary elected transfer, significant change in condition, or discharge and return to the same HHA during the 60-day episode; (2) within 48 hours of the patient's return to the home from a hospital admission of 24 hours or more for any reason other than diagnostic tests; and (3) at discharge.

It is important to note that to calculate quality measures from OASIS data, there must be a complete quality episode, which requires both a Start of Care or Resumption of Care OASIS assessment and a Transfer or Discharge OASIS assessment. Failure to submit sufficient OASIS assessments to allow calculation of quality measures,

including transfer and discharge assessments, is failure to comply with the CoPs.

Home Health Agencies do not need to submit OASIS data for those patients who are excluded from the OASIS submission requirements under the Home Health Conditions of Participation (CoPs) § 484.1 through § 484.265. As described in the Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies Final Rule (CMS–3006–F) (70 FR 76202), these are:

- Those patients receiving only nonskilled services;
- Those patients for whom neither Medicare nor Medicaid is paying for home health care (patients receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement);
- Those patients receiving pre- or post-partum services; or
- Those patients under the age of 18 years.

As set forth in the Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008 Final Rule (CMS–1541–CF) (72 FR 49863), HHAs that become Medicare-certified on or after May 31 of the preceding year are not subject to the OASIS quality reporting requirement nor any payment penalty for quality reporting purposes for the following year. For example, HHAs certified on or after May 31, 2012 are not subject to the 2 percentage point reduction to their market basket update for CY 2013. These exclusions only affect quality reporting requirements and do not affect the HHA's reporting responsibilities under the Conditions of Participation and Conditions of Payment (70 FR 76202).

c. Home Health Care Quality Reporting Program Requirements for CY 2014 Payment and Subsequent Years

(1) Submission of OASIS data

For CY 2013, we propose to consider OASIS assessments submitted by HHAs to CMS in compliance with HHA Conditions of Participation and Conditions for Payment for episodes beginning on or after July 1, 2011 and before July 1, 2012 as fulfilling one portion of the quality reporting requirement for CY 2013. This time period would allow for 12 full months of data collection and would provide us with the time necessary to analyze and make any necessary payment adjustments to the payment rates for CY 2013. We propose to continue this pattern for each subsequent year beyond CY 2013, considering OASIS assessments submitted in the time frame between July 1 of the calendar year two years prior to the calendar year of the Annual Payment Update (APU) effective date and July 1 of the calendar year one year prior to the calendar year of the APU effective date as fulfilling the OASIS portion of the quality reporting requirement for the subsequent APU.

(2) Acute Care Hospitalization Claims-Based Measure

We have determined that claims data are a more robust source of data for accurately measuring acute care hospitalizations than other data sources. We propose that the claims-based Acute Care Hospitalization measure replace the OASIS-based measure on Home Health Compare. The OASIS-based measure will continue to be reported on the agency-specific Certification and Survey Provider Enhanced Reporting system (CASPER) reports.

Due to technical issues with Home Health Compare files, we will delay the reporting of both ''Emergency Department Use Without Hospitalization'' and ''Acute Care Hospitalization'' until such time as the technical issues are resolved. The OASIS-based Acute Care Hospitalization measure will continue to be made available to the public via Home Health Compare until it is replaced with the claims-based measure.

To summarize, for the CY 2013 payment update and for subsequent annual payment updates, we propose to continue to use a HHA's submission of OASIS assessments between July 1 and June 30 as fulfilling one portion of the quality reporting requirement for each payment year. Medicare claims data and HHCAHPS data will also be used to measure home health care quality.

d. Home Health Care CAHPS Survey (HHCAHPS)

In the HH PPS Rate Update for CY 2012 HH PPS final rule (76 FR 68577), we stated that the expansion of the home health quality measures reporting requirements for Medicare-certified agencies includes the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Home Health Care (HHCAHPS) Survey for the CY 2012 annual payment update (APU). In CY 2012 we moved forward with the HHCAHPS linkage to the pay-for-reporting (P4R) requirements affecting the HH PPS rate update for CY 2012. We are maintaining the stated HHCAHPS data requirements for CY 2013 that were set out in the CY 2012 HH PPS final rule, for the continuous monthly data collection and quarterly data submission of HHCAHPS data.

Background and Description of HHCAHPS

As part of the United States Department of Health and Human Services' (DHHS) Transparency Initiative, we have implemented a process to measure and publicly report patient experiences with home health care, using a survey developed by the Agency for Healthcare Research and Quality's (AHRQ's) CAHPS® program, and endorsed by the National Quality Forum (NQF). The HHCAHPS survey is part of a family of CAHPS® surveys that asks patients to report on and rate their experiences with health care. The HHCAHPS survey presents home health patients with a set of standardized questions about their home health care providers and about the quality of their home health care.

Prior to this survey, there was no national standard for collecting information about patient experiences that would enable valid comparisons across all home health agencies (HHAs). The history and development process for HHCAHPS has been given in previous rules, but it is also available on our Web site *https://homehealthcahps.org* and also, in the annually-updated *HHCAHPS Protocols and Guidelines Manual,* which is downloadable from *https://homehealthcahps.org.*

For public reporting purposes, we present five measures—three composite measures and two global ratings of care—from the questions on the HHCAHPS survey. The publicly reported data are adjusted for differences in patient mix across home health agencies. Each composite measure consists of four or more questions regarding one of the following related topics:

- Patient care (Q9, Q16, Q19, and Q24);
- Communications between providers and patients (Q2, Q15, Q17, Q18, Q22, and Q23); and
- Specific care issues on medications, home safety, and pain (Q3, Q4, Q5, Q10, Q12, Q13, and Q14).

The two global ratings are the overall rating of care given by the HHA's care providers (Q20), and the patient's willingness to recommend the HHA to family and friends (Q25).

The HHCAHPS survey is not supposed to measure the aspects of home health clinical care that can be captured through a medical record. Rather, the HHCAHPS survey focuses on areas where the home health patient is the best or only source for the

information. We believe that the HHCAHPS survey is a valid measure of patient's perspectives of home health care. The developmental work for the HHCAHPS survey began in mid-2006, and the first HHCAHPS survey was field-tested (to validate the length and content of the survey) in 2008 by the AHRQ and the CAHPS® grantees, and the final HHCAHPS survey was used in a national randomized mode experiment in 2009 through 2010.

The HHCAHPS survey is currently available in several languages. At the time of the CY 2010 HH PPS final rule, HHCAHPS was only available in English and Spanish translations. In the proposed rule for CY 2010, we stated that we would provide additional translations of the survey over time in response to suggestions for any additional language translations. We now offer HHCAHPS in English, Spanish, Chinese, Russian, and Vietnamese languages. We will continue to consider additional translations of the HHCAHPS in response to the needs of the home health patient population.

All of the requirements about home health patient eligibility for the HHCAHPS survey and conversely, which home health patients are ineligible for the HHCAHPS survey are delineated and detailed in the *HHCAHPS Protocols and Guidelines Manual,* which is downloadable from *https://homehealthcahps.org.* Home health patients are eligible for HHCAHPS if they received at least two skilled home health visits in the past two months, and are paid for by Medicare or Medicaid.

Home health patients are ineligible for inclusion in HHCAHPS surveys if one of these conditions pertains to them:

- Are under the age of 18;
- Are deceased prior to pulling sample;
- Receive hospice care;
- Received routine maternity care only;
- Are not considered survey eligible because the state in which the patient lives restricts release of patient information for a specific condition or illness that the patient has; or
- Requested that their names not be released to anyone.

We stated in previous rules that Medicare-certified agencies are required to contract with an approved HHCAHPS survey vendor. This requirement is also codified. Beginning in summer 2009, interested vendors applied to become approved HHCAHPS survey vendors. HHCAHPS survey vendors are required to attend introductory and all update trainings conducted by CMS and the HHCAHPS Survey Coordination Team, as well as to pass a post-training certification test. We now have approximately 40 approved HHCAHPS survey vendors. The list of approved HHCAHPS survey vendors is available at *https://homehealthcahps.org.*

HHCAHPS Oversight Activities

We stated in prior final rules that vendors and HHAs would be required to participate in HHCAHPS oversight activities to ensure compliance with HHCAHPS protocols, guidelines, and survey requirements. The purpose of the oversight activities is to ensure that HHAs and approved survey vendors follow the *HHCAHPS Protocols and Guidelines Manual.* As stated previously in the CY 2010, CY 2011, and CY 2012 final rules, all approved survey vendors must develop a Quality Assurance Plan (QAP) for survey administration in accordance with the *HHCAHPS Protocols and Guidelines Manual.* An HHCAHPS survey vendor's first QAP must be submitted within 6 weeks of the data submission deadline date after the vendor's first quarterly data submission. The QAP must be updated and submitted annually thereafter and at any time that changes occur in staff or vendor capabilities or systems. A model QAP is included in the *HHCAHPS Protocols and Guidelines Manual.* The QAP should include the following:

- Organizational Background and Staff Experience
- Work Plan
- Sampling Plan
- Survey Implementation Plan
- Data Security, Confidentiality and Privacy Plan
- Questionnaire Attachments

As part of the oversight activities, the HHCAHPS Survey Coordination Team conducts on-site visits to the approved HHCAHPS survey vendors. The purpose of the site visits is to allow the HHCAHPS Coordination Team to observe the entire Home Health Care CAHPS Survey implementation process, from the sampling stage through file preparation and submission, as well as to assess how the HHCAHPS data are stored. The HHCAHPS Survey Coordination Team reviews the survey vendor's survey systems, and assesses administration protocols based on the *HHCAHPS Protocols and Guidelines Manual* posted at *https://homehealthcahps.org.* The systems and program review includes, but is not limited to the following:

- Survey management and data systems;
- Printing and mailing materials and facilities;
- Telephone call center facilities;
- Data receipt, entry and storage facilities; and
- Written documentation of survey processes.

After the site visits, HHCAHPS vendors are given a defined time period in which to correct any identified issues and provide follow-up documentation of corrections for review. HHCAHPS survey vendors are subject to follow-up site visits on an as-needed basis.

We are proposing to codify the current guideline that all approved HHCAHPS survey vendors fully comply with all HHCAHPS oversight activities. We are proposing to include this survey requirement at § 484.250(c).

HHCAHPS Requirements for CY 2014

For the CY 2014 APU, we propose to continue monthly HHCAHPS data collection and reporting for four quarters. The data collection period for CY 2014 would include second quarter 2012 through first quarter 2013 (the months of April 2012 through March 2013). HHAs would be required to submit their HHCAHPS data files to the Home Health CAHPS Data Center for CY 2014 for the second quarter 2012 by 11:59 p.m., Eastern Time on October 18, 2012; for the third quarter 2012 by 11:59 p.m., Eastern Time on January 17, 2013; for the fourth quarter 2012 by 11:59 p.m., Eastern Time on April 18, 2013; and for the first quarter 2013 by 11:59 p.m., Eastern Time on July 18, 2013.

As noted, we exempt HHAs receiving Medicare certification on or after April 1, 2012 from the full HHCAHPS reporting requirement for the CY 2014 APU, because these HHAs were not Medicare-certified in the period of April 1, 2011 through March 31, 2012. These HHAs would not need to complete a Participation Exemption Request Form for the CY 2014 Annual Payment Update. We propose to maintain this stated exemption for new HHAs.

As noted, HHAs that had fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2011 through March 31, 2012 would be exempt from the HHCAHPS data collection and submission requirements for the CY 2014 APU. Such agencies would be required to submit their patient counts for the period of April 1, 2011 through March 31, 2012 on the Participation Exemption Request form posted at *https://homehealthcahps.org* by 11:59 p.m., Eastern Time on January 17, 2013. This deadline would be firm, as would be all of the quarterly data submission deadlines.

HHCAHPS Requirements for CY 2015

For the CY 2015 APU, we propose to continue to require the continuous

monthly HHCAHPS data collection and reporting for four quarters. The data collection period for CY 2015 would include second quarter 2013 through first quarter 2014 (the months of April 2013 through March 2014). HHAs would be required to submit their HHCAHPS data files to the Home Health CAHPS Data Center for CY 2014 for the second quarter 2013 by 11:59 p.m., Eastern Time on October 17, 2013; for the third quarter 2013 by 11:59 p.m., Eastern Time on January 16, 2014; for the fourth quarter 2013 by 11:59 p.m., Eastern Time on April 17, 2014; and for the first quarter 2014 by 11:59 p.m., Eastern Time on July 17, 2014.

We propose to continue to exempt HHAs receiving Medicare certification after the period in which HHAs do their patient count (April 1, 2012 through March 31, 2013) on or after April 1, 2013 from the full HHCAHPS reporting requirement for the CY 2015 APU, because these HHAs would not have been Medicare-certified throughout the period of April 1, 2012 through March 31, 2013. These HHAs do not need to complete a Participation Exemption Request Form for the CY 2015 Annual Payment Update. We propose to maintain this stated exemption for new HHAs.

Likewise, we would require that all HHAs that had fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2012 through March 31, 2013 would be exempt from the HHCAHPS data collection and submission requirements for the CY 2015 APU. Agencies with fewer than 60 HHCAHPS-eligible, unduplicated or unique patients in the period of April 1, 2012 through March 31, 2013 would be required to submit their patient counts on the Participation Exemption Request form for CY 2015 posted at *https://homehealthcahps.org* by 11:59 p.m., Eastern Time on January 16, 2014. This deadline would be firm, as would be all of the quarterly data submission deadlines.

HHCAHPS Reconsiderations and Appeals Process

We believe that HHAs should monitor their respective HHCAHPS survey vendors to ensure that vendors submit their HHCAHPS data on time, by accessing their HHCAHPS Data Submission Reports on *https://homehealthcahps.org.* This will help HHAs ensure that their data are submitted in the proper format for data processing to the HHCAHPS Data Center.

We believe that the reconsiderations process for HHCAHPS should not be burdensome to HHAs. We have modeled the HHCAHPS reconsiderations process after the one that is used for Hospital CAHPS, in use for nearly 7 years. We have described the HHCAHPS reconsiderations process requirements in the notification memorandum that the RHHIs/MACs sent to the affected HHAs, on behalf of CMS. HHAs have 30 days to send their reconsiderations to CMS. CMS has and will continue to fully examine all HHA reconsiderations.

Summary of Proposed Changes in CY 2013

We are proposing only one change for the CY 2013 rule—to codify the HHCAHPS guideline that HHAs ensure that survey vendors fully comply with all HHCAHPS requirements.

For Further Information on the HHCAHPS Survey

We strongly encourage HHAs to learn about the survey and view the HHCAHPS Survey Web site at the official Web site for the HHCAHPS at *https://homehealthcahps.org.* Home health agencies can also send an email to the HHCAHPS Survey Coordination Team at *HHCAHPS@rti.org,* or telephone toll-free (1–866–354–0985) for more information about HHCAHPS.

4. Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services. For CY 2013, as in previous years, we are proposing to base the wage index adjustment to the labor portion of the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index. We would apply the appropriate wage index value to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence). Previously, we determined each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). We have consistently used the pre-floor, pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates. We believe the use of the pre-floor, pre-reclassified hospital wage index data results in an appropriate adjustment to the labor portion of the costs, as required by statute.

In the CY 2006 HH PPS final rule (70 FR 68132), we began adopting revised labor market area definitions as discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003). This bulletin announced revised definitions for Metropolitan Statistical Areas (MSAs) and the creation of Micropolitan Statistical Areas and Core-Based Statistical Areas (CBSAs). The bulletin is available online at *www.whitehouse.gov/omb/bulletins/b03-04.html.* In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. This rule incorporates the CBSA changes published in the most recent OMB bulletin. The OMB bulletins are available at *http://www.whitehouse.gov/omb/bulletins/index.html.*

Finally, we would continue to use the methodology discussed in the CY 2007 HH PPS final rule (71 FR 65884) to address those geographic areas in which there were no IPPS hospitals and, thus, no hospital wage data on which to base the calculation of the HH PPS wage index. For rural areas that do not have IPPS hospitals, and therefore, lack hospital wage data on which to base a wage index, we would use the average wage index from all contiguous CBSAs as a reasonable proxy. For rural Puerto Rico, we do not apply this methodology due to the distinct economic circumstances that exist there, but instead continue using the most recent wage index previously available for that area (from CY 2005).

For urban areas without IPPS hospitals, we use the average wage index of all urban areas within the State as a reasonable proxy for the wage index for that CBSA. For CY 2012, the only urban area without IPPS hospital wage data is Hinesville-Fort Stewart, Georgia (CBSA 25980).

The wage index values for rural areas and the CBSAs and their associated wage index values are available via the Internet at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices.html*

5. Proposed CY 2013 Payment Update

a. National Standardized 60-Day Episode Rate

The Medicare HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000 final rule (65 FR 41128), the base unit of payment under the Medicare HH PPS is a national standardized 60-day episode rate. As set forth in § 484.220, we adjust the national standardized 60-day episode rate by a case-mix relative weight and a

wage index value based on the site of service for the beneficiary.

In the CY 2008 HH PPS final rule with comment period, we refined the case-mix methodology and also rebased and revised the home health market basket. To provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage difference, we apply the appropriate wage index value to the labor portion of the HH PPS rates. As discussed in section III.C.1, we have proposed a labor-related share of the case-mix adjusted 60-day episode rate of 78.535 percent and a non-labor-related share of 21.465 percent. The proposed CY 2013 HH PPS rates use the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the CY 2008 HH PPS final rule with comment period. Following are the steps we take to compute the case-mix and wage adjusted 60-day episode rate:

(1) Multiply the national 60-day episode rate by the patient's applicable case-mix weight.

(2) Divide the case-mix adjusted amount into a labor (78.535 percent) and a non-labor portion (21.465 percent).

(3) Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.

(4) Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 60-day episode rate, subject to any additional applicable adjustments.

In accordance with section 1895(b)(3)(B) of the Act, this document constitutes the annual update of the HH PPS rates. The HH PPS regulations at § 484.225 set forth the specific annual percentage update methodology. In accordance with § 484.225(i), for a HHA that does not submit home health quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount minus two percentage points. Any reduction of the percentage change will apply only to the calendar year involved and will not be considered in computing the prospective payment amount for a subsequent calendar year.

For CY 2013, we propose to update the national per-visit rates for each discipline by the applicable home health payment update percentage of 1.5 percent. We propose to adjust the national per-visit rate by the appropriate wage index based on the site of service for the beneficiary, as set forth in § 484.230. As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a low utilization payment amount (LUPA). We propose to adjust the labor portion of the updated national per-visit rates used to calculate LUPAs by the most recent pre-floor and pre-reclassified hospital wage index. We are also proposing to update the LUPA add-on payment amount and the NRS conversion factor by the applicable home health payment update of 1.5 percent for CY 2013.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and § 484.205(b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment (RAP) and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which calendar year rates Medicare would use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(e) and § 484.240.

b. Proposed Updated CY 2013 National Standardized 60-Day Episode Payment Rate

In calculating the annual update for the CY 2012 national standardized 60-day episode payment rates, we first look at the CY 2012 rates as a starting point. The CY 2012 national standardized 60-day episode payment rate is $2,138.52.

Next, we update the payment amount by the proposed CY 2013 home health payment update of 1.5 percent.

As previously discussed in section III.A. (''Case-Mix Measurement'') of this proposed rule, our updated analysis of the change in case-mix that is not due to an underlying change in patient health status reveals an additional increase in nominal change in case-mix. Therefore, we propose to reduce rates by 1.32 percent in CY 2013. The national 60-day episode payment amount is adjusted by the case-mix weight of the patient and by the wage index of the geographic area in which the beneficiary is located. The proposed CY 2013 national standardized 60-day episode payment rate for an HHA that submits the required quality data is shown in Table 11. The proposed CY 2013 national standardized 60-day episode payment rate for an HHA that does not submit the required quality data is updated by the proposed CY 2013 home health payment update (1.5 percent) minus 2 percentage points and is shown in Table 12.

TABLE 11—PROPOSED CY 2013 NATIONAL 60-DAY EPISODE PAYMENT AMOUNT

CY 2012 National standardized 60-day episode payment rate	Multiply by the proposed CY 2013 home health payment update of 1.5 percent	Reduce by 1.32 percent for nominal change in case-mix	Proposed CY 2013 National standardized 60-day episode payment rate
$2,138.52	× 1.015	× 0.9868	$2,141.95

TABLE 12—FOR HHAS THAT DO NOT SUBMIT THE QUALITY DATA—PROPOSED CY 2013 NATIONAL 60-DAY EPISODE PAYMENT AMOUNT

CY 2012 National standardized 60-day episode payment rate	Multiply by the proposed CY 2013 home health payment update of 1.5 percent minus 2 percentage points (−0.5 percent)	Reduce by 1.32 percent for nominal change in case-mix	Proposed CY 2013 national standardized 60-day episode payment rate
$2,138.52	× 0.995	× 0.9868	$2099.74

c. National Per-Visit Rates

The national per-visit rates are used to pay LUPAs and are also used to compute imputed costs in outlier calculations. The per-visit rates are paid by type of visit or home health discipline. The six home health disciplines are as follows:

- Home Health Aide (HH aide);
- Medical Social Services (MSS);
- Occupational Therapy (OT);
- Physical Therapy (PT);
- Skilled Nursing (SN); and
- Speech Language Pathology Therapy (SLP).

In order to calculate the CY 2013 national per-visit rates, the CY 2012 national per-visit rates for each discipline are updated by the proposed CY 2013 home health payment update of 1.5 percent. The national per-visit rates are adjusted by the wage index based on the site of service of the beneficiary. The per-visit rates are not case-mix adjusted nor are they subject to the 1.32 percent reduction related to the nominal increase in case-mix.

The per-visit payment amounts for LUPAs are separate from the LUPA Add-On amount which is paid for episodes that occur as the only episode or initial episode in a sequence of adjacent episodes. The CY 2013 national per-visit rates are shown in Table 13.

TABLE 13—PROPOSED CY 2013 NATIONAL PER-VISIT PAYMENT AMOUNTS

Home health discipline type	CY 2012 per-visit amounts per 60-day episode	For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
		Multiply by the proposed CY 2013 payment update of 1.5 percent	Proposed CY 2013 per-visit payment	Multiply by the proposed CY 2013 payment update of 1.5 percent minus 2 percentage points (−0.5 percent)	Proposed CY 2013 per-visit payment
HH Aide	$51.13	× 1.015	$51.90	× 0.995	$50.87
MSS	180.96	× 1.015	183.67	× 0.995	180.06
OT	124.26	× 1.015	126.12	× 0.995	123.64
PT	123.43	× 1.015	125.28	× 0.995	122.81
SN	112.88	× 1.015	114.57	× 0.995	112.32
SLP	134.12	× 1.015	136.13	× 0.995	133.45

d. LUPA Add-on Payment Amount Update

Beginning in CY 2008, LUPA episodes that occur as the only episode or initial episode in a sequence of adjacent episodes are adjusted by adding an additional amount to the LUPA payment before adjusting for area wage differences. We update the LUPA payment amount by the proposed CY 2013 home health payment update of 1.5 percent. The LUPA add-on payment amount is not subject to the 1.32 percent reduction related to the nominal increase in case-mix. For CY 2013, we propose that the add-on to the LUPA payment to HHAs that submit the required quality data be updated by the proposed CY 2013 home health payment update of 1.5 percent. The proposed CY 2013 LUPA add-on payment amount is shown in Table 14. We propose that the add-on to the LUPA payment to HHAs that do not submit the required quality data would be updated by the proposed CY 2013 home health payment update (1.5 percent) minus two percentage points.

TABLE 14—PROPOSED CY 2013 LUPA ADD-ON AMOUNTS

CY 2012 LUPA add-on amount	For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
	Multiply by the proposed CY 2013 payment update of 1.5 percent	Proposed CY 2013 LUPA add-on amount	Multiply by the proposed CY 2013 payment update of 1.5 percent minus 2 percentage points (−0.5 percent)	Proposed CY 2013 LUPA add-on amount
$94.62	× 1.015	$96.04	× 0.995	$94.15

e. Nonroutine Medical Supply Conversion Factor Update

Payments for nonroutine medical supplies (NRS) are computed by multiplying the relative weight for a particular severity level by the NRS conversion factor. We first increase CY 2012 NRS conversion factor ($53.28) by the proposed payment update of 1.5 percent. The final updated CY 2013 NRS conversion factor for 2013 appears in Table 15.

TABLE 15—PROPOSED CY 2013 NRS CONVERSION FACTOR FOR HHAS THAT DO SUBMIT THE REQUIRED QUALITY DATA

CY 2012 NRS conversion factor	Multiply by the proposed CY 2013 payment update of 1.5 percent	Proposed CY 2013 NRS conversion factor
$53.28	× 1.015	$54.08

Using the NRS conversion factor ($54.08) for CY 2013, the payment amounts for the various severity levels are shown in Table 16.

TABLE 16—PROPOSED CY 2013 NRS PAYMENT AMOUNTS FOR HHAS THAT DO SUBMIT THE REQUIRED QUALITY DATA

Severity level	Points (scoring)	Relative Weight	Proposed CY 2013 NRS payment amount
1	0	0.2698	$14.59
2	1 to 14	0.9742	52.68
3	15 to 27	2.6712	144.46
4	28 to 48	3.9686	214.62
5	49 to 98	6.1198	330.96
6	99+	10.5254	569.21

For HHAs that do not submit the required quality data, we again begin with the CY 2012 NRS conversion factor. We first increase the CY 2012 NRS conversion factor ($53.28) by the proposed CY 2013 home health payment update of 1.5 percent minus 2 percentage points. The CY 2013 NRS conversion factor for HHAs that do not submit quality data is shown in Table 17.

TABLE 17—PROPOSED CY 2013 NRS CONVERSION FACTOR FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

CY 2012 NRS Conversion Factor	Multiply by the proposed CY 2013 payment update of 1.5 percent minus 2 percentage points (−0.5 percent)	Proposed CY 2013 NRS conversion factor
$53.28	× 0.995	$53.01

The payment amounts for the various severity levels based on the updated conversion factor for HHAs that do not submit quality data are calculated in Table 18.

TABLE 18—PROPOSED CY 2013 NRS PAYMENT AMOUNTS FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

Severity level	Points (scoring)	Relative weight	Proposed NRS payment amount
1	0	0.2698	$14.30
2	1 to 14	0.9742	51.64
3	15 to 27	2.6712	141.60
4	28 to 48	3.9686	210.38
5	49 to 98	6.1198	324.41
6	99+	10.5254	557.95

6. Rural Add-On

Section 421(a) of the MMA required, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), with respect to episodes or visits ending on or after April 1, 2004 and before April 1, 2005, that the Secretary increase the payment amount that otherwise would have been made under section 1895 of the Act for the services by 5 percent.

Section 5201 of the DRA amended section 421(a) of the MMA. The amended section 421(a) of the MMA required, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), on or after January 1, 2006 and before January 1, 2007, that the Secretary increase the payment amount otherwise made under section 1895 of the Act for those services by 5 percent.

Section 3131(c) of the Affordable Care Act amended Section 421(a) of the MMA to provide an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending on or after April 1, 2010 and before January 1, 2016.

The statute waives budget neutrality related to this provision, as the statute specifically states that the Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

The 3 percent rural add-on is applied to the national standardized 60-day episode rate, national per-visit rates, LUPA add-on payment, and NRS conversion factor when home health services are provided in rural (non-CBSA) areas. Refer to Tables 19 through 23 for these payment rates.

TABLE 19—PROPOSED CY 2013 PAYMENT AMOUNTS FOR 60-DAY EPISODES FOR SERVICES PROVIDED IN A RURAL AREA

For HHAs that do submit quality data			For HHAs that do not submit quality data		
Proposed CY 2013 national standardized 60-day episode payment rate	Multiply by the 3 percent rural add-on	Proposed rural CY 2013 national standardized 60-day episode payment rate	Proposed CY 2013 national standardized 60-day episode payment rate	Multiply by the 3 percent rural add-on	Proposed rural CY 2013 national standardized 60-day episode payment rate
$2,141.95	× 1.03	$2,206.21	$2,099.74	× 1.03	$2,162.73

TABLE 20—PROPOSED CY 2013 PER-VISIT AMOUNTS FOR SERVICES PROVIDED IN A RURAL AREA

Home health discipline type	For HHAs that do submit quality data			For HHAs that do not submit quality data		
	Proposed CY 2013 per-visit rate	Multiply by the 3 percent rural add-on	Proposed rural CY 2013 per-visit rate	Proposed CY 2013 per-visit rate	Multiply by the 3 percent rural add-on	Proposed rural CY 2013 per-visit rate
HH Aide	$51.90	× 1.03	$53.46	$50.87	× 1.03	$52.40
MSS	183.67	× 1.03	189.18	180.06	× 1.03	185.46
OT	126.12	× 1.03	129.90	123.64	× 1.03	127.35
PT	125.28	× 1.03	129.04	122.81	× 1.03	126.49
SN	114.57	× 1.03	118.01	112.32	× 1.03	115.69
SLP	136.13	× 1.03	140.21	133.45	× 1.03	137.45

TABLE 21—PROPOSED CY 2013 LUPA ADD-ON AMOUNTS FOR SERVICES PROVIDED IN RURAL AREAS

For HHAs that do submit quality data			For HHAs that do not submit quality data		
Proposed CY 2013 LUPA add-on amount	Multiply by the 3 percent rural add-on	Proposed rural CY 2013 LUPA add-on amount	Proposed CY 2013 LUPA add-on amount	Multiply by the 3 percent rural add-on	Proposed rural CY 2013 LUPA add-on amount
$96.04	× 1.03	$98.92	$94.15	× 1.03	$96.97

TABLE 22—PROPOSED CY 2013 NRS CONVERSION FACTOR FOR SERVICES PROVIDED IN RURAL AREAS

For HHAs that do submit quality data			For HHAs that do not submit quality data		
Proposed CY 2013 conversion factor	Multiply by the 3 percent rural add-on	Proposed rural CY 2013 conversion factor	Proposed CY 2013 conversion factor	Multiply by the 3 percent rural add-on	Proposed CY rural 2013 conversion factor
$54.08	× 1.03	$55.70	$53.01	× 1.03	$54.60

TABLE 23—PROPOSED CY 2013 NRS PAYMENT AMOUNTS FOR SERVICES PROVIDED IN RURAL AREAS

Severity level	Points (scoring)	For HHAs that do submit quality data (NRS Conversion Factor = $55.70)		For HHAs that do not submit quality data (NRS Conversion Factor = $54.60)	
		Relative weight	Total NRS payment amount for rural areas	Relative weight	Total NRS payment amount for rural areas
1	0	0.2698	$15.03	0.2698	$14.73
2	1 to 14	0.9742	54.26	0.9742	53.19
3	15 to 27	2.6712	148.79	2.6712	145.85
4	28 to 48	3.9686	221.05	3.9686	216.69
5	49 to 98	6.1198	340.87	6.1198	334.14
6	99+	10.5254	586.26	10.5254	574.69

D. Home Health Face-to-Face Encounter

1. Acute or Post-Acute Physician Flexibility

As a condition for payment, the Affordable Care Act requires that, prior to certifying a patient's eligibility for the home health benefit, the physician must document that the physician himself or herself or an allowed nonphysician practitioner (NPP) has had a face-to-face encounter with the patient. Specifically, the Affordable Care Act states that a nurse practitioner or clinical nurse specialist, as those terms are defined in section 1861(aa)(5) of the Act, working in collaboration with the physician in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg) of the Act) as authorized by State law, or a physician assistant (as defined in section 1861(aa)(5) of the Act) under the supervision of the physician may perform the face to face encounter and inform the certifying physician, who documents the encounter as part of the certification of eligibility. In the CY 2012 HH PPS final rule (76 FR 68597), we stated that, in addition to the certifying physician and allowed NPPs, the physician who cared for the patient in an acute or post-acute care facility, and who had privileges in such facility, could also perform the face-to-face encounter and inform the certifying physician, who would document the encounter as part of the certification of eligibility, and that encounter supported the patient's homebound status and need for skilled services.

For patients admitted to home health following care in an acute or post-acute care facility, the home health industry has asked whether it would be acceptable for an allowed NPP, working in the acute or post-acute facility, to perform the face-to-face encounter in collaboration with the acute or post-acute care physician and communicate his or her clinical findings to the acute or post-acute care physician and, then, for the acute or post-acute care physician to communicate the NPP's findings to the certifying physician. In practice, it is our understanding from these stakeholders that acute or post-acute care physicians utilize NPPs to obtain information about the patient's clinical condition. As such, the industry suggests that it would be reasonable and appropriate for an allowed NPP working in an acute or post-acute facility to perform the face-to-face encounter and communicate the clinical findings to the acute or post-acute care physician who would then communicate information regarding the patient's homebound status and need for skilled services to the certifying physician. However, we do not believe the statute specifically addresses this situation.

Currently, in guidance in the form of Qs and As and a recent MLN article available on CMS' Home Health Agency Center Web site (*http://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html*), we have communicated that physician residents, under the supervision of a teaching physician, would be allowed to perform the face-to-face encounter in the acute or post-acute facility and inform the teaching physician of the clinical findings of that face-to-face encounter. The teaching physician, in turn, informs the certifying physician of the clinical findings of the face-to-face encounter, to include the patient's homebound status and the need for skilled services.

A resident is not precluded from performing the face-to-face encounter because he or she is a physician and can perform the encounter. However, we stated that because a resident does not have privileges, the teaching physician would be responsible for informing the certifying physician of the patient's homebound status and need for skilled services. Since we recognize this exchange of information between residents and teaching physicians as allowable under existing face-to-face requirements we believe that NPPs should not be precluded from performing the face-to-face encounter in collaboration with the acute or post-acute care physician who has privileges and cared for the patient in the acute or post-acute facility, informing the acute or post-acute care physician of the patient's clinical condition, and having the acute or post-acute care physician inform the certifying physician of the patient's homebound status and need for skilled services.

Therefore, for patients admitted to home health from an acute or post-acute facility, we propose to modify the regulations at § 424.22(a)(1)(v) to allow an NPP in an acute or post-acute facility to perform the face-to-face encounter in collaboration with or under the supervision of the physician who has privileges and cared for the patient in the acute or post-acute facility, and allow such physician to inform the certifying physician of the patient's homebound status and need for skilled services. For the specific proposed changes to part 424, see the regulation text of this proposed rule. We encourage stakeholder comment on these proposed changes.

In addition to meeting the goals of the face-to-face encounter provision, we believe this proposed policy change will result in more efficient care coordination between the acute or post-acute NPP and physician, and the certifying physician. We believe this more efficient care delivery will result in an improved transition of care from the acute or post-acute facility to the home health setting. Improving a patient's transition from one healthcare setting to another is widely regarded to be directly related to improved patient care and improved patient outcomes. We believe that this policy change would encourage the acute or post-acute NPP who is best informed of the patient's most current clinical condition to collaboratively communicate the patient's need for home health services to the physician who cared for the patient in the acute or post-acute facility, who would then inform the certifying physician. Because a standard protocol of communication or documentation is not mandated between the acute or post-acute NPP,

the acute or post-acute physician, and a patient's community physician, we believe the additional flexibility with the face-to-face encounter will encourage increased communication between the allowed practitioners and better care coordination for the patient. Further, for patients admitted to home health from an acute or post-acute facility, such a policy would be consistent with what believe is the goal of the provision, which is increased physician involvement in a patient's home health certification, without creating additional burden or preventing access to care. We believe that increased physician and NPP communication regarding the patient's clinical condition fits within the framework of Congress' goals associated with the face-to-face encounter requirement.

2. Regulatory Text Clarification

Additionally, because of the way our regulatory text is constructed at § 424.22(a)(1)(v)(D), we received notice that claims are being denied if the face-to-face documentation is not ''clearly titled'' by the certifying physician. Our intent was that the face-to-face documentation be clearly titled, but not necessarily by the certifying physician. As such, we propose to revise our regulatory language so as to not be prescriptive as to what entity must title the documentation. The face-to-face documentation must still be signed by the certifying physician, and the content requirements are not changing. For the specific proposed changes to part 424, see the regulation text of this proposed rule. We encourage stakeholder comment on these proposed changes.

E. Therapy Coverage and Reassessments

1. Therapy Coverage

In the CY 2011 HH PPS final rule (75 FR 70389), we clarified policies related to how therapy services are to be provided and documented, and began requiring additional therapy documentation to support medical necessity to address continuing concerns regarding the provision of unnecessary therapy in the home health setting. Specifically, we required that: (1) Measurable treatment goals be described in the plan of care and that the patient's clinical record demonstrate that the method used to assess a patient's function include objective measurement and successive comparisons of measurements, thus enabling objective measurement of progress toward goals and/or therapy effectiveness; (2) a qualified therapist (instead of an assistant) perform the needed therapy service, assess the patient, measure progress, and document progress toward goals at least once least every 30 days during a therapy patient's course of treatment; (3) for those patients needing more than 13 or 19 therapy visits, we require that a qualified therapist (instead of an assistant) perform the therapy service required at the 13th or 19th visit, assess the patient, and measure and document effectiveness of the therapy; and (4) we cease coverage of therapy services if progress towards plan of care goals cannot be measured, unless the documentation supports the expectation that progress can be expected in a reasonable and predictable timeframe. We also finalized policies that provide additional flexibility for the 13th and 19th visit requirements in cases when: (1) The patient resides in a rural area; (2) documented exceptional circumstances prevent the qualified therapist from making the required visit; and (3) patients receive more than one type of therapy.

Although in the CY 2011 HH PPS final rule, we clarified our therapy coverage requirements and instituted polices that, in exceptional circumstances, provide flexibility in fulfilling these requirements, concerns regarding certain aspects of these policies persist. The first issue involves the timing of when the resumption of coverage occurs after a qualified therapist misses one of the required 13th/19th or at least once every 30 days reassessment visits. Currently, when a qualified therapist misses one of the required reassessment visits, once the therapist has completed the required reassessment, coverage resumes after this reassessment visit. Some agencies and therapists believe they are being unfairly penalized by this policy and that the reassessment visit should be covered as therapy was also provided during that visit even though it was not timely.

The second issue concerns patients receiving more than one type of therapy and the lack of coverage for all therapy disciplines if the required reassessment visit is missed for any one of the therapy disciplines for which therapy services are being provided. Currently, if a patient receives more than one type of therapy and the required reassessment visit is missed for any one of the therapy disciplines for which therapy services are being provided, therapy visits are not covered for any of the therapy disciplines until the qualified therapist that missed the reassessment visit complies with the reassessment visit requirements. Therefore, even if qualified therapists from the other therapy disciplines have completed all their required reassessment visits, therapy visits for these disciplines would not be covered until the qualified therapist who missed the reassessment visit has completed the previously missed reassessment visit. We received feedback from the home health industry that they believe this requirement is unfair in that it denies coverage for therapy disciplines that have met their requirement for qualified therapists to complete a reassessment visit and that they are providing what should be considered covered therapy services. We had additional concerns that this requirement may be negatively impacting beneficiaries' access to therapy services. That is, if an agency anticipates a visit will not be covered because one qualified therapist has not completed the required reassessment, it might be reluctant for any therapy visits to occur until that missed reassessment visit is completed. This is obviously not in the best interest of the beneficiary.

We propose to revise our regulations at § 409.44(c)(2)(i)(E) to state that if a qualified therapist missed a reassessment visit, therapy coverage would resume with the visit during which the qualified therapist completed the late reassessment, not the visit after the therapist completed late reassessment. We would expect minimal changes to claims submissions as a result of this policy change. However, we will monitor claims for unintended consequences, including possible up-coding associated with therapy-related home health resource groups (HHRGs) pre- and post-implementation.

In addition, we propose to revise our regulations at § 409.44(c)(2)(i)(E) to state that in cases where multiple therapy disciplines are involved, if the required reassessment visit was missed for any one of the therapy disciplines for which therapy services were being provided, therapy coverage would cease only for that particular therapy discipline. Therefore, as long as the required therapy reassessments were completed timely for the remaining therapy disciplines, therapy services would continue to be covered for those therapy disciplines. We encourage stakeholder comment on these proposed changes.

2. When Therapy Reassessment Visits Are To Be Conducted

We continue to receive questions regarding acceptable visit ranges for the required 13th and 19th reassessment visits. As we codified at § 409.44(c)(2)(i)(C)(1) and § 409.44(c)(2)(i)(D)(1), if either a patient lives in a rural area, or documented circumstances outside the therapist's

control prevent her or him from completing the reassessment visit at the 13th or 19th visit, this requirement can be met by the therapist having made the visit during the 11th or 12th visit for the required 13th visit or the 17th or 18th visit for the required 19th visit.

We also intended for similar flexibility to be applicable in cases where beneficiaries are receiving more than one type of therapy. Therefore, we included in our regulations at § 409.44(c)(2)(i)(C)(2) and § 409.44(c)(2)(i)(D)(2) that the therapist's visit need only be ''close to'' the 13th and 19th visits. However, because we recognize the industry's need for additional guidance, to provide more precise guidance, we propose to revise the regulations at § 409.44(c)(2)(i)(C)(1) and § 409.44(c)(2)(i)(D)(1) to clarify that in cases where the patient is receiving more than one type of therapy, qualified therapists could complete their reassessment visits during the 11th, 12th, or 13th visit for the required 13th visit reassessment and the 17th, 18th, or 19th visit for the required 19th visit reassessment. We encourage stakeholder comment on these proposed changes.

3. Technical Correction to G-Code Description

As part of our ''Home Health Prospective Payment System Rate Update for Calendar Year 2011,'' (75 FR 70389) we also provided notice of changes to existing G-codes and new G-codes related to skilled nursing and therapy services (75 FR 43248). In Change Request 7182, we finalized these new and revised G-codes. These codes included G0158, which had as its description, ''Services performed by a qualified occupational therapist assistant in the home health or hospice setting, each 15 minutes.'' After the publication of these codes, a national therapy association informed us that the use of the word, ''therapist'' rather than ''therapy'' is technically incorrect for the occupational therapy profession. This association requested that we change the terminology in the G-code. Because this description includes the terminology, ''occupational therapist assistant,'' we propose to make a technical correction to this terminology in G0158, so that the new description would instead include the terminology, ''occupational therapy assistant,'' making it also consistent with § 484.4.

F. Payment Reform: Home Health Study and Report

To address concerns that some beneficiaries are at risk of not having access to Medicare home health services and that the current HH PPS may encourage providers to adopt selective admission patterns, section 3131(d) of the Affordable Care Act requires the Secretary to conduct a study on home health agency costs involved with providing access to care to low-income Medicare beneficiaries or beneficiaries in medically underserved areas, and in treating beneficiaries with varying levels of severity of illness (specifically, beneficiaries with ''high levels of severity of illness''). As part of the study, we plan to assess whether these vulnerable populations (low-income Medicare beneficiaries, beneficiaries in medically underserved areas, and beneficiaries with high levels of severity of illness) experience access issues. We may also analyze methods to revise the current HH PPS to ensure access to care and better account for costs for these beneficiaries.

Methods to revise the current HH PPS could include payment adjustments for services that involve either more or fewer resources, changes to reflect resources involved with providing home health services to low-income Medicare beneficiaries or Medicare beneficiaries residing in medically underserved area, and ways outlier payments could be revised to reflect costs of treating Medicare beneficiaries with high severity of illness. In addition, section 3131(d) of the Affordable Care Act allows for the investigation into other issues with the payment system as the Secretary determines appropriate. Therefore, in addition to examining access to care for vulnerable populations and examining ways to more accurately align payment with resource costs, we also plan to evaluate the current HH PPS and develop possible revisions to the payment system that might minimize vulnerabilities.

As we stated in the CY 2012 proposed rule (76 FR 41025), we awarded a contract in the fall of 2010 to perform exploratory work for the study. The contractor performed a literature review of HH PPS payment vulnerabilities and access issues, established and convened technical expert panels and open door forums to help define the vulnerable populations and to gain insight on access issues these populations may face, and performed preliminary analysis looking at resource costs versus Medicare reimbursement. In September 2011, we awarded a study contract to develop an analytic plan, perform detailed analysis, and if necessary, develop recommendations for changes to the HH PPS. We are in the preliminary stages of our analyses. We plan to provide updates regarding our progress in future rulemaking and open door forums.

The Affordable Care Act requires that the Secretary submit a Report to Congress regarding the study no later than March 1, 2014. The report may contain recommendations for revisions to the HH PPS, recommendations for legislation and administrative action, and recommendations for whether further research is needed. The Congress also provided CMS with the authority to conduct a separate demonstration project to test recommended HH PPS changes resulting from the study.

G. International Classification of Diseases, 10th Edition (ICD–10) Transition Plan and Grouper Enhancements

On April 17, 2012 the Department of Health and Human Services (HHS) published a proposed rule ''Administrative Simplification: Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for ICD–10–CM and ICD–10–PCS Medical Data Code Set'' (77 FR 22950) that proposed, among other things, to delay, from October 1, 2013 to October 1, 2014, the compliance date for the International Classification of Diseases, 10th Edition diagnosis and procedure codes (ICD–10). Any changes to the effective date for ICD–10 implementation would be announced in future rulemaking. We will include an update in our final rule and outline any impact on our ICD–10 transition plans as a result of the proposed change in ICD–10 compliance date.

Although a compliance date change has been proposed, we continue to work with the HH PPS Grouper maintenance contractor to revise the HH PPS Grouper to accommodate ICD–10–CM codes. Home Health Agencies currently report IC–9–CM codes for their patients through OASIS–C. For Medicare patients, the data collection software invokes HH PPS Grouper software. The HH PPS Grouper will be revised to utilize ICD–10–CM codes. If determined to be appropriate, we plan to publish a draft list of ICD–10–CM codes for the HH PPS Grouper by the summer of 2012 for industry review and comment. An email account on the ICD–10 section of the CMS Web site to facilitate receipt of comments on the draft list of ICD–10–CM codes will be provided. Our current plans are to describe the testing approach for the HH PPS Grouper to accommodate and process ICD–10 codes on the ICD–10 section of the CMS Web site in conjunction with the release of the draft grouper in April 2013. We plan

to update providers of any changes to our current plans through the following forums: the ICD–10 Home Health section of the CMS Web site, the Home Health, Hospice and DME Open Door Forums, and provider outreach sessions for ICD–10.

In December 2008, we updated and released Attachment D: Selection and Assignment of OASIS Diagnoses to promote accurate selection and assignment of the patient's diagnosis *(https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/OASIS_Attachment_D_Guidance.html*). This guidance was designed to ensure that providers limited the number of diagnoses assigned to M1024. In addition, Attachment D reminded HHA clinicians/coders to comply with ICD–9–CM coding guidelines when assigning primary and secondary diagnoses to the OASIS items M1020 and M1022. Analysis conducted by our HH PPS Grouper maintenance contractor revealed that many HHAs do not comply with these guidelines. The analysis demonstrated that HHAs are not limiting the number of diagnoses assigned to M1024 and continue to not comply with ICD–9–CM coding guidelines. We have reviewed the diagnosis codes identified in the HH PPS Grouper and confirmed that the only codes that cannot be reported as a primary or secondary diagnosis code (M1020 and M1022) are the fracture codes (V-code). As a result, we are proposing two enhancements for the HH PPS Grouper which we believe will encourage compliance with coding guidelines.

We propose to restrict M1024 to only permit fracture (V-code) diagnoses codes which according to ICD–9–CM coding guidelines cannot be reported in a home health setting as a primary or secondary diagnosis. To further ensure compliance with proper coding guidelines, we propose to pair the fracture codes (V-code) with appropriate diagnosis codes and only when these pairings appear in the primary and payment diagnosis fields will the grouper award points. Currently, when a code from the Diabetes, Skin 1 or Neuro 1 group is submitted in the primary diagnosis position (M1020) the diagnosis code may score additional points. In situations where ICD–9 coding guidelines have required a V-code to be submitted in the M1020 position, HHAs have been instructed to report the etiology code in the payment diagnosis field (M1024) and receive equivalent scoring. Specifically, we are proposing a revision in HHRG logic to permit equivalent scoring when the Diabetes, Skin 1 or Neuro 1 codes are submitted immediately following the V-code in the M1020 position without requiring utilization of the payment diagnosis field. These grouper enhancements will enforce appropriate use of our payment diagnosis field based upon the guidance issued in Attachment D (putting us in a much more favorable position to eventually retire the payment diagnosis field) until we move to ICD–10 where there is no longer an issue with fracture codes, and ensure ICD–9 and ICD–10 coding guidelines are followed to assist in the eventual transition of grouping the claim, versus OASIS, to determine the appropriate HIPPS code for payment.

IV. Quality Reporting for Hospices

A. Background and Statutory Authority

Section 3004 of the Affordable Care Act amends the Act to authorize a quality reporting program for hospices. As added by section 3004 (c), new section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that fiscal year. Depending on the amount of the annual update for a particular year, a reduction of 2 percentage points could result in the annual market basket update being less than 0.0 percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the particular FY involved. Any such reduction will not be cumulative and will not be taken into account in computing the payment amount for subsequent FYs.

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Any measures selected by the Secretary must have been endorsed by the consensus-based entity which holds a contract regarding performance measurement with the Secretary under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). However, section 1814(i)(5)(D)(ii) of the Act provides that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the consensus-based entity, the Secretary may specify a measure(s) that is(are) not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary. Under section 1814(i)(5)(D)(iii) of the Act, the Secretary must publish selected measures that will be applicable with respect to FY 2014 no later than October 1, 2012.

B. Public Availability of Data Submitted

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. Such procedures will ensure that a hospice will have the opportunity to review the data regarding the hospice's respective program before it is made public. In addition, under section 1814(i)(5)(E) of the Act, the Secretary is authorized to report quality measures that relate to services furnished by a hospice on the CMS Web site. We recognize that public reporting of quality data is a vital component of a robust quality reporting program and are fully committed to developing the necessary systems for public reporting of hospice quality data. We also recognize it is essential that the data we make available to the public be meaningful data and that comparing performance between hospices requires that measures be constructed from data collected in a standardized and uniform manner. The development and implementation of a standardized data set for hospices must precede public reporting of hospice quality measures. We will announce the timeline for public reporting of data in future rulemaking.

C. Quality Measures for Hospice Quality Reporting Program and Data Submission Requirements for Payment Year FY 2014.

1. Quality Measures Required for Payment Year 2014

In the Hospice Wage Index for Fiscal Year 2012 Final Rule (76 FR 47302, 47320 (August 4, 2011)), to meet the quality reporting requirements for hospices for the FY 2014 payment determination as set forth in section 1814(i)(5) of the Act, we finalized the requirement that hospices report two measures:

- An NQF-endorsed measure that is related to pain management, NQF #0209: The percentage of patients who report being uncomfortable because of pain on the initial assessment (after admission to hospice services) who report pain was brought to a comfortable

level within 48 hours. The data collection period for this measure is October 1, 2012 through December 31, 2012, and the data submission deadline is April 1, 2013. The data for this measure are collected at the patient level, but are reported in the aggregate for all patients cared for within the reporting period, regardless of payor.

• A structural measure that is not endorsed by NQF: Participation in a Quality Assessment and Performance Improvement (QAPI) program that includes at least three quality indicators related to patient care. Specifically, hospice programs are required to report whether or not they have a QAPI program that addresses at least three indicators related to patient care. In addition hospices are required to check off, from a list of topics, all patient care topics for which they have at least one QAPI indicator. The data collection period for this measure is October 1, 2012 through December 31, 2012, and the data submission deadline is January 31, 2013. Hospices are not asked to report their level of performance on these patient care related indicators. The information being gathered will be used by CMS to ascertain the breadth and content of existing hospice QAPI programs. This stakeholder input will help inform future measure development.

Hospice programs will be evaluated for purposes of the quality reporting program based on whether or not they respond, not on how they respond or on performance level. No additional measures are required for payment year FY 2014.

2. Data Submission Requirements for Payment Year 2014

We will provide a Hospice Data Submission Form to be completed using a web-based data entry site. Training for use of this Web based data submission form will be provided to hospices through webinars and other downloadable materials before the data submission date. Though similar to the data entry site utilized during the hospice voluntary reporting period, the site will be changed to accommodate the addition of the NQF #0209 measure, as well as to simplify the data entry requirements for the structural measure. Hospices will be asked to provide identifying information, and then complete the web based data entry for the required measures. For hospices that cannot complete the web based data entry, a downloadable data entry form will be available upon request.

The data submission form as well as details regarding education and resources related to the data collection and data submission for both the NQF #0209 measure and the structural measure will be provided on the CMS Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/.*

D. Quality Measures for Hospice Quality Reporting Program for Payment Year FY 2015 and Beyond

1. Quality Measures Required for Payment Year FY 2015 and Subsequent Years

To meet the quality reporting requirements for hospices for the FY 2015 payment determination and each subsequent year, as set forth in section 1814(i)(5) of the Act, we propose that hospices report the following:

• The NQF-endorsed measure that is related to pain management, NQF #0209: The percentage of patients who report being uncomfortable because of pain on the initial assessment (after admission to hospice services) who report pain was brought to a comfortable level within 48 hours.

• The structural measure: Participation in a Quality Assessment and Performance Improvement (QAPI) Program that Includes at Least Three Quality Indicators Related to Patient Care. Specifically, hospice programs would report whether or not they have a QAPI program that addresses at least three indicators related to patient care.

We are not extending the requirement that hospices provide a list of their patient care indicators. We invite comment on the proposed selection of measures.

2. Data Submission Requirements for Payment Year FY 2015.

As previously noted, in the Hospice Wage Index for Fiscal Year 2012 Final Rule, we finalized the following:

• All hospice quality reporting periods subsequent to that for Payment Year FY 2014 be based on a calendar year rather than a calendar quarter. For example, January 1, 2013 through December 31, 2013 will be the data collection period used for determination of the hospice market basket update for each hospice in FY 2015, etc.; and

• Hospices submit data in the fiscal year prior to the payment determination. For FY 2015 and beyond, the data submission deadline will be April 1 of each year. For example, April 1, 2014 will be the data submission deadline used for determination of the hospice market basket update for each hospice in FY 2015, etc.

E. Additional Measures Under Consideration and Standardization of Data Collection

While initially we will build a foundation for quality reporting by requiring hospices to report one NQF-endorsed measure and one structural measure, we seek to achieve a comprehensive set of quality measures to be available for widespread use for quality improvement and also informed decision making. The provision of quality care to hospice patients and families is of utmost importance to CMS. For annual payment determinations beyond FY2015, we are considering an expansion of the required measures to include some additional measures endorsed by NQF. The measures of particular interest are NQF numbers 1634, 1637, 1638, 1639, and 0208 and can be found by searching the NQF site at *www.qualityforum.org.* We welcome comments on whether all, some, any, or none of these measures should be considered for future rulemaking. A potential timeline and titles of future measures under consideration are included below.

To support the standardized collection and calculation of quality measures specifically focused on hospice services, we believe the required data elements would potentially require a standardized assessment instrument. We are committed to developing a quality reporting program for hospices that utilizes standardized methods to collect data needed to calculate endorsed quality measures. To achieve this goal, we have been working on the initial development and testing of a hospice patient-level data item set. This patient level item set could be used by all hospices at some point in the future to collect and submit standardized data items about each patient admitted to hospice. These data could be used for calculating quality measures. Many of the items currently in testing are already standardized and included in assessments used by a variety of other providers. Other items have been developed specifically for the hospice care settings, and obtain information needed to calculate the hospice-appropriate quality measures that were endorsed by NQF in February 2012. We are considering a target date for implementation of a standardized hospice data item set as early as CY 2014, dependent on development and infrastructure logistics. We welcome comments on the potential implementation of a hospice patient-level data item set in CY 2014.

In developing the standardized data item set, we have included data items that will support the following endorsed measures:

- 1617 Patients Treated With an Opioid Who Are Given a Bowel Regimen
- 1634 Pain Screening
- 1637 Pain Assessment
- 1638 Dyspnea Treatment
- 1639 Dyspnea Screening

Starting with data collection in 2015, we envision these measures as possible measures that we would implement subject to future rulemaking. We welcome comments on the potential future implementation of these measures and the associated projected timeframe for implementation.

We are also considering future implementation of measures based on an experience of care survey such as the Family Evaluation of Hospice Care Survey (FEHC). The NQF endorsed measure # 0208 Family Evaluation of Hospice Care is such a measure. Implementation of an experience of care measure and the associated use of a specified survey could precede or follow the implementation of a standardized data set. We do not envision implementation of both a data set and an experience of care survey in the same year and would project implementation in succession in order to avoid excessive burden to hospices. We solicit comment on the succession of implementation of these two potential requirements.

Summary Tables:

Data collection	Data submission	APU impact	Measures
Proposed in This Proposed Rule			
1/1/2013–12/31/2013	4/1/2014	FY 2015 (10/1/2014)	Structural measure without QAPI list NQF 0209.
1/1/2014–12/31/2014	4/1/2015	FY 2016 (10/1/2015)	Structural measure without QAPI list NQF 0209.
Target Date for Potential Future Implementation of Standardized Data Set			
Considering Hospice Standardized Data Item Set for implementation in CY 2014.			
Target Dates for Potential Implementation of Future Measures Under Consideration			
1/1/2015–12/31/2015	4/1/2016	FY 2017 (10/1/2016)	Structural measure without QAPI list NQF 0209.
			Considering NQF endorsed measures supported by a standardized data set:
			• 1617 Patients Treated With an Opioid Who Are Given a Bowel Regimen
			• 1634 Pain Screening
			• 1637 Pain Assessment
			• 1638 Dyspnea Treatment
			• 1639 Dyspnea Screening
			Considering NQF endorsed measure derived from the FEHC survey:
			• 0208 Family Evaluation of Hospice Care

V. Survey and Enforcement Requirements for Home Health Agencies

A. Background and Statutory Authority

In the 1980s and 1990s, home health services became a rapidly growing segment of Medicare expenditures. During that time, Congress enacted several laws that dramatically expanded the authority of CMS in its administration of the home health benefit. The Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203, enacted on December 22, 1987) amended the Act to incorporate provisions that would create mechanisms to improve the quality of home health services as well as long-term care services. It also provided the Secretary with the authority to change the manner in which CMS regulated and carried out enforcement actions with respect to HHAs participating in the Medicare program. Changes in both the HHA and long-term care arenas required significant adjustments and increased workload for CMS in its operation and regulatory oversight of these programs.

The OBRA '87 amendments mandated an outcome-oriented survey process for HHAs that would include ''a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care,'' as reflected in section 1891(c)(2)(C)(i)(II) of the Act. We responded to that mandate by creating an outcome-oriented survey process for HHAs that included specific procedures to be followed, including visits to patients in their homes. We also defined in our policies, although not in regulation, the different types of surveys to be used, including the standard, partial extended and extended surveys addressed in section 1891 of the Act. This proposed rule would codify these types of surveys in regulation.

To participate as an HHA in the Medicare program, an agency or organization must meet the definition of an HHA in section 1861(o) of the Act. Section 1861(o) of the Act defines an HHA as a public agency or private organization or a subdivision of such an agency or organization, which among other things, is primarily engaged in the provision of skilled nursing services and other therapeutic services, has policies established by a group of professional personnel, maintains clinical records, is licensed under State or local law, and meets the health and safety standards established by the Secretary. Additionally, section 1891(a) of the Act sets out specific participation requirements for HHAs. The regulations implementing sections 1861(o) and 1891(a) of the Act are known as health and safety standards, or CoPs, for HHAs and are codified in 42 CFR part 484.

Home health services are covered for the elderly and disabled under the Hospital Insurance (Part A) and Supplemental Medical Insurance (Part B) benefits of the Medicare program. Section 1861(m) of the Act defines the

term ''home health services'' as services that must be furnished by, or under arrangement with, an HHA that participates in the Medicare program, must be provided on a visiting basis to the individual's home, and may include the following:

- Part-time or intermittent skilled nursing care furnished by or under the supervision of a registered nurse.
- Physical therapy, speech-language pathology, and occupational therapy.
- Medical social services under the direction of a physician.
- Part-time or intermittent home health aide services.
- Medical supplies, other than drugs and biologicals, but including osteoporosis drugs.
- Services of interns and residents if the HHA is owned by or affiliated with a hospital that has an approved medical education program.
- Services at hospitals, skilled nursing facilities, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

The HHA CoPs were originally issued in 1973, with revisions made in 1989 and 1991, to implement provisions of section 4021 of OBRA '87, which added section 1891(a) to the Act. Additional minor revisions to the CoPs have been made since that time. Over the years, additional home-health-specific areas of focus for CMS have included adjustments to the home health Prospective Payment System (HH PPS) and Outcome and Assessment Information Set (OASIS).

The CoPs apply to an HHA as an entity, as well as to the services furnished to each individual under the care of the HHA, unless the CoPs are specifically limited to Medicare/Medicaid beneficiaries, such as the OASIS requirements at § 484.11, § 484.20 and § 484.55. Under section 1891(b) of the Act, the Secretary is responsible for assuring that the CoPs, and their enforcement, are adequate to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of public monies.

The Secretary is authorized to enter into an agreement with a State survey agency (SA) under section 1864(a) of the Act or a national accreditation organization (AO) under section 1865(a) of the Act, with oversight by CMS Regional Offices, to determine whether HHAs meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for SAs to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid-related surveys are used by CMS and the Medicaid State Agency, respectively, as the basis for a decision to enter into, deny, or terminate a provider agreement with the agency. To assess compliance with Federal participation requirements, surveyors conduct onsite inspections (surveys) of agencies. In the survey process, surveyors directly observe the actual provision of care and services to patients and the effect or possible effects of that care to assess whether the care provided meets the assessed needs of individual patients. An SA periodically surveys HHAs and certifies its findings to CMS and to the State Medicaid Agency if the HHA is seeking to acquire or maintain Medicare or Medicaid certification, respectively. The general requirements regarding the survey and certification process are codified at 42 CFR part 488 and specific survey instructions are detailed in our State Operations Manual (SOM) (IOM Pub. 100–07) and in policy transmittals. Certain providers and suppliers, including HHAs, are also deemed by CMS to meet the Federal requirements for participation if they are accredited by an AO whose program is approved by CMS to meet or exceed Federal requirements under section 1865(a). However, these deemed providers and suppliers are subject to validation surveys under § 488.7.

On August 2, 1991, we published the Survey Requirements and Alternative Sanctions for Home Health Agencies proposed rule (56 FR 37054) that proposed to establish survey and enforcement requirements, as well as alternative sanctions for HHAs under section 1891 of the Act, implementing the OBRA '87 provisions.

While we attempted to finalize the proposed rule numerous times since its publication on August 2, 1991, sweeping changes in the law and other regulations, together with the demands of additional improvement efforts, impeded the promulgation of a final rule. Indeed, in response to the August 2008 Office of Inspector General (OIG) Report, ''Deficiency History and Recertification of Medicare Home Health Agencies,'' (OEI–09–06–00040), we noted that the August 2, 1991 proposed rule would require substantial revisions and republication to implement the alternative sanctions. Due to the considerable length of time that has passed since publication of the August 2, 1991 proposed rule, we are now publishing a new proposed rule, which would implement those survey and enforcement requirements, as well as establish alternative sanctions specified under 1891(f) for HHAs.

B. Provisions of the Proposed Rule

1. Overview

Sections 4022 and 4023 of OBRA '87 amended the Act by adding sections 1891(c) through (f) to establish requirements for surveying and certifying HHAs as well as to establish the authority of the Secretary to utilize varying enforcement mechanisms to terminate participation and to impose alternative sanctions if HHAs were found out of compliance with the CoPs. We propose to add new subparts I and J to 42 CFR part 488 to implement these sections of the Act. New subpart I would provide survey and certification guidance while new subpart J would outline the basis for enforcement of compliance standards for HHAs that are not in substantial compliance with Medicare participation requirements.

In addition, we propose to amend certain sections of 42 CFR part 488, subpart A—General Provisions. Currently, the general provisions include specific references to survey, certification and enforcement procedures for long term care facilities and the residents of those facilities. We are proposing to amend several regulations, where appropriate, to also include reference to HHAs and the patients they serve.

Specifically, we propose to amend § 488.2 to include the statutory reference to home health services (section 1861(m) of the Act), HHAs (section 1861(o) of the Act), and the Conditions of Participation (CoPs) for HHAs and home health quality (section 1891 of the Act).

We propose to amend § 488.3 by revising paragraph (a)(1) to include the statutory citations concerning HHAs mentioned above. In addition, we propose to amend § 488.26 by revising paragraph (c)(2) and (e) to include references to ''patient'' and ''patients'' which is how individuals receiving services in an HHA are referenced. Furthermore, we propose to revise the heading for § 488.28 to include reference to HHAs with deficiencies.

Rules for certification, documentation of findings, periodic review of compliance and approval, certification of noncompliance, and determining compliance are set forth, respectively, in §§ 488.12, 488.18, 488.20, 488.24, and 488.26 of this part.

2. Proposed New Subpart I—Survey and Certification of HHAs

a. Basis and Scope (§ 488.700)

Proposed section 488.700 of subpart I would specify the statutory authority for and general scope of standards proposed

in part 488 that establish the requirements for surveying HHAs to determine whether they meet the Medicare conditions of participation. In general, this proposed rule is based on the rulemaking authority in section 1891 of the Act as well as specific statutory provisions identified in the preamble where appropriate.

b. Definitions (§ 488.705)

We propose to add § 488.705 which would define certain terms. Sections 1891(c)(1) and (2) of the Act specify the requirements for types and frequency of surveys to be performed in HHAs, utilizing the terms ''standard'', ''abbreviated standard'', ''extended'', ''partial extended'' and ''complaint'' surveys, as well as specifying the minimum components of the standard and extended surveys. Therefore, we are proposing definitions for these surveys at § 488.705.

In addition to those terms, we are proposing to add definitions for ''condition-level deficiency,'' ''deficiency,'' ''noncompliance,'' ''standard-level deficiency,'' ''substandard care,'' and ''substantial compliance.'' The definitions of the different surveys as well as the additional proposed definitions have been a part of longstanding CMS policy, but have not yet been codified in the regulations for HHAs.

c. Standard Surveys (§ 488.710)

At proposed § 488.710, a standard survey would be conducted not later than 36 months after the date of the previous standard survey, as specified at section 1891(c)(2)(A) of the Act. Section 1891(c)(2)(C) of the Act requires for standard surveys, to the extent practicable, to review a case-mix stratified sample of individuals to whom the HHA furnishes services, which is reflected in proposed § 488.710(a)(1). The statute specifies that CMS actually visit the homes of sampled patients, and that CMS conduct a survey of the quality of services being provided (as measured by indicators of medical, nursing, and rehabilitative care). At proposed § 488.710(a), we would specify minimum requirements and provide that visits to homes of patients could be done only with the consent of the patient, their guardian or legal representative. The purpose of the home visit would be to evaluate the extent to which the quality and scope of services furnished by the HHA attained and maintained the highest practicable functional capacity of each patient as reflected in the patient's written plan of care and clinical records. Other forms of communication with patients, such as through telephone calls, could be used to complete surveys, if determined necessary by the State Survey Agency or CMS Regional Office. We also would provide in proposed § 488.710(b) that the survey agency's failure to follow its own survey procedures would not invalidate otherwise legitimate determinations that deficiencies existed in an HHA. For example, if the Statement of Deficiencies was not forwarded to the provider within 10 days of the end of the exit conference, this would not invalidate the underlying determinations.

d. Partial Extended Survey (§ 488.715)

In proposed § 488.715, the partial extended survey would be conducted to determine if deficiencies and/or deficient practice(s) exist that were not fully examined during the standard survey. It would be conducted when a standard-level noncompliance was identified; or if the surveyor believed that a deficient practice existed at a standard or condition-level that was not examined during the standard survey. During the partial extended survey, the surveyor would review, at a minimum, additional standard(s) under the same CoP in which the deficient practice was identified during the standard survey. The surveyors could also review any additional standards under the same or related CoPs which would assist in making a compliance decision. Under § 488.24 of our regulations, which applies to most other providers and suppliers and upon which this proposed provision is modeled, the SA certifies that a provider is not in compliance with the CoPs where the deficiencies are of such character as to substantially limit the provider's capacity to furnish adequate care or which adversely affect the health and safety of patients. A CoP may be considered out of compliance (and thus condition-level) for one or more standard level deficiencies, if, in a surveyor's judgment, the standard level deficiency constitutes a significant or a serious finding that adversely affects, or has the potential to adversely affect, patient outcomes. Surveyors are to use their professional judgment, in concert with the Federal forms, policies and interpretive guidelines in their assessment of a provider's compliance with the CoPs. The same procedures would be used with respect to HHAs.

e. Extended Surveys (§ 488.720)

As described in proposed § 488.720, the extended survey would review compliance with all CoPs and standards applicable to the HHA. It could be conducted at any time, at the discretion of CMS or the SA, but would be conducted when any condition level deficiency was found. This survey also would review the HHA's policies, procedures, and practices that produced the substandard care, which we define in proposed § 488.705 as noncompliance with one or more Conditions of Participation at the condition-level. The extended survey would be conducted no later than 14 calendar days after the completion of a standard survey which found the HHA had furnished substandard care. Additionally, the survey would review any associated activities that might have contributed to the deficient practice.

f. Unannounced Surveys (§ 488.725)

Section 1891(c)(1) of the Act requires that standard surveys be unannounced. Moreover, CMS policy (State Operations Manual (SOM) section 2700A) requires that all HHA surveys be unannounced; this policy would be set out at proposed § 488.725, which also would provide that surveys be conducted with procedures and scheduling that renders the onsite surveys as unpredictable in their timing as possible. In addition, section 1891(c)(1) of the Act requires CMS to review State scheduling and survey procedures to ensure that the agency has taken all reasonable steps to avoid giving advance notice to HHAs of impending surveys through these procedures. Generally, as with respect to other provider-types, State survey agencies make every effort to lessen the predictability of a survey occurring at a specific time, day, or month. Moreover, section 1891(c)(1) of the Act states that any individual who notifies (or causes to be notified) an HHA of the time or date of the standard survey is subject to a civil money penalty (CMP) not to exceed $2,000. Accordingly, our proposed regulations at § 488.725 would reflect these survey requirements.

g. Survey Frequency and Content (§ 488.730)

In proposed § 488.730, we would set out the requirements for survey frequency and the substantive content of the survey, as discussed in § 488.710, § 488.715, and § 488.720. Section 1891(c)(2) of the Act requires HHAs to be subject to a standard survey at least every 36 months and the frequency of a standard survey to be commensurate with the need to assure the delivery of quality home health services. This 36 month interval is based upon the last day of the last standard survey. This section of the Act also gives CMS the authority to conduct a survey as often as necessary to assure the delivery of quality home health services by determining whether an HHA complies

with the CoP or to confirm the correction of previous deficiencies. A standard survey or abbreviated standard survey may be conducted within two months of a change in ownership, administration or management of an HHA, as specified in 1891(c)(2)(B)(ii) of the Act, and must be conducted within 2 months of a significant number of complaints reported against the HHA (as determined by CMS), and would also be conducted as otherwise directed by CMS to determine compliance with the CoP, such as the investigation of a complaint. Extended surveys and partial extended surveys may also be conducted at any time. As required in section 1891(c)(2)(D) of the Act, extended surveys and partial extended surveys must be conducted when an HHA is found to have furnished substandard care, and may also be conducted for other reasons at the discretion of CMS or the State in order to determine compliance with the CoP.

h. Surveyor Qualifications (§ 488.735)

Section 1891(c)(2)(C)(iii) of the Act requires ''an individual who meets the minimum qualifications established by the Secretary'' to conduct a survey of an HHA. We interpret this statutory language to mean that each individual on a survey team must meet certain minimum CMS qualifications. We set forth our proposed criteria for surveyor minimum qualifications in § 488.735. We are proposing that he or she successfully complete the relevant CMS-sponsored Basic HHA Surveyor Training Course and any associated course prerequisites prior to conducting an HHA survey.

Proposed § 488.735 would also set out the circumstances that would disqualify a surveyor from surveying a particular HHA as required by section 1891(c)(2)(C)(iii) of the Act. A surveyor would be prohibited from surveying an HHA if the surveyor currently serves, or within the previous two years has served, on the staff of or as a consultant to, the HHA undergoing the survey. Specifically, the surveyor could not have been a direct employee, employment agency staff at the HHA, or an officer, consultant or agent for the surveyed HHA regarding compliance with CoPs. A surveyor would be prohibited from surveying an HHA if he or she has a financial interest or an ownership interest in that HHA. The surveyor would also be disqualified if he or she has a family member who has a financial interest or ownership interest with the HHA to be surveyed or has a family member who is a patient of the HHA to be surveyed.

i. Certification of Compliance or Non-Compliance (§ 488.740)

We propose in § 488.740 to cross reference the rules for certification, documentation of findings, periodic review of compliance and approval, certification of non-compliance, and determining compliance for HHAs as set forth, respectively at § 488.12, § 488.18, § 488.24 and § 488.26 of this part. These general rules must be followed when a State Agency certifies compliance or non-compliance of the HHA with the Act and Conditions of Participation.

j. Informal Dispute Resolution (IDR) (§ 488.745)

We propose in § 488.745 to make available to HHAs an IDR process to address disputes related to condition-level survey findings following an HHA's receipt of the official statement of deficiencies. We propose adding an IDR process that would provide HHAs an informal opportunity to resolve disputes in the survey findings for those HHAs that are seeking recertification from the SA for continued participation in Medicare and for those HHAs that are currently under SA monitoring (either through a complaint or validation survey). Whenever possible, we want to provide every opportunity to settle disagreements at the earliest stage, prior to a formal hearing, conserving time and money potentially spent by the HHA, the State agency, and CMS. The goal of IDR is to offer an HHA the opportunity to refute one or more condition-level deficiencies cited on the official Statement of Deficiencies. An IDR between an HHA and the SA or RO, as appropriate, would allow the HHA an opportunity to provide an explanation of any material submitted to the SA and respond to the reviewer's questions.

In proposed § 488.745, we would provide HHAs with the option to dispute condition-level survey findings or repeat deficiencies warranting a sanction upon their receipt of the official Statement of Deficiencies. When survey findings indicate a condition level deficiency (or deficiencies), CMS or the State, as appropriate, would notify the HHA in writing of its opportunity to request an IDR of those deficiencies. This notice would be provided to the HHA at the time the Statement of Deficiencies is issued to the HHA. The HHA's request for IDR must be submitted in writing, should include the specific deficiencies that are disputed, and should be submitted within the same 10 calendar day period that the HHA has for submitting an acceptable plan of correction.

An HHA's initiation of the IDR process would not postpone or otherwise delay the effective date of any enforcement action. The failure to complete an IDR would not delay the effective date of any enforcement action. Further, if any findings are revised or removed based on IDR, the official Statement of Deficiencies is revised accordingly and any enforcement actions imposed solely as a result of those revised or removed deficiencies are adjusted accordingly. We believe that the IDR procedures would maintain the balance between an HHA's due process concerns and the public's interest in the timely correction of HHA deficiencies.

3. Proposed Subpart J—Alternative Sanctions for Home Health Agencies With Deficiencies

a. Statutory Basis (§ 488.800)

We are proposing rules for enforcement actions for HHAs with deficiencies, including alternative sanctions, at new subpart J. Under sections 1866(b)(2)(B) and 1891(e) of the Act and § 489.53(a)(3), we may terminate an HHA's provider agreement if that HHA is not in substantial compliance with the Medicare requirements (that is, the failure to meet one or more conditions of participation is considered a lack of substantial compliance). We may also terminate an HHA that fails to correct its deficiencies within a reasonable time (ordinarily no more than 60 days), even if those deficiencies are at the standard (rather than condition) level at § 488.28. Prior to OBRA '87, the only action available to CMS to address HHAs out of compliance with Federal requirements was termination of their Medicare provider agreement. Section 4023 of OBRA '87 added subsections 1891(e) and (f) to the Act, which expanded the Secretary's options to enforce Federal requirements for HHAs. Under section 1891(e)(1) of the Act, if the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this title is no longer in compliance with the requirements specified in or pursuant to section 1861(o) or section 1891(a) of the Act and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in section 1891(f)(2)(A)(iii) or terminate the certification of the agency,

and may provide, in addition, for one or more of the other sanctions described in section 1891(f)(2)(A).

We are proposing to set out the statutory basis for the new subsection at proposed § 488.800, which is sections 1891(e) and (f) of the Act. Section 1891(e) provides for termination of home health agencies that fail to comply with Conditions of Participation. This section also provides for ensuring that the procedures with respect to the conditions under which each of the alternative sanctions developed by the Secretary shall be designed to minimize the time between identification of deficiencies and imposition of these sanctions, including imposition of incrementally more severe fines for repeated or uncorrected deficiencies. Furthermore, this section specifies that these sanctions are in addition to any others available under State or Federal law, and, except for civil money penalties, are imposed prior to the conduct of a hearing.

b. Definitions (§ 488.805)

We are proposing to add § 488.805 to define the frequently used terms, including ''directed plan of correction,'' ''immediate jeopardy,'' ''new admission,'' ''per instance,'' ''plan of correction,'' ''repeat deficiency'' and ''temporary management''.

Although section 1891 of the Act uses the term ''intermediate sanctions,'' for consistency with other enforcement rules, this proposed rule uses ''alternative sanctions,'' which we consider to have the same meaning.

c. General Provisions (§ 488.810)

We propose in § 488.810 general rules for enforcement actions against an HHA with condition-level deficiencies. Sections 1891(e)(1) and (2) of the Act provide that if CMS finds that an HHA is not in compliance with the Medicare home health CoPs and the deficiencies involved either do or do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, then we may terminate the provider agreement, impose an alternative sanction(s), or both. Therefore, our decision to impose one or more sanctions, including termination, would be based on condition-level deficiencies, found in an HHA during a survey, pursuant to section 1891(e)(2) of the Act. We would be able to impose one or more sanctions for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

It is also important to note that HHAs acquire certification for participation in Medicare via a SA survey or via accreditation by a CMS-approved AO. Accreditation by a CMS-approved AO is voluntary and not necessary to participate in Medicare. The AO communicates any condition level findings to the applicable CMS Regional Office. When an accredited HHA is to lose its accreditation status from the AO due to condition-level findings that remain uncorrected, we would follow the usual procedures for the resumption of oversight by the SA and the same procedures for imposition of alternative sanctions if appropriate. Once a sanction was imposed on an HHA, oversight and enforcement of that HHA would be by the SA from the accrediting organization until the HHA achieved compliance and the alternative sanction was removed or until the HHA was terminated from the Medicare program.

It is CMS policy that any deficiencies found at a branch of the HHA would be counted against the HHA as a business entity. Therefore, regardless of whether the deficient practice is identified at the branch or the parent location, all sanctions imposed would apply to the parent HHA. However, these sanctions would not apply to any non-branch subunit that was associated with an HHA if such subunit were independently required to meet the CoPs for HHAs. Such subunit instead could have sanctions imposed on it based on deficient practices found at that subunit. For HHAs that operate branch offices in multiple states, we would base enforcement decisions on surveys conducted by the State in which the parent office is located.

In proposed § 488.810(e) an HHA would be required to submit an acceptable plan of correction (POC) to CMS. We define plan of correction in proposed § 488.805 whether it has standard-level or condition-level as a plan developed by the HHA and approved by CMS that is the HHA's written response to survey findings detailing corrective actions to cited deficiencies and specifies the date by which those deficiencies will be corrected. More specifically, a POC would detail how an HHA has or would correct each deficiency, how the HHA would act to protect patients in similar situations, how the HHA would ensure that each deficiency did not recur, how the HHA would monitor performance to sustain solutions, and in what timeframe corrective actions would be taken. We would determine if the POC was acceptable based on the information presented in the POC.

In proposed § 488.810(f) CMS would provide written notification of the intent to impose a sanction including the specific sanction, the statutory basis for the sanction and appeal rights including an opportunity to participate in the proposed Informal Dispute Resolution process.

An HHA may appeal the determination of noncompliance leading to the imposition of a sanction under the provisions of 42 CFR Part 498. A pending hearing does not delay the effective date of a sanction against an HHA and sanctions continue to be in effect regardless of any pending appeals proceedings. Civil money penalties continue to accrue during the pendency of an appeal, but will not be collected until a final agency determination, as we note in proposed § 488.845(f).

d. Factors To Be Considered in Selecting Sanctions (§ 488.815)

Section 1891(e)(2) of the Act provides that if CMS finds that an HHA is not in compliance with the Medicare home health CoPs and the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, CMS may terminate the provider agreement, impose an alternative sanction(s), or both, at CMS's discretion for a period not to exceed six months. The choice of any alternative sanction or termination would reflect the impact on patient care and the seriousness of the HHA's patterns of noncompliance and would be based on the factors proposed in § 488.815. We could propose termination of the provider agreement and apply one or more sanctions for HHAs with the most egregious deficiencies, for an HHA that was unwilling or unable to achieve compliance within a maximum of six months, whether or not the violations constituted an ''immediate jeopardy'' situation.

In proposed § 488.815 and consistent with section 1891(f)(3) of the Act, procedures for selecting the appropriate alternative sanction, including the amount of any CMP and the severity of each sanction, have been designed to minimize the time between the identification of deficiencies and the final imposition of sanctions. To determine which sanction or sanctions to apply, we propose that we would consider the following:

- Whether the deficiencies pose immediate jeopardy to patient health and safety;
- The nature, incidence, degree, manner, and duration of the deficiencies or noncompliance;
- The presence of repeat deficiencies, the HHA's compliance history in general, and specifically with reference to the cited deficiencies, and any history

of repeat deficiencies at either the parent or branch location;

- Whether the deficiencies are directly related to a failure to provide quality patient care;
- Whether the HHA is part of a larger organization with documented performance problems;
- Whether the deficiencies indicate a system wide failure of providing quality care.

Section 1891(f)(3) of the Act provides for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. We would define ''repeat deficiency'' in § 488.805 as a standard or condition-level deficiency that was cited on a survey that was substantially the same as, or similar to, a finding of noncompliance issued within the preceding 365 days. The standard-level findings would be evaluated for condition-level noncompliance based on the HHA's failure to correct and sustain compliance. As noted in proposed 488.815(c), CMS would consider the presence of repeat deficiencies as a factor in selecting sanctions and civil money penalties.

e. Available Sanctions (§ 488.820)

Section 1891(f)(1)(A) of the Act provides that CMS shall ''develop a range of intermediate [or alternative] sanctions'' that may be imposed in addition to, or instead of, termination when CMS finds that an HHA has deficiencies. The Act explicitly provides for the following: Civil money penalties, suspension of payment for new admissions, and temporary management. We are proposing those alternative sanctions in this proposed rule. In addition to those specified in the statute, we are proposing to add the following additional alternative sanctions: A directed plan of correction, directed in-service training, and/or suspension of payment for new PPS episodes. The list of alternative sanctions that could be imposed for a noncompliant HHA is in proposed § 488.820.

f. Actions When Deficiencies Pose Immediate Jeopardy (§ 488.825)

Under paragraph 1891(e)(1) of the Act, if CMS determined that the HHA's deficiencies immediately jeopardize the health or safety of its patients, then CMS must take immediate action to notify the HHA of the immediate jeopardy situation and the HHA must correct the deficiencies. We are proposing to implement the statutory requirement by proposing that if the IJ situation was not addressed and resolved within 23 days because the HHA was unable or unwilling to correct the deficiencies, CMS would terminate the HHA's provider agreement, using the procedures set out at § 489.53(d). In addition, CMS could impose one or more other alternative sanctions permitted by section 1891(f)(2) of the Act, including a civil money penalty (CMP), temporary management and/or suspension of all Medicare payments before the effective date of termination. We propose to set out these provisions as new § 488.825.

We also propose in § 488.825 that for immediate jeopardy situations, we would terminate the HHA and we would give notice of the termination within 2 days before the effective date of the termination, which is consistent with the requirement for skilled nursing facilities in § 489.53(d)(2)(ii). Under our regular survey process, providers are advised of any immediate jeopardy findings upon discovery of the immediate jeopardy situation during the survey or as part of the exit conference at the end of the survey. This would give an HHA time to remove the immediate jeopardy and correct the deficiencies that gave rise to the immediate jeopardy finding. If the HHA fails to remove the immediate jeopardy situation, we would terminate the provider agreement no later than 23 days from the last day of the survey. Consistent with the notice process established for hospital emergency departments with deficiencies that pose immediate jeopardy (set out at § 489.53(b)), we are proposing at § 488.825 that if an immediate jeopardy situation was not resolved within 23 days because the HHA was unable or unwilling to correct deficiencies found during a survey, CMS would terminate the HHA's provider agreement, using the termination procedures set out at § 489.53 We propose to amend § 489.53 by adding a new basis for termination at paragraph (a)(17), establishing that we would terminate an HHA's provider agreement if the HHA failed to correct a deficiency or deficiencies within the required time frame.

The notice of our intent to impose a sanction as proposed § 488.825(b) would include the nature of the noncompliance, the sanctions to be imposed, the effective date of the sanction, opportunity for IDR and the right to appeal the determination leading to the sanction. In order to assure an HHA achieved prompt compliance, we expect that we would give HHAs written notice of impending enforcement actions against them as quickly as possible following the completion of a survey of any kind.

Finally, in proposed § 488.825(c), we would require an HHA whose provider agreement is terminated to appropriately and safely transfer its patients to another local HHA within 30 days of termination. The HHA would be responsible for providing information, assistance and any arrangements necessary for the safe and orderly transfer of its patients. The State would be required to assist the HHA with this process.

g. Actions When Deficiencies Are at the Condition-Level, But Do Not Pose Immediate Jeopardy (§ 488.830)

While section 1891(e)(2) of the Act provides for termination of the HHA's provider agreement as an enforcement option in non-immediate jeopardy situations, we are interested in providing incentives for HHAs to achieve and maintain full compliance with the requirements specified under sections 1861(o) and 1891(a) of the Act before termination becomes necessary. Accordingly, our proposed regulations at § 488.830 reflect this enforcement policy and address the definition of ''noncompliance,'' provision of 15 day notice, criteria for continuation of payment, and termination time frame when there is no immediate jeopardy.

The statute does not require CMS to discontinue alternative sanctions when it proposes to terminate an HHA's participation in Medicare; thus, these sanctions, if imposed, could continue while CMS initiated termination proceedings. Therefore, alternative sanctions could be imposed before the termination became effective, but could not continue for a period that exceeded six months. Also, to protect the health and safety of individuals receiving services from the HHA, alternative sanctions would apply until the HHA achieved compliance or had its Medicare participation terminated. For example, the suspension of payment sanction would end when the HHA corrected all condition-level deficiencies or was terminated.

We propose in § 488.830(b) that for a deficiency or deficiencies that do not pose immediate jeopardy, we would give the HHA at least 15 days advance notice of any proposed sanctions, except CMP, which would remain effective until the effective date of an impending termination (at 6 months) or until the HHA achieved compliance with CoPs, whichever was earlier. This is consistent with the general rule for providers and suppliers in § 489.53(d).

Section 1891(f)(3) of the Act provides that the Secretary shall develop and implement specific procedures for determining the conditions under which

alternative sanctions are to be applied, including the amount of any penalties and the severity of each sanction. The following sections describe each possible sanction and procedures for imposing them.

Finally, in proposed § 488.830(e), we would require an HHA whose provider agreement is terminated to appropriately and safely transfer its patients to another local HHA within 30 days of termination. The HHA would be responsible for providing information, assistance and any arrangements necessary for the safe and orderly transfer of its patients. The State would be required to assist the HHA with this process.

h. Temporary Management § 488.835

We are proposing in § 488.835 when and how CMS applies temporary management, the duration of this sanction, and the payment procedures for temporary managers. We propose that temporary management means the temporary appointment by CMS or a CMS authorized agent of an authorized substitute manager or administrator (based on qualifications described in § 484.4) who would be under the direction of the HHA's governing body and who would have authority to hire, terminate or reassign staff, obligate HHA funds, alter HHA procedures, and manage the HHA to correct deficiencies identified in the HHA's operation. We could impose temporary management when we determine that an HHA has condition-level deficiencies and that the deficiencies or the management limitations of the HHA are likely to impair the HHA's ability to correct the deficiencies and return the HHA to full compliance with the CoPs within the required timeframe. We would impose temporary management to bring an HHA into compliance with program requirements in non-IJ cases within six months, as we propose in § 488.835(c). We would also choose to impose temporary management as a sanction for deficiencies that posed immediate jeopardy to patient health and safety, as provided under proposed § 488.825(a)(3).

When temporary management is imposed, CMS would consider the HHA or SA's recommendation for a temporary manager when making the appointment. The individual appointed as a temporary manager would be required to have work experience and education that would qualify such individual to oversee the correction of deficiencies so that the HHA could achieve substantial compliance with the Medicare requirements. Each State Survey Agency will maintain a list of recommended individuals who would be eligible to serve as temporary managers, and annually submit the list to CMS.

If the HHA refused to relinquish authority and control to the temporary manager, we would terminate the HHA's provider agreement. If a temporary manager was appointed, but the HHA failed to correct the condition-level deficiencies within 6 months from the last day of the survey, the HHA's Medicare participation would be terminated. Additionally, if the HHA resumes management control without CMS's approval, it would be deemed to be a failure to relinquish authority and control to the temporary manager and we would impose termination and could impose any additional sanctions. The appointment of a temporary manager would not relieve the HHA of its responsibility to achieve compliance.

We propose in § 488.835(c) that temporary management would end when:

- We determined that the HHA was in compliance with all CoPs and had the capability to remain in full compliance;
- The HHA provider agreement was terminated; or
- The HHA resumed management control without CMS approval.

We believe that the proposed regulations at § 488.805 and § 488.835 would provide the temporary manager with the authority necessary to manage the HHA and cause positive changes. The temporary manager would have the authority to hire, terminate, or reassign staff; obligate HHA funds; alter HHA policies and procedures; and otherwise manage an HHA to correct deficiencies identified in the HHA's operations. Temporary management would be provided at the HHA's expense. Before the temporary manager was installed, the HHA would have to agree to pay his/her salary directly for the duration of the appointment. We believe that the responsibility for the HHA to pay the expenses of the temporary manager is an inherent management responsibility of the agency for which the HHA is regularly reimbursed by Medicare and Congress, pursuant to section 1891(e)(1), though such temporary outside management might be necessary in some cases to bring the HHA back into compliance with the conditions of participation. We propose that the salary for the temporary manager would not be less than the amount equivalent to the prevailing salary paid by providers in the geographic area for positions of this type, based on the based on the Geographic Guide by the Department of Labor (BLS Wage Data by Area and Occupation). In addition, the HHA would have to pay for any additional costs that would have reasonably been incurred if such person had been in an employment relationship, and any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the State. An HHA's failure to pay the salary of the temporary manager would be considered by CMS to be a failure to relinquish authority and control to temporary management.

i. Suspension of Payment for All New Admissions and New Payment Episodes § 488.840

We are proposing at § 488.840 regulations describing when and how CMS would apply a suspension of payment for new Medicare admissions and new PPS episodes of care. If an HHA had a condition-level deficiency or deficiencies (regardless of whether or not immediate jeopardy exists), we would suspend payments for new Medicare patient admissions to the HHA that were made on or after the effective date of the sanction. The suspension of payment would be for a period not to exceed six months and would end when the HHA either achieved substantial compliance or was terminated. Suspension of payment for new patient admissions and for new payment episodes that occurred on or after the effective date of the sanction could be imposed anytime an HHA was found to be out of substantial compliance. The CMS would provide the HHA with written notice of non-compliance at least two calendar days before the effective date of the sanction in immediate jeopardy situations (proposed § 488.825(b)) or at least 15 calendar days before the effective date of the sanction in non-immediate jeopardy situations (proposed § 488.830(b)). Our notice of suspension of payment for new admissions and new payment episodes would include the following: the nature of the non-compliance; the effective date of the sanction; and the right to appeal the determination leading to the sanction.

We propose to define a ''new admission'' in § 488.805 as the following:

- A patient who is admitted or readmitted to the HHA under Medicare on or after the effective date of a suspension of payment sanction; or
- A new payment episode that occurs on or after the effective date of a suspension of payment sanction. We have expanded the definition of ''new admission'' to include new payment episodes because we believe that each new payment episode (the 60 day

payment episode of HHA care) marks the beginning of a new assessment and a new care plan for the patient.

Furthermore, patients who are admitted before the effective date of the suspension and who have temporarily interrupted their treatment in the middle of a payment episode but are not discharged would not be subject to the suspension of payment.

Further, section 1891(f)(2)(C) of the Act provides that a suspension of payment sanction shall terminate when CMS finds that the HHA is in substantial compliance with all of the requirements specified in, or developed in accordance with, sections 1861(o) and 1891(a) of the Act. That is, the suspension of payment sanction would end when the HHA was determined to have corrected all condition-level deficiencies, or upon termination, whichever is earlier.

We would notify the HHA of the imposition of this sanction under proposed § 488.840(b)(1). Once such a sanction was imposed, we propose that the HHA would be required to notify any new patient admission and patients with new payment episodes that Medicare payment might not be available to this HHA because of the imposed suspension before care could be initiated. Moreover, the HHA would be precluded from charging the Medicare patient for those services unless it could show that, before initiating or continuing care, it had notified the patient or his/her representative both orally and in writing in a language that the patient or representative could understand, that Medicare payment might not be available. The suspension of payment would end when CMS terminated the provider agreement or CMS found, in accordance with 1891(f)(2)(C) of the Act, the HHA to be in compliance with all CoPs.

In proposed § 488.840(b)(3) in accordance with section 1891(f)(2)(C) of the Act, if CMS terminated the provider agreement, or if the HHA was in substantial compliance with the CoPs (as determined by CMS), the HHA would not be eligible for any payments for services provided to new Medicare patients admitted during the time the suspension was in effect, or for existing Medicare patients beginning a new payment episode during their care. This policy would be consistent with the legislative history of OBRA '87, which states that ''suspended payments [are] not [to] be repaid to any agency once it has come back into compliance and the suspension has been lifted. It is the Committee's belief that if such repayment were permitted, there would be little incentive for deficient agencies to come back into compliance as quickly as possible.'' *See* H.R. Rep. No. 100–391(I) at 423 (1987). In accordance with the Committee's intent, we would construe the term ''suspend'' to mean to temporarily stop Medicare payments, without the possibility of recovering the suspended payments. If compliance with the CoPs was achieved, we would resume payment to the HHA prospectively from the date that CMS had determined correction.

In proposed § 488.840(c), the suspension of payment would end when CMS terminates the provider agreement or CMS finds, in accordance with section 1891(f)(2)(C) of the Act, the HHA to be in substantial compliance with all of the CoPs.

j. Civil Money Penalties (CMPs) § 488.845

We are proposing in § 488.845 rules for imposition of CMPs. Under sections 1891(e) and 1891(f)(2)(A)(i) of the Act, CMS may impose a CMP against an HHA that is determined to be out of compliance with one or more CoPs, regardless of whether the HHA's deficiencies pose immediate jeopardy to patient health and safety. We could also impose a civil money penalty for the number of days of immediate jeopardy. The CMP amount cannot exceed $10,000 for each day of non-compliance. A deficiency found during a survey at a parent HHA or any of its branches results in a noncompliance issue for the entire HHA, which can be subject to the imposition of a CMP.

In this section, we propose both a ''per day'' and a ''per instance'' CMP at § 488.845(a). The per day CMP would be imposed for each day of noncompliance with the CoPs. Additionally, should a survey identify a particular instance or instances of noncompliance during a survey, we propose to impose a CMP for that instance or those individual instances of noncompliance. We propose to define ''per instance'' in § 488.805 as a single event of noncompliance identified and corrected during a survey, for which the statute authorizes CMS to impose a sanction. While there may be a single event which leads to noncompliance, there can also be more than one instance of noncompliance identified and more than one CMP imposed during a survey. For penalties imposed per instance of noncompliance, we are proposing penalties from $1,000 to $10,000 per instance. Such penalties would be assessed for one or more singular events of condition-level noncompliance that were identified at the survey and where the noncompliance was corrected during the onsite survey.

Since the range of possible deficiencies is great and depends upon the specific circumstances at a particular time, it would be impossible to assign a specific monetary amount for each type of noncompliance that could be found. Thus, we believe that each deficiency would fit into a range of CMP amounts, which we discuss below.

We are proposing that we would consider the following factors when determining a CMP amount, in addition to those factors that we would consider when choosing a type of sanction proposed in § 488.815:

- The size of the agency and its resources.
- The availability of other HHAs within a region, including service availability in a given region.
- Accurate and credible resources such as PECOS and Medicare cost reports and claims information, that provide information on the operations and the resources of the HHA.
- Evidence that the HHA has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the conditions of participation and to ensure patient health and safety. When several instances of noncompliance would be identified at a survey, more than one per-day or per instance CMP could be imposed as long as the total CMP did not exceed $10,000 per day. Also, a per-day and a per-instance CMP would not be imposed simultaneously for the same deficiency.

At proposed § 488.845(b)(2), we would give ourselves the discretion to increase or reduce the amount of the CMP during the period of noncompliance depending on whether the level of noncompliance had changed at the time of a revisit survey. CMS could increase a CMP in increments based upon an HHA's inability or unwillingness to correct deficiencies, the presence of a system wide failure in the provision of quality care or a determination of immediate jeopardy with potential for harm. CMS could also decrease a CMP in increments to the extent that it finds, pursuant to a revisit, that substantial and sustainable improvements have been implemented even though the HHA is not yet in full compliance if earnest efforts have been made to address the causes of deficiencies and sustain improvement, If an HHA cured the immediate jeopardy situation, but not the

condition-level deficiencies, we could reduce penalties from the upper range to a lower range imposed in non-immediate jeopardy situations.

However, section 1891(f)(2)(A)(i) of the Act specifies that the sanctions shall include a CMP in an amount not to exceed $10,000 for each day of noncompliance. Therefore, we are proposing at § 488.845(b)(2)(iii) that no CMP assessment exceed $10,000 per day of noncompliance. Because the Act directs us to establish the amounts of fines and the levels of severity, we propose to establish a three-tier system with subcategories which would establish the amount of a CMP. In proposed § 488.845(b)(3), (b)(4), and (b)(5), we propose the following would be ranges of civil money penalty amounts based on three levels of seriousness—upper, middle and lower:

- Upper range—For a deficiency that poses immediate jeopardy to patient health and safety, we would assess a penalty within the range of $8,500 to $10,000 per day of condition level noncompliance.
- Middle range—For repeat and/or a condition-level deficiency that did not pose immediate jeopardy, but is directly related to poor quality patient care outcomes, we would assess a penalty within the range of $2,500 to $8,500 per day of noncompliance with the CoPs.
- Lower range—For repeated and/or condition-level deficiencies that did not constitute immediate jeopardy and were deficiencies in structures or processes that did not directly relate to poor quality patient care, we would assess a penalty within the range of $500 to $4,000 per day of noncompliance.

Table is displayed to represent the relationship between the existing survey protocols and proposed ranges of CMP imposition. This table distinguishes proposed ranges based in IJ, Non-IJ, repeat deficiency and first time deficiency. It uses the terminology of structure, process, and outcomes, which is used in the quality improvement field as a hierarchy of measures. This structure would be further developed in the policy guidance stage and is presented for illustrative purposes only.

TABLE 24—CMP

[Per day]

Level of seriousness	CMP fine ranges/amount
Immediate Jeopardy	$8,500–$10,000;
(Non-IJ) Patient Care Outcomes	2,500–8,500;
Repeat Deficiency	8,500
42 CFR 484.18 Acceptance of Patients, Plan of Care, & Medical Supervision.	
42 CFR 484.30 Skilled Nursing Services.	
42 CFR 484.34 Medical Social Services.	
42 CFR 484.36 Home Health Aide Services.	
42 CFR 484.55 Comprehensive Assessment of Patients.	
First time deficiency	5,000
42 CFR 484.18 Acceptance of Patients, Plan of Care, & Medical Supervision.	
42 CFR 484.30 Skilled Nursing Services.	
42 CFR 484.34 Medical Social Services.	
42 CFR 484.36 Home Health Aide Services.	
42 CFR 484.55 Comprehensive Assessment of Patients.	
Structure or process issues	2,500
42 CFR 484.10 Patient Rights.	
42 CFR 484.12 Compliance With Federal, State and Local Laws, Disclosure and Ownership Information, and Accepted Professional Standards and Principles.	
42 CFR 484.14 Organization, Services, and Administration.	
42 CFR 484.48 Clinical Records.	
Non-IJ Structure/process	500–4,000
Repeat Deficiency at revisit or from prior survey	4,000
42 CFR 484.11 Confidential OASIS Information.	
42 CFR 484.16 Group of Professional Personnel.	
42 CFR 484.20 Reporting OASIS Information.	
42 CFR 484.52 Evaluation of the agency's program.	
First time deficiency	500–3,000
42 CFR 484.11 Confidential OASIS Information.	
42 CFR 484.16 Group of Professional Personnel.	
42 CFR 484.20 Reporting OASIS Information.	
42 CFR 484.52 Evaluation of the agency's program.	
Other structure or process issues	500–3,000
Non patient care issues 42 CFR 484.34 Medical Social Services.	
42 CFR 484.38 Qualifying to Furnish Outpatient Physical Therapy or Speech Pathology Services.	

If we imposed a CMP, we would send the HHA written notification of the intent to impose it, including the amount of the CMP being imposed and the proposed effective date of the sanction. After a final agency determination is made, a final notice would be sent with the final amount due and the rate of interest to be charged on unpaid balances (as published quarterly in the **Federal Register**). The notice would include reference to the nature of the noncompliance; the statutory basis for the penalty; the proposed amount of the penalty per day/instance of noncompliance; the criteria we considered when determining the amount per-day or per-instance; the date on which the penalty would begin to accrue; when the penalty would stop accruing; when the penalty would be collected; and instructions for responding to the notice, including a statement of the HHA's appeal rights, including an opportunity to participate in the proposed IDR process and, as discussed below, the right to a hearing, and the implications of waiving a hearing. In accordance with our existing

regulations at § 498.22(b)(3) and § 498.40 and at proposed § 488.845(c)(2), once a notice of intent to impose the CMP had been sent to the HHA, the HHA would have 60 days from the receipt of the notice to request an administrative hearing under § 498.40 or waive its right to an administrative hearing in writing and receive a 35 percent reduction in the CMP amount. This reduction would be offered to encourage HHAs to address deficiencies more expeditiously and to save the cost of hearings and appeals. Upon such reduction, the CMP would be due within 15 days of the receipt of the HHA's written request for waiver. The HHA could waive its right to a hearing in writing within 60 calendar days from the date of the notice initial determination.

The per-day CMP would begin to accrue on the day of the survey that identified the HHA noncompliance, and would end on the date of correction of all deficiencies, or the date of termination. We are proposing at 488.845(d) that in immediate jeopardy cases, if the immediate jeopardy was not removed, the CMP would continue to accrue until CMS terminated the provider agreement (within 23 calendar days after the last day of the survey which first identified the immediate jeopardy). Under proposed 488.845(d)(4), if immediate jeopardy did not exist, the CMP would continue to accrue until the HHA achieved substantial compliance or until we terminated the provider agreement. Additionally, we are proposing at § 488.845(d)(2) that the per-day and per-instance CMP would not be imposed simultaneously in conjunction with a survey. In no instance will the period of noncompliance be allowed to extend beyond 6 months from the last day of the original survey that determined noncompliance. If the HHA has not achieved compliance with the CoPs within those 6 months, we would terminate the HHA. The accrual of the CMP stops on the day the HHA provider agreement is terminated or the HHA achieves substantial compliance, whichever is earlier.

Total CMP amounts would be computed after a final agency determination; that is, after: (1) Compliance was verified; (2) the HHA provider agreement was involuntarily terminated; or (3) administrative remedies had been exhausted. If the HHA had achieved substantial compliance, we would send a separate notice to the HHA describing the amount of penalty per day, the number of days the penalty accrued, the total amount due, the due date of the penalty, and the interest rate for any unpaid balance. For a per-instance CMP, we would include the amount of the penalty, the total amount due, the due date of the penalty, and the rate of interest for any unpaid balance. In the case of the HHA that was terminated, we would send the HHA any CMP notice of final amount or a due and payable notice information in the termination notice, as described in § 489.53(d).

In proposed § 488.845(f), a CMP would become due and payable 15 days from the notice of final administrative decision, which is after:

- The time to appeal had expired without the HHA appealing its initial determination;
- CMS received a request from the HHA waiving its right to appeal the initial determination;
- A final decision of an Administrative Law Judge and/or DAB Appellate Board upheld CMS's determinations; or
- After an HHA achieves substantial compliance; or
- The HHA was terminated from the program and no appeal request was received.

A request for hearing would not delay the imposition of the CMP, but would only affect the collection of any final amounts due to CMP. If an HHA timely waived its right to a hearing under proposed § 488.845(c)(2)(ii), we would reduce the final CMP amount by 35 percent. This reduction would be reflected once the CMP stops accruing: when the HHA achieved compliance before we received its request to waive a hearing, or the effective date of the termination occurred before we received the waiver request.

The final CMP receivable amount would be determined when the per-day CMP accrual period ended (either when the HHA achieved compliance or was terminated).

An HHA has three options for action following the imposition of a penalty:

- The HHA could pay the fine in full for all CMPs imposed prior to the date a CMP is due and payable.
- The HHA could request a hearing based on the determination of noncompliance with Medicare requirements. Within 60 days of receipt of the notice of imposition of a penalty, the HHA could file a request directly to the Departmental Appeals Board in the Office of the Secretary, Department of Health and Human Services with a copy to the State and CMS. In accordance with § 498.40(b), the HHA's appeal request would identify the specific issues of contention, the findings of fact and conclusions of the law with which the agency disagreed, and the specific bases for contending that the survey findings and determinations were invalid. A hearing would be completed before any penalty was collected. However, sanctions would continue regardless of the timing of any appeals proceedings if the HHA had not met the CoPs. Requesting an appeal would not delay or end the imposition of a sanction.

A CMP would begin to accrue on the date of the survey which identified the noncompliance. These include penalties imposed on a per day basis, as well as penalties imposed per instance of noncompliance.

Offsets

To maintain consistency in recovering a CMP among other types of providers who are subject to a CMP, we propose that the amount of any penalty, when determined, could be deducted (offset) from any sum CMS or the State Medicaid Agency owed to the HHA. Interest would be assessed on the unpaid balance of the penalty beginning on the due date. We propose that the rate of interest assessed on any unpaid balance would be based on the Medicare interest rate published quarterly in the **Federal Register**, as specified in § 405.378(d). We would recover a CMP as set forth in section 1128A(f) of the Act. Those CMP receipts not recovered due to HHA failure to pay or inadequate funds for offset will be collected through the Debt Collection Improvement Act of 1996 which requires all debt owed to any Federal agency that is more than 180 days delinquent to be transferred to the Department of the Treasury for debt collection services.

If payment was not received by the established due date, we propose to initiate action to collect the CMP through offset of monies owed or owing to the HHA. To initiate such an offset, we would instruct the appropriate Medicare Administrative Contractors/ Fiscal Intermediaries and, when applicable, the State Medicaid agencies to deduct unpaid CMP balances from any money owed to the agency.

Disbursement of Recovered CMP Funds

Under § 488.845(g)(1), we propose to divide the CMP amounts recovered and any corresponding interest between the Medicare and Medicaid programs, based on a proportion that is commensurate with the comparative Federal expenditures under Titles XVIII and XIX of the Act, using an average of years 2007 to 2009 based on Medicaid Statistical Information System (MSIS) and HHA Prospective Payment System

(PPS) claims. Based on the proportions of HHA claims attributed to Medicare and Medicaid, respectively, for the FY 2007–2009 period, approximately 63 percent of the CMP amounts recovered would be deposited as miscellaneous receipts to the U.S. Department of the Treasury and approximately 37 percent will be returned to the State Medicaid Agency to improve the quality of care for those who need home-based care. We propose that, beginning one year after these rules are finalized and become effective, these proportions would be updated annually based on the most recent 3 year period for which CMS determined that the Medicare and Medicaid expenditure data were essentially complete.

Costs of Home Health Surveys

Consistent with the proposed disbursement to States of a portion of federally imposed-CMP amounts collected, this proposed rule would provide that State Medicaid programs share in the cost of HHA surveys for those HHAs that are Medicaid-certified. We propose to amend § 431.610(g) (Relations with standard-setting and survey agencies) to apply to HHA surveys the same cost accounting principles that are now applied to nursing homes. In other words, we are adding a reference to HHAs, along with nursing facilities (NFs) and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs). We project the initial cost to the Medicaid program would be approximately 37 percent of the cost of surveys for dually-certified programs, based on the same cost allocation methodology we propose to use for the disbursement to States of CMP collections, as described above. We request comment on the new requirement for State Medicaid programs and the methodology for calculating the State share of both survey costs and CMP disbursement.

k. Directed Plan of Correction § 488.850

We are proposing in § 488.850 a directed plan of correction as an available sanction. This sanction is a part of the current nursing home alternative sanction procedures and has been an effective tool to encourage correction of deficient practices. Specifically, CMS would be able to impose a directed plan of correction on an HHA which is out of compliance with the Conditions of Participation. A directed plan of correction sanction would require the HHA to take specific actions in order to correct the deficient practice(s) if the HHA failed to submit an acceptable plan of correction. As proposed in § 488.850(b)(2) an HHA's directed plan of correction would have to be developed by us or by the temporary manager, with our approval. The directed plan of correction would set forth the outcomes to be achieved, the corrective action necessary to achieve these outcomes, and the specific date the HHA would be expected to achieve such outcomes. For example, a directed plan of correction for a deficiency finding involving poor drug regimen review would likely indicate that the HHA would be required to: (1) Develop policies and procedures for assessing each patient and before accepting any new admissions; (2) assess every patient's drug regimen according to the regulations at § 484.55(c); and (3) train staff in correct policies and procedures and implement them. The HHA would be responsible for achieving compliance. If the HHA failed to achieve compliance within the timeframes specified in the directed plan of correction, we would impose one or more additional alternative sanctions until the HHA achieved compliance or was terminated from the Medicare program. Before imposing this sanction, we would provide appropriate notice to the HHA of this sanction under proposed § 488.810(f).

l. Directed In-Service Training § 488.855

We are proposing in § 488.855 when and how CMS would conduct directed in-service training for HHAs with deficiencies. Some compliance problems are a result of a lack of knowledge on the part of the health care provider relative to advances in health care technology and expectations of favorable patient outcomes. In proposed § 488.855(a) directed in-service training would be used in situations where staff performance resulted in deficient practices. A directed in-service training program would correct this deficient practice through retraining the staff in the use of clinically and professionally sound methods to produce quality outcomes. Directed in-service training would be imposed if CMS determined that the HHA had a deficiency or deficiencies that indicated noncompliance, and that staff education was likely to correct the deficient practice(s). It could be imposed alone or in addition to other alternative sanctions.

At proposed § 488.855(a)(3), HHAs would be required to use in-service programs conducted by instructors with an in-depth knowledge of the area(s) that would require specific training, so that positive changes would be achieved and maintained. HHAs would be required to participate in programs developed by well-established centers of health services education and training. These centers include, but are not limited to, schools of medicine or nursing, area health education centers, and centers for aging. We would only recommend possible training locations to an HHA and not require that the HHA utilize a specific school/center/provider. The HHA would be required to bear any resulting expenses. The ultimate evaluation of the training program would be in the demonstrated competencies of the HHA's staff in achieving the desired patient care outcomes after completion of the training program. In proposed § 488.855(b) if the HHA did not achieve compliance after such training, we could impose one or more additional sanctions. The HHA itself would pay for the directed in-service training for its staff.

m. Continuation of Payments to HHAs With Deficiencies § 488.860

We propose in § 488.860 rules concerning the continuation of Medicare payments to HHAs with condition-level deficiencies. Section 1891(e)(4) of the Act provides that the Secretary may continue Medicare payments to HHAs not in compliance with the conditions for participation for up to six months if:

- The survey agency finds it more appropriate to impose alternative sanctions to assure compliance with program requirements than to terminate the HHA from the Medicare program;
- The HHA submits a plan of correction to the Secretary, and to the office the Secretary has delegated the authority to approve the plan of correction; and
- The HHA agrees to repay the Federal government the payments under this arrangement should the HHA fail to take the corrective action as set forth in its approved plan of correction by the time of the revisit.

We propose these same three criteria in § 488.860(a). If any of these three requirements set forth in the Act and in our proposed rule are not met, an HHA with condition-level deficiencies would not receive any Federal payments from the time that deficiencies were initially identified. We would terminate the agreement before the end of the 6-month correction period in accordance with proposed § 488.865 if the requirements proposed at § 488.860(a)(1) are not met. If any sanctions were also imposed, they would stop accruing or end when the HHA achieves compliance with all requirements, or when the HHA's provider agreement is terminated, whichever is earlier. We would terminate the HHA's provider agreement

if the HHA is not in compliance with the CoPs within 6 months of the last day of the survey. Finally, if an HHA provides an acceptable plan of correction but cannot achieve compliance with the CoPs within 6 months of the last day of the survey, we are proposing in § 488.830(d) that CMS would terminate the provider agreement.

n. Termination of Provider Agreement (§ 488.865)

At § 488.865(a), we would address the termination of an HHA's Medicare provider agreement, as well as the effect of such termination. Termination of the provider agreement would end all payments to the HHA, including any payments that were continued under proposed § 488.860. Termination would also end any alternative sanctions imposed against the HHA, regardless of any proposed timeframes for the sanction(s) originally specified. In proposed § 488.865(b) we would terminate the provider agreement if (1) the HHA failed to correct condition-level deficiencies within six months unless the deficiencies constitute immediate jeopardy; (2) the HHA failed to submit an acceptable plan of correction for approval by us under proposed § 488.810; or (3) the HHA failed to relinquish control to the temporary manager, if that sanction is imposed or (4) the HHA failed to meet the eligibility criteria for continuation of payments under proposed § 488.860. If CMS or the SA determined deficiencies existed which posed immediate jeopardy to patient health and safety, we would terminate the provider agreement. The provider could also voluntarily terminate its agreement. CMS and the SA would, if necessary, work with all Medicare-approved HHAs that were terminated to ensure the safe discharge and orderly transfer of all patients to another Medicare-approved HHA.

The procedures for terminating a provider agreement are set forth in § 489.53 and we are proposing to continue to use those procedures for an enforcement action terminating an HHA at § 488.865(d). These procedures form the basis for termination by CMS and specify a provider's notice and appeal rights. Under § 488.865(e), we propose that the HHA could appeal the termination of its provider agreement in accordance with 42 CFR part 498. We are also proposing to add an exception to the general notice provision as well as to amend § 489.53(a) by adding a new paragraph (17) establishing that when an HHA failed to correct any deficiency (either standard-level or condition-level), we could terminate its provider agreement. The notification requirements in § 489.53(d)(1) requires that CMS give notice to any provider and the public at least 15 days before the effective date of a termination of a provider agreement. We are proposing a new clause in § 489.53(d)(2)(iii) which would provide for a timing exception to this general notice rule. Specifically, we propose that for HHA terminations based on deficiencies that posed immediate jeopardy to patient health and safety, we would give notice to the HHA of such termination at least 2 days before the effective date of the termination. As currently provided in § 489.53(d)(4), we would give concurrent notice to the public when such termination occurred.

C. Provider Agreements and Supplier Approval

We are also proposing to amend § 498.3, Scope and applicability, by revising paragraphs (b)(13), (b)(14) introductory text, (b)(14)(i), and (d)(10) to include specific reference to HHAs and to cross-refer to our proposed regulation at proposed § 488.740 concerning appeals.

D. Solicitation of Comments

Presently, we are required only to give notice of an HHA termination to the public 15 days before the effective date of an involuntary termination. We are soliciting comments related to additional public notices. We are considering that when a suspension of payments for new admissions and new payment episodes or a civil money penalty is imposed, we could, at our discretion, issue a public notice. The issuance of additional publicly-reported notices when certain sanctions are imposed would offer information to patients who were choosing a provider of home health services, as well as to current recipients of home health care. A home health patient does not necessarily know when a survey has been conducted at an HHA and if deficiencies had been determined or any sanctions imposed unless a surveyor visited the patient during a survey or the patient requested a copy of a Statement of Deficiencies from the SA or HHA. We are also soliciting comments on the proposed definition of a ''per instance'' of noncompliance when imposing a CMP sanction.

VI. Collection of Information Requirements

While this proposed rule contains information collection requirements, this rule does not add new or revise any of the existing information collection requirements or burden with regard to: § 424.22(a) (OCN 0938–1083), § 488.710 (OCN 0938–0355; CMS–1515 and CMS–1572), and § 488.810(e) (OCN 0938–0391; CMS–2567). Nor does this proposed rule revise any of the existing information collection requirements or burden with regard to OASIS as discussed in preamble section III.C.3. and approved under OCN 0938–0760 or Home Health Care CAHPS as discussed in the same preamble section but approved under OCN 0938–1066. All of the requirements and burden estimates associated with these collections are currently approved by OMB and are not subject to additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

In § 431.610, HHAs would be added to the survey agency provision concerning State Plans. Since the State Medicaid Plans already include a provision that the State Survey Agencies will have qualified personnel perform onsite inspections as appropriate, we believe that this requirement is in the current plans and is inclusive of all Medicaid work being performed by the State Survey Agency. Consequently, the provision would not require a specific revision to any State Plans and would not impose any additional burden to States.

In § 488.710, for each HHA the SA must (existing requirement) conduct standard surveys according to their agreements with CMS under sections 1864 and 1891(c)(1) of the Act. CMS believes that the additional survey agency administrative activity required to impose alternative sanctions created by this rule will not generate a significant amount of additional paperwork burden at the State survey agency or HHA level. Imposing sanctions may require that states engage in some additional communication and carry out follow-up surveys, and CMS Regional Offices may need additional time for determining, imposing and tracking sanctions. In estimating appeal volume and costs, we note that in 2010 only 260 providers out of 11,821 had condition level-deficiencies, and only seven of these involved immediate jeopardy situations. Further, the impact of additional activity on State budgets will be negligible because we estimate that about 63 percent of the cost attributable to Medicare will be paid to survey agencies under the authority provided by section 1864 for Medicare surveys; and Federal Medicaid funds will generally pay 75 percent of the remaining 37 percent share of costs, since there is an increased Federal match for State survey activities as

referenced in section 1903(a)(2) of the Act. In addition, the State will benefit financially by the additional CMP funds returned to the State to use for the benefit of home based care participants.

SAs survey HHAs to determine compliance with the CoPs under part 484 and follow the guidance contained in the State Operations Manual, S&C Memoranda, and Interpretive Guidelines. This rule would serve to codify some existing CMS policies while proposing new requirements which would be consistent with OBRA '87 mandates discussed in the Background and Statutory Authority section. State Surveyor recordkeeping requirements already exist as Forms CMS–1515 and CMS–1572 (OMB control number known as information collection 0938–0355) and CMS–2567 (OMB# 938–0391). CMS anticipates enhancing survey protocols and Interpretive Guidelines and providing additional S&C Memoranda and Surveyor Training in response to the issuance of new regulations. CMS would revise these currently approved collections as necessary in accordance with the final rule.

In § 488.735, State and Federal surveyors would be required to complete the CMS-sponsored Basic HHA Surveyor Training Course before they can serve on a HHA survey team. The CMS Central Office currently provides national training to all State surveyors for all of the provider types that are surveyed for Medicare and Medicaid. Those training courses are funded entirely by the Central Office and there is no burden to States since our annual budgets to the States (for the performance of survey activities) includes the cost of the salaries and the travel for participating in all national training courses. These training courses are designed to teach the surveyors how to conduct the survey process in accordance with the applicable regulations and associated Interpretive Guidance. During the course of the survey, all of the data collection tools that may be used (see the reference to CMS–1515, –1572, and –2567 above) have been approved by OMB through the PRA process.

Section 488.810(e) requires each HHA that has deficiencies constituting noncompliance to submit a plan of correction for approval by CMS. This is a current requirement for both standard and condition level deficiencies, so the burden associated with this requirement that is above and beyond the existing effort put forth by the HHA is to prepare and submit a plan of correction would be to notify their governing body, potentially prepare for IDR or to issue a check for a CMP. While there is paperwork burden associated with this plan of correction requirement, it is already required and currently approved under OMB# 0938–0391 (CMS–2567).

Information Collection Requests Exempt From the Paperwork Reduction Act

In accordance with 5 CFR 1320.4(a)(2) and (c), the following information collection activities are exempt from the requirements of the Paperwork Reduction Act since they are associated with administrative actions: (1) Section 488.745(a) regarding HHA request to dispute condition-level survey findings; (2) § 488.810(g) regarding appeals; (3) § 488.845(c)(2)(i) regarding the submission of a written request for a hearing or waiver of a hearing; (4) § 488.840(b)(1)(ii) regarding HHA disclosure requirements; (5) § 488.845(c) regarding hearings; and (6) § 488.855 regarding HHA deficiencies and directed in-service training.

The information collection requirement in § 488.825(c) regarding the transfer of care is exempt from the requirements of the Paperwork Reduction Act since it is associated with an administrative action (5 CFR 1320.4(a)(2) and (c)) and we estimate fewer than ten provider agreements will be terminated annually (5 CFR 1320.3(c)).

Information Collection Requests Regarding the Quality Reporting for Hospices

Within the preamble of this proposed rule, in section IV, we note that section 3004 of the Affordable Care Act amends the Social Security Act (the Act) to authorize a quality reporting program for hospices. Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. As added by section 3004(c), new section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by two percentage points for any hospice that does not comply with the quality data submission requirements with respect to that fiscal year.

In implementing the Hospice quality reporting program, CMS seeks to collect measure-related information with as little burden to the providers as possible and which reflects the full spectrum of quality performance. Our purpose in collecting this data is to help achieve better health care and improve health through the widespread dissemination and use of performance information.

The Hospice Data Submission form intended for data submission by January 31, 2013 (for the structural measure related to patient care-focused QAPI indicators) and for data submission by April 1, 2013 (for the NQF #0209 measure related to pain) has been made available for public comment through a 60-day **Federal Register** notice that published on June 4, 2012 (77 FR 32977). A follow up 30-day notice will publish after the 60-day comment period closes. Technically, the form is not associated with this proposed rule but is discussed within this document to provide background information.

VII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule does not reach the economic threshold and thus is not considered a major rule. In accordance with the provisions of Executive Order

12866, this regulation was reviewed by the Office of Management and Budget.

B. Statement of Need

This proposed rule adheres to the following statutory requirements. Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered HH services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Act, entitled ''Prospective Payment For Home Health Services''. Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare. In addition, section 1895(b)(3)(A) of the Act requires (1) the computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary, and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area compared to the applicable national average level.

Section 1895(b)(5) of the Act, as amended by section 3131 of the Affordable Care Act, gives the Secretary the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. Also, section 3131 of the Affordable Care Act requires that HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits ending on or after April 1, 2010, and before January 1, 2016, receive an increase of 3 percent the payment amount otherwise made under section 1895 of the Act.

C. Overall Impact

The update set forth in this proposed rule applies to Medicare payments under HH PPS in CY 2013. Accordingly, the following analysis describes the impact in CY 2013 only. We estimate that the net impact of the proposals in this rule is approximately $20 million in CY 2013 savings. The $20 million impact reflects the distributional effects of an updated wage index ($70 million decrease) the +1.5 percent HH payment update ($300 million increase), and the −1.32 percent case-mix adjustment applicable to the national standardized 60-day episode rates ($250 million decrease). The $20 million in savings is reflected in the first row of column 3 of Table 25 as 0.10 percent decrease in expenditures when comparing the current CY 2012 HH PPS to the proposed CY 2013 HH PPS. The RFA requires agencies to analyze options for regulatory relief of small entities, if a 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 governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to $34.5 million in any 1 year. For the purposes of the RFA, our updated data show that approximately 98 percent of HHAs are considered to be small businesses according to the Small Business Administration's size standards with total revenues of $13.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. The Secretary has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. We define small HHAs as either non-proprietary or proprietary with total revenues of $13.5 million or less in any 1 year. We estimate that approximately 18 percent of HHAs are classified as non-proprietary. Analysis of Medicare claims data reveals a 0.11 percent decrease in estimated payments to small HHAs in CY 2013.

A discussion on the alternatives considered is presented in section V.E. below. The following analysis, with the rest of the preamble, constitutes our initial RFA analysis. We solicit comment on the RFA analysis provided.

In this proposed rule, we have stated that our analysis reveals that nominal case-mix continues to grow under the HH PPS. Specifically, nominal case-mix has grown from the 19.03 percent growth identified in our analysis for CY 2012 rulemaking to 20.08 percent for this year's rulemaking (see further discussion in section III.A.). As such, we believe it is appropriate to reduce the HH PPS rates using the 1.32 percent payment reduction promulgated in the CY 2012 HH PPS Final Rule (76 FR 68532) in moving towards more accurate payment for the delivery of home health services. Our analysis shows that smaller HHAs are impacted slightly more than are larger HHAs by the proposed provisions of this rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule applies to HHAs. Therefore, the Secretary has determined that this proposed rule would not have a significant economic impact on the operations of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This proposed rule is not anticipated to have an effect on State, local, or tribal governments in the aggregate, or by the private sector, of $139 million or more.

D. Detailed Economic Analysis

This proposed rule sets forth updates to the HH PPS rates contained in the CY 2012 HH PPS final rule. The impact analysis of this proposed rule presents the estimated expenditure effects of policy changes proposed in this rule. We use the latest data and best analysis available, but we do not make adjustments for future changes in such variables as number of visits or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on Medicare claims from 2010. We note that certain events may combine to limit the scope

or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the Affordable Care Act, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 25 represents how HHA revenues are likely to be affected by the policy changes proposed in this rule. For this analysis, we used linked home health claims and OASIS assessments; the claims represented a 100-percent sample of 60-day episodes occurring in CY 2010. The first column of Table 25 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The second column shows the payment effects of the wage index only. The third column shows the payment effects of all the proposed policies outlined earlier in this rule. For CY 2013, the average impact for all HHAs due to the effects of the wage index is a 0.34 percent decrease in payments. The overall impact for all HHAs, in estimated total payments from CY 2012 to CY 2013, is a decrease of approximately 0.10 percent.

As shown in Table 25, the combined effects of all of the changes vary by specific types of providers and by location. In general, facility-based, proprietary agencies in rural areas would be impacted positively as a result of the proposed the provisions of this rule. In addition, free-standing, other volunteer/non-profit agencies and facility-based volunteer/non-profit agencies in urban areas would be impacted positively.

TABLE 25—PROPOSED HOME HEALTH AGENCY POLICY IMPACTS FOR CY 2013, BY FACILITY TYPE AND AREA OF THE COUNTRY

Group	Comparisons	
	Percent change due to the effects of the updated wage index (percent)	Impact of all CY 2013 policies[1] (percent)
All Agencies	−0.34	−0.10
Type of Facility		
Free-Standing/Other Vol/NP	0.04	0.32
Free-Standing/Other Proprietary	−0.46	−0.23
Free-Standing/Other Government	−0.45	−0.19
Facility-Based Vol/NP	−0.06	0.20
Facility-Based Proprietary	−0.35	−0.11
Facility-Based Government	−0.46	−0.22
Subtotal: Freestanding	−0.36	−0.12
Subtotal: Facility-based	−0.13	0.13
Subtotal: Vol/NP	0.01	0.27
Subtotal: Proprietary	−0.45	−0.22
Subtotal: Government	−0.46	−0.20
Type of Facility (Rural * Only)		
Free-Standing/Other Vol/NP	−0.61	−0.36
Free-Standing/Other Proprietary	−0.83	−0.61
Free-Standing/Other Government	−0.56	−0.28
Facility-Based Vol/NP	−0.51	−0.26
Facility-Based Proprietary	0.16	0.39
Facility-Based Government	−0.56	−0.31
Type of Facility (Urban * Only)		
Free-Standing/Other Vol/NP	0.15	0.42
Free-Standing/Other Proprietary	−0.40	−0.17
Free-Standing/Other Government	−0.31	−0.07
Facility-Based Vol/NP	0.07	0.33
Facility-Based Proprietary	−0.58	−0.34
Facility-Based Government	−0.34	−0.10
Type of Facility (Urban* or Rural*)		
Rural	−0.72	−0.48
Urban	−0.26	−0.02
Facility Location: Region*		
North	0.17	0.45
South	−0.69	−0.45
Midwest	−0.25	−0.02
West	0.39	0.64
Outlying	−0.49	−0.25
Facility Location: Area of the Country		
New England	0.61	0.88
Mid Atlantic	−0.09	0.20
South Atlantic	−0.41	−0.17
East South Central	−1.12	−0.91
West South Central	−0.76	−0.53
East North Central	−0.32	−0.10

TABLE 25—PROPOSED HOME HEALTH AGENCY POLICY IMPACTS FOR CY 2013, BY FACILITY TYPE AND AREA OF THE COUNTRY—Continued

Group	Comparisons	
	Percent change due to the effects of the updated wage index (percent)	Impact of all CY 2013 policies[1] (percent)
West North Central	0.11	0.35
Mountain	−0.56	−0.31
Pacific	0.82	1.06
Outlying	−0.49	−0.25
Facility Size: (Number of First Episodes)		
<100	−0.49	−0.26
100 to 249	−0.54	−0.31
250 to 499	−0.46	−0.22
500 to 999	−0.40	−0.17
1,000 or More	−0.08	0.18
Facility Size: (estimated total revenue)		
Small (estimated total revenue < $13.5 million)	−0.34	−0.11
Large (estimated total revenue > $13.5 million)	−0.18	0.12

Note: Based on a 100 percent sample of CY 2010 claims linked to OASIS assessments.

* Urban/rural status, for the purposes of these simulations, is based on the wage index on which episode payment is based. The wage index is based on the site of service of the beneficiary.

REGION KEY:

New England = Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic = Pennsylvania, New Jersey, New York; South Atlantic = Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central = Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central = Alabama, Kentucky, Mississippi, Tennessee; West North Central = Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central = Arkansas, Louisiana, Oklahoma, Texas; Mountain = Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific = Alaska, California, Hawaii, Oregon, Washington; Outlying = Guam, Puerto Rico, Virgin Islands.

[1] Percent change due to the effects of the updated wage index, the 1.5 percent proposed payment update, and the 1.32 percent case-mix adjustment.

E. Alternatives Considered

As described in section VI.C. above, if we implement the case-mix adjustment for CY 2013 along with the home health payment update and the updated wage index, the aggregate impact would be a net decrease of $20 million in payments to HHAs, resulting from a $70 million decrease due to the updated wage index, a $300 million increase due to the home health payment update, and a $250 million decrease from the 1.32 percent case-mix adjustment. If we were to not implement the 1.32 case-mix adjustment, Medicare would pay an estimated $250 million more to HHAs in CY 2013, for a net increase of $230 million in payments to HHAs (market basket update of $300 million minus $70 million due to the updated wage index). We believe that not implementing a case-mix adjustment, and paying out an additional $250 million to HHAs when those additional payments are not reflective of HHAs treating sicker patients, would not be in line with the intent of the HH PPS, which is to pay accurately and appropriately for the delivery of home health services to Medicare beneficiaries.

Section 1895(b)(3)(B)(iv) of the Act gives CMS the authority to implement payment reductions for nominal case-mix growth, changes in case-mix that are unrelated to actual changes in patient health status. We are committed to monitoring the accuracy of payments to HHAs, which includes the measurement of the increase in nominal case-mix, which is an increase in case-mix that is not due to patient acuity. As discussed in section III.A. of this rule, we have determined that there is a 20.08 percent nominal case-mix change from 2000 to 2010. For CY 2013, we propose to move forward with the 1.32 percent payment reduction to the national standardized 60-day episode rates as promulgated in the CY 2012 HH PPS final rule (76 FR 68532).

We believe that the alternative of not implementing a case-mix adjustment to the payment system in CY 2013 to account for the increase in case-mix that is not real would be detrimental to the integrity of the PPS. As discussed in section III.A. of this rule, because nominal case-mix continues to grow as we update our analysis with more current data and thus to date we have not accounted for all the increase in nominal case-mix growth, we believe it is appropriate to reduce HH PPS rates now, thereby paying more accurately for the delivery of home health services under the Medicare home health benefit. The other reduction to HH PPS payments, a 1.0 percentage point reduction to the proposed CY 2013 home health market basket update, is discussed in this rule and is not discretionary as it is a requirement in section 1895(b)(3)(B)(vi) of the Act (as amended by the Affordable Care Act).

We solicit comment on the alternatives considered in this analysis.

F. Survey and Enforcement Requirements for Home Health Agencies

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on a substantial number of small entities. In 2010, out of a total of 11,814 HHAs enrolled in the Medicare program, only 260 HHA providers had the potential to be sanctioned based on noncompliance

with one or more CoPs. This would be 2.2 percent of the HHAs (small entities affected) which is less that 5 percent.

We believe the benefit would be in assuring public health and safety CMS believes this proposed rule will have a minor impact on HHAs and SAs. This minor rule determination was made by examining the following survey data for calendar year (CY) 2010 in the CMS Providing Data Quickly (PDQ) System: Survey Activity Report, the Citation Frequency Report, the Condition-Level Deficiencies Report and the Active Provider Count Report(s).

Our data below reflects the probability of low impact for monetary sanctions. In any given year approximately 11,814 surveyed agencies have the possibility of having a mandatory unannounced survey, but only 260 are likely to be cited for condition level noncompliance.

TABLE 26

CMS Survey data CY 2010	Total
Active HHAs	11,814
Standard Surveys Completed	3,960
Complaint Surveys Completed	1,446
Standard + Complaint Surveys Completed	5,406
HHAs with ≥1 CoP Citation	260

Also, by comparison, in our review of the nursing home data reports, we have found less than 0.3 percent of nursing homes have been subject to the Temporary Management Sanction in 2008 therefore we do not anticipate any major impact on home health provider costs with this sanction in the proposed regulation.

Because implementation of the complex and far-reaching provisions of this proposed rule for CMS would require an infrastructure overhaul with changes to current tracking mechanisms and a nationwide training effort to train surveyors, their supervisors and related CMS personnel, we propose an effective date of one year following a final regulation.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must also conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a ''small rural hospital'' as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold level is approximately $139 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

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 requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We would incur certain administrative expenses in the course of designing and managing a CMP process. One-time costs are estimated at $2 million for redesigning certain parts of the survey information system (ASPEN) and ongoing expenses for maintenance and associated modifications of the system are estimated at $75,000 per year. In addition, we would incur expenses for training Federal and State surveyors, developing and publishing the necessary training and instruction documents and procedures, and tracking and reporting of CMP data. We estimate one 6 hour webinar training and trouble-shooting session per year involving approximately 302 surveyor and ancillary State and Federal personnel (1812 person-hours) and 190 hours for training development and design. We also estimate 104 hours per year in trouble-shooting and responding to questions. The total combined person hours of 2106 would cost $299,052 annually. We also estimate ongoing CMS costs for managing the collection and disbursement of CMPs to require about 260 person hours per year or approximately $36,920. The grand total amounts to $2 million in onetime expenses and approximately $335,972 in annual operating costs. The provisions in this proposed rule related to survey protocols have already been incorporated into long standing CMS survey policy, implemented in the years after 1987 and most recently revised in 2011. We project that aggregate Medicare and Medicaid home health survey costs in FY 2013 and FY 2014 would be $39.9 million and $45.7 million, respectively. Assuming a standard State Medicaid obligation of 37 percent of the total, the Medicaid share would amount to $14.7 million and $16.9 million, respectively. The cost of surveys is treated as a Medicaid administrative cost, reimbursable at the professional staff rate of 75 percent. At this rate the net State Medicaid costs incurred in FYs 2013 and 2014 would be approximately $3.7 million and $4.2 respectively, spread out across all States and territories.

G. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 27, we have prepared an accounting statement showing the classification of the transfers associated with the provisions of this proposed rule. This table provides our best estimate of the decrease in Medicare payments under the HH PPS as a result of the changes presented in this proposed rule.

TABLE 27—ACCOUNTING STATEMENT

Category	Transfers
Classification of Estimated Transfers, from the CY 2012 HH PPS to the CY 2013 HH PPS	
Annualized Monetized Transfers	−$20 million
From Whom to Whom?	Federal Government to HH providers.

TABLE 27—ACCOUNTING STATEMENT—Continued

Federal Medicaid HH Survey and Certification Costs	FYs 2013 to FY 2014	
Category	Transfers	
	Units Discount Rate	
	7%	3%
Classification of Estimated Transfers Relating to the Medicare and Medicaid Home Health Survey and Certification Costs, FYs 2013 to 2014		
Annualized Monetized Transfers	$11.9 Million	$11.9 Million.
From Whom to Whom?	Federal Government to Medicaid HH Survey Agencies.	
State Medicaid HH Survey and Certification Costs	FYs 2013 to FY 2014	
Category	Transfers	
	Units Discount Rate	
	7%	3%
Annualized Monetized Transfers	$3.9 Million	$3.9 Million.
From Whom to Whom?	State Governments to Medicaid HH Survey Agencies.	
Medicare HH Survey and Certification Costs	FYs 2013 to FY 2014	
Category	Transfers	
	Units Discount Rate	
	7%	3%
Annualized Monetized Transfers	−$15.8 Million	−$15.8 Million.
From Whom to Whom?	Federal Government to Medicare HH Survey Agencies.	

H. Conclusion

In conclusion, we estimate that the net impact of the proposals in this rule is approximately $20 million in CY 2013 savings. The −$20 million impact to the proposed CY 2013 HH PPS reflects the distributional effects of an updated wage index ($70 million decrease), the 1.5 percent home health payment update ($300 million increase), and a 1.32 percent case-mix adjustment applicable to the national standardized 60-day episode rates ($250 million decrease). This analysis, together with the remainder of this preamble, provides a Regulatory Impact Analysis. In addition, this proposed rule would provide that State Medicaid programs share in the cost of HHA surveys. The cost ratio would be calculated at 63 percent for the Medicare program and 37 percent for the Medicaid program. The projected HHA survey budget for FY 2013 is $39.9 million and FY 2014 at $45.7 million. The anticipated State Medicaid share is $3.7 million and $4.2 million respectively (minus Federal match).

IX. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it would not have substantial direct effects on the rights, roles, and responsibilities of States, local or tribal governments.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Record and reporting requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

2. Section 409.44 is amended by revising paragraphs (c)(2)(i)(C)(*2*), (c)(2)(i)(D)(*2*), (c)(2)(i)(E) introductory text, and (c)(2)(i)(E)(*1*) to read as follows:

§ 409.44 Skilled services requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) * * *

(*2*) Where more than one discipline of therapy is being provided, the qualified therapist from each discipline must provide all of the therapy services and functionally reassess the patient in accordance with paragraph (c)(2)(i)(A) of this section during the visit associated with that discipline which is schedule to occur after the 10th therapy visit but no later than the 13th therapy visit per the plan of care.

(D) * * *

(*2*) Where more than one discipline of therapy is being provided, the qualified therapist from each discipline must provide all of the therapy services and functionally reassess the patient in accordance with paragraph (c)(2)(i)(A) of this section during the visit associated with that discipline which is schedule to occur after the 16th therapy visit but no later than the 19th therapy visit per the plan of care.

(E) As specified in paragraphs (c)(2)(i)(A), (B), (C), and (D) of this section, therapy visits for the therapy discipline(s) not in compliance with these policies will not be covered until the following conditions are met:

(*1*) The qualified therapist has completed the reassessment and objective measurement of the effectiveness of the therapy as it relates to the therapy goals. As long as paragraphs (c)(2)(i)(E)(*2*) and (c)(2)(i)(E)(*3*) of this section are met, therapy coverage resumes with the completed reassessment therapy visit.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

3. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

4. Section 424.22 is amended by—

A. Revising paragraph (a)(1)(v) introductory text.

B. Redesignating paragraphs (a)(1)(v)(A), (a)(1)(v)(B), (a)(1)(v)(C), and (a)(1)(v)(D) as paragraphs (a)(1)(v)(C), (a)(1)(v)(D), (a)(1)(v)(E), and (a)(1)(v)(F), respectively.

C. Adding new paragraphs (a)(1)(v)(A) and (a)(1)(v)(B).

D. Revising newly redesignated paragraphs (a)(1)(v)(C) and (a)(1)(v)(F).

The revisions and additions read as follows:

§ 424.22 Requirements for home health services.

* * * * *

(a) * * *

(1) * * *

(v) The physician responsible for performing the initial certification must document that the face-to-face patient encounter, which is related to the primary reason the patient requires home health services, has occurred no more than 90 days prior to the home health start of care date or within 30 days of the start of the home health care by including the date of the encounter, and including an explanation of why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) of this chapter, respectively.

(A) The face-to-face encounter must be performed by one of the following:

(*1*) The certifying physician himself or herself.

(*2*) A physician, with privileges, who cared for the patient in an acute or post-acute care facility from which the patient was directly admitted to home health.

(*3*) A nurse practitioner or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5) of the Act) who is working in accordance with State law and in collaboration with the certifying physician or in collaboration with an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(*4*) A certified nurse midwife (as defined in section 1861(gg)of the Act) as authorized by State law, under the supervision of the certifying physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(*5*) A physician assistant (as defined in section 1861(aa)(5) of the Act) under the supervision of the certifying physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(B) The documentation of the face-to-face patient encounter must be a separate and distinct section of, or an addendum to, the certification, and must be clearly titled and dated and the certification must be signed by the certifying physician.

(C) In cases where the face-to-face encounter is performed by an acute or post-acute care physician who cared for the patient in an acute or post-acute care facility or by a non-physician practitioner in collaboration with or under the supervision of such an acute or post-acute care physician who is not directly communicating to the certifying physician the clinical findings (i.e., the patient's homebound status and need for intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) of this chapter), the acute or post-acute care physician must communicate the clinical findings of that face-to-face encounter to the certifying physician. In all other cases where a non-physician practitioner performs the face-to-face encounter, the nonphysician practitioner must communicate the clinical findings of that face-to-face patient encounter to the certifying physician.

* * * * *

(F) The physician responsible for certifying the patient for home care must document the face-to-face encounter on the certification itself, or as an addendum to the certification (as described in paragraph (a)(1)(v) of this section), that the condition for which the patient was being treated in the face-to-face patient encounter is related to the primary reason the patient requires home health services, and why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) of this chapter respectively. The documentation must be clearly titled and dated and the documentation must be signed by the certifying physician.

* * * * *

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

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

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302)

6. Section 431.610 is amended by revising paragraph (g) introductory text to read as follows:

§ 431.610 Relations with standard-setting and survey agencies.

* * * * *

(g) *Responsibilities of survey agency.* The plan must provide that, in certifying NFs, HHAs, and ICF–IIDs, the survey agency designated under paragraph (e) of this section will—

* * * * *

PART 484—HOME HEALTH SERVICES

7. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

8. Section 484.250 is amended by adding paragraph (c)(3) to read as follows:

§ 484.250 Patient assessment data.

* * * * *

(c) * * *

(3) Approved HHCAHPS survey vendors must fully comply with all HHCAHPS oversight activities, including allowing CMS and its HHCAHPS program team to perform site visits at the vendors' company locations.

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

9. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395(hh)); Section 6111 of the Patient Protection and Affordable Care Act (Pub. L. 111–148)

10. Section 488.2 is amended by adding the following statutory basis in numerical order as follows:

§ 488.2 Statutory basis.

* * * * *

1861(m)—Requirements for home health services.

1861(o)—Requirements for home health agencies.

* * * * *

1891—Conditions of participation for home health agencies; home health quality.

* * * * *

11. Section 488.3 is amended by revising paragraph (a)(1) to read as follows:

§ 488.3 Conditions of participation; conditions for coverage; and long-term care requirements.

(a) * * *

(1) Meet the applicable statutory definition in sections 1138(b), 1819, 1832(a)(2)(F), 1861, 1881, 1891, or 1919 of the Act.

* * * * *

12. Section 488.26 is amended by revising paragraphs (c)(2) and (e) to read as follows:

§ 488.26 Determining compliance.

* * * * *

(c) * * *

(2) The survey process uses resident and patient outcomes as the primary means to establish the compliance process of facilities and agencies. Specifically, surveyors will directly observe the actual provision of care and services to residents and/or patients, and the effects of that care, to assess whether the care provided meets the needs of individual residents and/or patients.

* * * * *

(e) The State survey agency must ensure that a facility's or agency's actual provision of care and services to residents and patients and the effects of that care on such residents and patients are assessed in a systematic manner.

13. The section heading for § 488.28 is revised to read as follows:

§ 488.28 Providers or suppliers, other than SNFs, NFs, and HHAs with deficiencies.

* * * * *

14. A new subpart I is added to read as follows:

Subpart I—Survey and Certification of Home Health Agencies

Sec.
488.700 Basis and scope.
488.705 Definitions.
488.710 Standard surveys.
488.715 Partial extended surveys.
488.720 Extended surveys.
488.725 Unannounced surveys.
488.730 Survey frequency and content.
488.735 Surveyor qualifications.
488.740 Certification of compliance or noncompliance.
488.745 Informal Dispute Resolution (IDR).

Subpart I—Survey and Certification of Home Health Agencies

§ 488.700 Basis and scope.

Section 1891 of the Act establishes requirements for surveying HHAs to determine whether they meet the Medicare conditions of participation.

§ 488.705 Definitions.

As used in this subpart—

Abbreviated standard survey means a focused survey other than a standard survey that gathers information on an HHA's compliance with specific conditions of participation. An abbreviated standard survey may be based on complaints received, a change of ownership or management, or other indicators of specific concern such as reapplication for Medicare billing privileges following a deactivation.

Complaint survey means a survey that is conducted to investigate specific allegations of noncompliance.

Condition-level deficiency means noncompliance as described in § 488.24 of this part.

Deficiency is a violation of the Act and regulations contained in part 484, subparts A through C of this chapter, is determined as part of a survey, and can be either standard or condition-level.

Extended survey means a survey that reviews all conditions of participation. It may be conducted at any time but must be conducted when one or more condition-level deficiencies (substandard care) are identified.

Noncompliance means any deficiency found at the condition-level or standard-level.

Partial extended survey means a survey conducted to determine if deficiencies and/or deficient practice(s) exist that were not fully examined during the standard survey. The surveyors may review any additional requirements which would assist in making a compliance finding.

Standard-level deficiency means noncompliance with one or more of the standards that make up each condition of participation for HHAs.

Standard survey means a survey conducted in which the surveyor reviews the HHA's compliance with a select number of standards and/or conditions of participation in order to determine the quality of care and services furnished by an HHA as measured by indicators related to medical, nursing, and rehabilitative care.

Substandard care means noncompliance with one or more conditions of participation, including deficiencies which could result in actual or potential harm to patients at an HHA.

Substantial compliance means compliance with all condition-level requirements, as determined by CMS or the State.

§ 488.710 Standard surveys.

(a) For each HHA, the survey agency must conduct a standard survey not later than 36 months after the date of the previous standard survey that includes, but is not limited to, all of the following (to the extent practicable):

(1) A case-mix stratified sample of individuals furnished items or services by the HHA.

(2) Visits to the homes of patients, (the purpose of the home visit is to

evaluate the extent to which the quality and scope of services furnished by the HHA attained and maintained the highest practicable functional capacity of each patient as reflected in the patient's written plan of care and clinical records), but only with their consent, and, if determined necessary by CMS or the survey team, other forms of communication with patients including telephone calls.

(3) Review of indicators that include the outcomes of quality care and services furnished by the agency as indicated by medical, nursing, and rehabilitative care.

(4) Review of compliance with a select number of regulations most related to high-quality patient care.

(b) The survey agency's failure to follow the procedures set forth in this section will not invalidate otherwise legitimate determinations that deficiencies exist at an HHA.

§ 488.715 Partial extended surveys.

A partial extended survey is conducted to determine if standard or condition-level deficiencies are present in the conditions of participation not fully examined during the standard survey and there are indications that a more comprehensive review of conditions of participation would determine if a deficient practice exists.

§ 488.720 Extended surveys.

(a) *Purpose of survey.* The purpose of an extended survey is:

(1) To review and identify the policies and procedures that caused an HHA to furnish substandard care.

(2) To determine whether the HHA is in compliance with *all* of the conditions of participation.

(b) *Timing and basis for survey.* An extended survey must be conducted not later than 14 calendar days after completion of a standard survey which found that a HHA had furnished substandard care.

§ 488.725 Unannounced surveys.

(a) *Basic rule.* All HHA surveys must be unannounced and conducted with procedures and scheduling that renders the onsite surveys as unpredictable in their timing as possible.

(b) *State survey agency's scheduling and surveying procedures.* CMS reviews each survey agency's scheduling and surveying procedures and practices to assure that the survey agency has taken all reasonable steps to avoid giving notice of a survey through the scheduling procedures and conduct of the surveys.

(c) *Civil money penalties.* Any individual who notifies an HHA, or causes an HHA to be notified, of the time or date on which a standard survey is scheduled to be conducted is subject to a Federal civil money penalty not to exceed $2,000.

§ 488.730 Survey frequency and content.

(a) *Basic period.* Each HHA must be surveyed not later than 36 months after the last day of the previous standard survey. Additionally, a survey may be conducted as frequently as necessary to—

(1) Assure the delivery of quality home health services by determining whether an HHA complies with the Act and conditions of participation; and

(2) Confirm that the HHA has corrected deficiencies that were previously cited.

(b) *Change in HHA information.* A standard survey or an abbreviated standard survey may be conducted within 2 months of a change in any of the following:

(1) Ownership;

(2) Administration; or

(3) Management of the HHA.

(c) *Complaints.* A standard survey, or abbreviated standard survey—

(1) Must be conducted of an HHA within 2 months of when a significant number of complaints against the HHA are reported to CMS, the State, the State or local agency responsible for maintaining a toll-free hotline and investigative unit, or any other appropriate Federal, State, or local agency; or

(2) As otherwise required to determine compliance with the conditions of participation such as the investigation of a complaint.

§ 488.735 Surveyor qualifications.

(a) *Minimum qualifications.* Surveys must be conducted by individuals who meet minimum qualifications prescribed by CMS. In addition, before any State or Federal surveyor may serve on an HHA survey team (except as a trainee), he/she must have successfully completed the relevant CMS-sponsored Basic HHA Surveyor Training Course and any associated course prerequisites. All surveyors must follow the principles set forth in § 488.24 through § 488.28 according to CMS policies and procedures for determining compliance with the conditions of participation.

(b) *Disqualifications.* Any of the following circumstances disqualifies a surveyor from surveying a particular agency:

(1) The surveyor currently works for, or, within the past two years, has worked with the HHA to be surveyed as:

(i) A direct employee;

(ii) An employment agency staff at the agency; or

(iii) An officer, consultant, or agent for the agency to be surveyed concerning compliance with conditions of participation specified in or pursuant to sections 1861(o) or 1891(a) of the Act.

(2) The surveyor has a financial interest or an ownership interest in the HHA to be surveyed.

(3) The surveyor has a family member who has a relationship with the HHA to be surveyed.

(4) The surveyor has an immediate family member who is a patient of the HHA to be surveyed.

§ 488.740 Certification of compliance or noncompliance.

Rules to be followed for certification, documentation of findings, periodic review of compliance and approval, certification of noncompliance, and determining compliance of HHAs are set forth, respectively, in § 488.12, § 488.18, § 488.20, § 488.24, and § 488.26.

§ 488.745 Informal Dispute Resolution (IDR).

(a) *Opportunity to refute survey findings.* Upon the provider's receipt of an official statement of deficiencies, HHAs are afforded the option to request an informal opportunity to dispute condition-level survey findings.

(b) *Failure to conduct IDR timely.* Failure of CMS or the State, as appropriate, to complete IDR shall not delay the effective date of any enforcement action.

(c) *Revised Statement of Deficiencies as a result of IDR.* If any findings are revised or removed by CMS or the State based on IDR, the official statement of deficiencies is revised accordingly and any enforcement actions imposed solely as a result of those cited deficiencies are adjusted accordingly.

(d) *Notification.* When the survey findings indicate a condition-level deficiency, CMS or the State, as appropriate, must provide the agency with written notification of the opportunity for participating in an IDR process at the time the official statement of deficiencies is issued. The request for IDR must be submitted in writing to the State or CMS, should include the specific deficiencies that are disputed, and should be made within the same 10 calendar day period that the HHA has for submitting an acceptable plan of correction.

15. A new subpart J is added to read as follows:

Subpart J—Alternative Sanctions for Home Health Agencies With Deficiencies

Sec.

488.800 Statutory basis.
488.805 Definitions.
488.810 General provisions.

488.815 Factors to be considered in selecting sanctions.
488.820 Available sanctions.
488.825 Action when deficiencies pose immediate jeopardy.
488.830 Action when deficiencies are at the condition-level but do not pose immediate jeopardy.
488.835 Temporary management.
488.840 Suspension of payment for all new patient admissions and new payment episodes.
488.845 Civil money penalties.
488.850 Directed plan of correction.
488.855 Directed in-service training.
488.860 Continuation of payments to an HHA with deficiencies.
488.865 Termination of provider agreement.

Subpart J—Alternative Sanctions for Home Health Agencies With Deficiencies

§ 488.800 Statutory basis.

Section 1891(e) through (f) of the Act authorizes the Secretary to take actions to remove and correct deficiencies in an HHA through an alternative sanction or termination or both. Furthermore, this section specifies that these sanctions are in addition to any others available under State or Federal law, and, except for civil money penalties, are imposed prior to the conduct of a hearing.

§ 488.805 Definitions.

As used in this subpart—

Directed plan of correction means CMS or the temporary manager (with CMS/SA approval) may direct the HHA to take specific corrective action to achieve specific outcomes within specific timeframes.

Immediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause serious injury, harm, impairment, or death to a patient(s).

New admission means an individual who becomes a patient or is readmitted to the HHA on or after the effective date of a suspension of payment sanction or new payment episode of an existing patient on or after the effective date of a suspension of payment sanction.

Per instance means a single event of noncompliance identified and corrected through a survey, for which the statute authorizes CMS to impose a sanction;

Plan of correction means a plan developed by the HHA and approved by CMS that is the HHA's written response to survey findings detailing corrective actions to cited deficiencies and specifies the date by which those deficiencies will be corrected.

Repeat deficiency means a standard or condition-level deficiency that is cited on the current survey and is substantially the same as, or similar to, a finding of noncompliance issued on the most recent previous survey.

Temporary management means the temporary appointment by CMS or a CMS authorized agent of a substitute manager or administrator based upon qualifications described in § 484.4 and § 484.14(c), under the direction of the HHA's governing body who has authority to hire, terminate or reassign staff, obligate funds, alter procedures, and manage the HHA to correct deficiencies identified in the HHA's operation.

§ 488.810 General provisions.

(a) *Purpose of sanctions.* The purpose of sanctions is to ensure prompt compliance with program requirements in order to protect the health and safety of individuals under the care of an HHA.

(b) *Basis for imposition of sanctions.* When CMS chooses to apply one or more sanctions specified in § 488.820, the sanctions are applied on the basis of noncompliance with conditions of participation found through surveys and may be based on failure to correct previous deficiency findings as evidenced by repeat deficiencies.

(c) *Number of sanctions.* CMS may apply one or more sanctions for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

(d) *Extent of sanctions imposed.* When CMS imposes a sanction, the sanction applies to the parent HHA and its respective branch offices. The sanctions imposed on a parent and/or its respective branches do not apply to the associated subunit.

(e) *Plan of correction requirement.* Regardless of which sanction is applied, a non-compliant HHA must submit a plan of correction for approval by CMS.

(f) *Notification requirements*—(1) *Notice.* CMS provides written notification to the HHA of the intent to impose the sanction.

(2) *Date of enforcement action.* The notice periods specified in § 488.825(b) and § 488.830(b) begin the day after the HHA receives the notice.

(g) *Appeals.* (1) The provisions of part 498 of this chapter apply when the HHA requests a hearing on a determination of noncompliance leading to the imposition of a sanction, including termination of the provider agreement.

(2) A pending hearing does not delay the effective date of a sanction, including termination, against an HHA. Sanctions continue to be in effect regardless of the timing of any appeals proceedings.

§ 488.815 Factors to be considered in selecting sanctions.

CMS bases its choice of sanction or sanctions on consideration of one or more factors that include, but are not limited to, the following:

(a) The extent to which the deficiencies pose immediate jeopardy to patient health and safety.

(b) The nature, incidence, manner, degree, and duration of the deficiencies or noncompliance.

(c) The presence of repeat deficiencies, the HHA's overall compliance history and any history of repeat deficiencies at either the parent or branch location.

(d) The extent to which the deficiencies are directly related to a failure to provide quality patient care.

(e) The extent to which the HHA is part of a larger organization with performance problems.

(f) An indication of any system-wide failure to provide quality care.

§ 488.820 Available sanctions.

In addition to termination of the provider agreement, the following alternative sanctions are available:

(a) Civil money penalties.

(b) Suspension of payment for all new admissions and new payment episodes.

(c) Temporary management of the HHA.

(d) Directed plan of correction, as set out at § 488.850.

(e) Directed in-service training, as set out at § 488.855.

§ 488.825 Action when deficiencies pose immediate jeopardy.

(a) *Immediate jeopardy.* If there is immediate jeopardy to the HHA's patient health or safety—

(1) CMS immediately terminates the HHA provider agreement in accordance with § 489.53 of this chapter.

(2) CMS terminates the HHA provider agreement no later than 23 days from the last day of the survey, if the immediate jeopardy has not been removed by the HHA.

(3) In addition to a termination, CMS may impose one or more alternative sanctions, as appropriate.

(b) *2-day notice.* Except for civil money penalties, for all sanctions specified in § 488.820 that are imposed when there is immediate jeopardy, notice must be given at least 2 calendar days before the effective date of the enforcement action.

(c) *Transfer of care.* An HHA, if its provider agreement is terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local HHA within 30

days of termination. The State must assist the HHA in the safe and orderly transfer of care and services for the patients to another local HHA.

§ 488.830 Action when deficiencies are at the condition-level but do not pose immediate jeopardy.

(a) *Noncompliance.* If the HHA is no longer in compliance with the conditions of participation, either because the deficiencies substantially limit the provider's capacity to furnish adequate care but do not pose immediate jeopardy, or because the HHA has repeat noncompliance with standard-level deficiencies or repeat condition-level deficiencies that would lead to noncompliance based on the HHA's failure to correct and sustain compliance as described in their proposed plan of correction with the condition as set forth in part 484 of this chapter, CMS will:

(1) Terminate the HHA's provider agreement; or

(2) In addition to, or as an alternative to termination for a period not to exceed six months, impose one or more alternative sanctions set forth in § 488.820(a) through (f) of this subpart.

(b) *15-day notice.* Except for civil money penalties, for all sanctions specified in § 488.820 imposed when there is no immediate jeopardy, notice must be given at least 15 calendar days before the effective date of the enforcement action. The requirements of the notice are set forth in § 488.810(f).

(c) *Not meeting criteria for continuation of payment.* If an HHA does not meet the criteria for continuation of payment under § 488.860(a), CMS will terminate the HHA's provider agreement in accordance with § 488.865.

(d) *Termination time frame when there is no immediate jeopardy.* CMS terminates an HHA within 6 months of the last day of the survey, if the HHA is not in compliance with the conditions of participation, and the terms of the plan of correction have not been met.

(e) *Transfer of care.* An HHA, if its provider agreement is terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local HHA within 30 days of termination. The State must assist the HHA in the safe and orderly transfer of care and services for the patients to another local HHA.

§ 488.835 Temporary management.

(a) *Application.* (1) CMS may impose temporary management of an HHA if it determines that an HHA has a condition-level deficiency(ies) and CMS determines that management limitations or the deficiencies are likely to impair the HHA's ability to correct deficiencies and return the HHA to full compliance with the conditions of participation within the timeframe required.

(2) [Reserved]

(b) *Procedures.* (1) CMS notifies the HHA that a temporary manager is being appointed.

(2) If the HHA fails to relinquish authority and control to the temporary manager, CMS terminates the HHA's provider agreement in accordance with § 488.865.

(c) *Duration and effect of sanction.* Temporary management continues until—

(1) CMS determines that the HHA has achieved substantial compliance and has the management capability to ensure continued compliance with all the conditions of participation;

(2) CMS terminates the provider agreement; or

(3) The HHA reassumes management control without CMS approval. In such case, it would be a failure to relinquish authority and control to temporary management and CMS initiates termination of the provider agreement and may impose additional sanctions. Temporary management will not exceed a period of six months from the date of the survey identifying noncompliance.

(d) *Payment of salary.* (1) The temporary manager's salary—

(i) Is paid directly by the HHA while the temporary manager is assigned to that HHA; and

(ii) Must be at least equivalent to the sum of the following:

(A) The prevailing salary paid by providers for positions of this type in what the State considers to be the HHA's geographic area (prevailing salary based on the Geographic Guide by the Department of Labor (BLS Wage Data by Area and Occupation);

(B) Any additional costs that would have reasonably been incurred by the HHA if such person had been in an employment relationship; and

(C) Any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the State.

(2) An HHA's failure to pay the salary and other costs of the temporary manager described in paragraph (d)(1) of this section is considered a failure to relinquish authority and control to temporary management.

(3) The costs of a temporary manager is not an allowable item on a cost report, as described in § 488.30.

§ 488.840 Suspension of payment for all new patient admissions and new payment episodes.

(a) *Application.* (1) CMS may suspend payment for all new admissions and new payment episodes if an HHA is found to have condition-level deficiencies, regardless of whether those deficiencies pose immediate jeopardy.

(2) CMS will consider this sanction for any deficiency related to poor patient care outcomes, regardless of whether the deficiency poses immediate jeopardy.

(b) *Procedures*—(1) *Notices.* (i) Before suspending payments for new admissions or new payment episodes, CMS provides the HHA notice of the suspension of payment for all new admissions and all new payment episodes as set forth in § 488.810(f). The CMS notice of suspension will include the nature of the non-compliance; the effective date of the sanction; and the right to appeal the determination leading to the sanction.

(ii) The HHA may not charge a newly admitted HHA patient who is a Medicare beneficiary for services for which Medicare payment is suspended unless the HHA can show that, before initiating care, it gave the patient or his or her representative oral and written notice of the suspension of Medicare payment in a language and manner that the beneficiary or representative can understand.

(2) *Restriction.* (i) Suspension of payment for all new admissions and new payment episodes sanction may be imposed anytime an HHA is found to be out of substantial compliance.

(ii) Suspension of payment for patients with new admissions or patients with new payment episodes will remain in place until CMS determines that the HHA has achieved substantial compliance or is involuntarily terminated with the conditions of participation, as determined by CMS.

(3) *Resumption of payments.* Payments to the HHA resume prospectively on the date that CMS determines that the HHA has achieved substantial compliance with the conditions of participation.

(c) *Duration and effect of sanction.* This sanction ends when—

(1) CMS determines that the HHA is in substantial compliance with all of the conditions of participation; or

(2) When the HHA is terminated or CMS determines that the HHA is not in compliance with the conditions of participation at a maximum of 6 months from the date noncompliance was determined.

§ 488.845 Civil money penalties.

(a) *Application.* (1) CMS may impose a civil money penalty against an HHA for either the number of days the HHA is not in compliance with one or more conditions of participation or for each instance that an HHA is not in compliance, regardless of whether the HHA's deficiencies pose immediate jeopardy.

(2) CMS may impose a civil money penalty for the number of days of immediate jeopardy.

(3) A per-day and a per-instance CMP may not be imposed simultaneously for the same deficiency.

(b) *Amount of penalty.* (1) *Factors considered.* CMS takes into account the following factors in determining the amount of the penalty:

(i) The factors set out at § 488.815.

(ii) The size of an agency and its resources.

(iii) The availability of other HHAs within a region.

(iv) Accurate and credible resources, such as PECOS, Medicare cost reports and Medicare/Medicaid claims information that provide information on the operation and resources of the HHA.

(v) Evidence that the HHA has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the conditions of participation and to ensure patient health and safety.

(2) *Adjustments to penalties.* Based on revisit survey findings, adjustments to penalties may be made after a review of the provider's attempted correction of deficiencies.

(i) CMS may increase a CMP in increments based on a HHA's inability or unwillingness to correct deficiencies, the presence of a system-wide failure in the provision of quality care, or a determination of immediate jeopardy with actual harm versus immediate jeopardy with potential for harm.

(ii) CMS may also decrease a CMP in increments to the extent that it finds, pursuant to a revisit, that substantial and sustainable improvements have been implemented even though the HHA is not yet in full compliance with the conditions of participation.

(iii) No penalty assessment shall exceed $10,000 for each day of noncompliance.

(3) *Upper range of penalty.* Penalties in the upper range of $8,500 to $10,000 per day of noncompliance are imposed for a condition-level deficiency that is immediate jeopardy. The penalty in this range will continue until compliance can be determined based on a revisit survey.

(4) *Middle range of penalty.* Penalties in the range of $3,500–$8,500 per day of noncompliance are imposed for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes.

(i) $8,500 per day for a repeat deficiency or deficiencies.

(ii) $2500 to $5,000 per day for other deficiencies.

(5) *Lower range of penalty.* Penalties within this range are imposed for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy and that is related predominately to structure or process-oriented conditions (such as OASIS submission requirements) rather than directly related to patient care outcomes.

(i) $4,000 per day for a repeat deficiency or deficiencies.

(ii) $500 to $3,000 per day for other deficiencies.

(6) *Per instance penalty.* Penalties imposed per instance of noncompliance may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey. When penalties are imposed for per instance of noncompliance, or more than one per instance of noncompliance, the penalties will be in the range of $1,000 to $10,000 per instance, not to exceed $10,000 each day of noncompliance.

(7) *Decreased penalty amounts.* If the immediate jeopardy situation is removed, but condition-level noncompliance continues, CMS will shift the penalty amount imposed per day from the upper range to the middle or lower range. An earnest effort to correct any systemic causes of deficiencies and sustain improvement must be evident.

(8) *Increased penalty amounts.* (i) In accordance with paragraph (b)(2) of this section, CMS will increase the per day penalty amount for any condition-level deficiency or deficiencies which, after imposition of a lower-level penalty amount, become sufficiently serious to pose potential harm or immediate jeopardy.

(ii) CMS increases the per day penalty amount for deficiencies that are not corrected and found again at the time of revisit survey(s) for which a lower-level penalty amount was previously imposed.

(iii) CMS may impose a more severe amount of penalties for repeated noncompliance with the same condition-level deficiency or uncorrected deficiencies from a prior survey.

(c) *Procedures*—(1) *Notice of intent.* CMS provides the HHA with written notice of the intent to impose a civil money penalty. The notice includes the amount of the CMP being imposed, the basis for such imposition, and the proposed effective date of the sanction.

(2) *Appeals*—(i) *Appeals procedures.* An HHA may request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty. The request must meet the requirements in § 498.40 of this chapter.

(ii) *Waiver of a hearing.* An HHA may waive the right to a hearing, in writing, within 60 days from the date of the notice imposing the civil money penalty. If an HHA timely waives its right to a hearing, CMS reduces the penalty amount by 35 percent, and the amount is due within 15 days of the HHAs agreeing in writing to waive the hearing. If the HHA does not waive its right to a hearing in accordance to the procedures specified in this section, the civil money penalty is not reduced by 35 percent.

(d) *Accrual and duration of penalty.* (1) The per day civil money penalty may start accruing as early as the beginning of the date of the survey that determines that the HHA was out of compliance, as determined by CMS.

(2) A civil money penalty for each per instance of noncompliance is imposed in a specific amount for that particular deficiency, with a maximum of $10,000 per day per HHA. A penalty that is imposed per day and per instance of noncompliance may not be imposed simultaneously.

(3) *Duration of per day penalty when there is immediate jeopardy.* (i) In the case of noncompliance that poses immediate jeopardy, CMS must terminate the provider agreement within 23 calendar days after the last date of the survey if the immediate jeopardy is not removed.

(ii) A penalty imposed per day of noncompliance will stop accruing on the day the provider agreement is terminated or the HHA achieves substantial compliance, whichever occurs first.

(4) *Duration of penalty when there is no immediate jeopardy.* (i) In the case of noncompliance that does not pose immediate jeopardy, the daily accrual of per day civil money penalties is imposed for the days of noncompliance prior to the notice specified in paragraph (c)(1) of this section and an additional period of no longer than 6 months following the last day of the survey.

(ii) If the HHA has not achieved compliance with the conditions of participation, CMS terminates the provider agreement. The accrual of civil money penalty stops on the day the HHA agreement is terminated or the HHA achieves substantial compliance, whichever is earlier.

(e) *Computation and notice of total penalty amount.* (1) When a civil money penalty is imposed on a per day basis and the HHA achieves compliance with the conditions of participation as determined by a revisit survey, CMS sends a final notice to the HHA containing all of the following information:

(i) The amount of penalty assessed per day.

(ii) The total number of days of noncompliance.

(iii) The total amount due.

(iv) The due date of the penalty.

(v) The rate of interest to be assessed on any unpaid balance beginning on the due date, as provided in paragraph (f)(4) of this section.

(2) When a civil money penalty is imposed for per instance of noncompliance, CMS sends a notice to the HHA containing all of the following information:

(i) The amount of the penalty that was assessed.

(ii) The total amount due.

(iii) The due date of the penalty.

(iv) The rate of interest to be assessed on any unpaid balance beginning on the due date, as provided in paragraph (f)(6) of this section.

(3) In the case of an HHA for which the provider agreement has been involuntarily terminated and for which a civil money penalty was imposed on a per day basis, CMS sends this penalty information after one of the following actions has occurred:

(i) Final administrative decision is made.

(ii) The HHA has waived its right to a hearing in accordance with paragraph (c)(2)(ii) of this section.

(iii) Time for requesting a hearing has expired and CMS has not received a hearing request from the HHA.

(f) *Due date for payment of penalty.* A penalty is due and payable 15 days from notice of the final administrative decision.

(1) Payments are due for all civil money penalties within 15 days:

(i) After a final administrative decision when the HHA achieves substantial compliance before the final decision or the effective date of termination before final decision,

(ii) After the time to appeal has expired and the HHA does not appeal or fails to timely appeal the initial determination,

(iii) After CMS receives a written request from the HHA requesting to waive its right to appeal the determinations that led to the imposition of a sanction,

(iv) After substantial compliance is achieved, or

(v) After the effective date of termination.

(2) A request for hearing does not delay the imposition of any penalty; it only potentially delays the collection of the final penalty amount.

(3) If an HHA waives its right to a hearing according to paragraph (c)(2)(ii) of this section, CMS will apply a 35 percent reduction to the CMP amount when:

(i) The HHA achieved compliance with the conditions of participation before CMS received the written waiver of hearing; or

(ii) The effective date of termination occurs before CMS received the written waiver of hearing.

(4) The period of noncompliance may not extend beyond 6 months from the last day of the survey.

(5) The amount of the penalty, when determined, may be deducted (offset) from any sum then or later owing by CMS or State Medicaid to the HHA.

(6) Interest is assessed and accrues on the unpaid balance of a penalty, beginning on the due date. Interest is computed at the rate specified in § 405.378(d) of this chapter.

(g) *Penalties collected by CMS*—(1) *Disbursement of CMPs.* Civil money penalties and any corresponding interest collected by CMS from Medicare and Medicaid participating HHAs are disbursed in proportion to average dollars spent by Medicare and Medicaid at the national level based on MSIS and HHA PPS data for a three year fiscal period.

(i) Based on expenditures for the FY 2007–2009 period, the initial proportions to be disbursed are 63 percent returned to the U.S. Treasury and 37 percent returned to the State Medicaid agency.

(ii) Beginning one year after the effective date of this section, CMS shall annually update these proportions based on the most recent 3-year fiscal period, prior to the year in which the CMP is imposed, for which CMS determines that the relevant data are essentially complete.

(iii) The portion corresponding to the Medicare is returned to the U.S. Department of Treasury as miscellaneous receipts.

(iv) The portion corresponding to the Medicaid payments is returned to the State Medicaid agency.

(2) Penalties may not be used for Survey and Certification operations nor as the State's Medicaid non-Federal medical assistance or administrative match.

§ 488.850 Directed plan of correction.

(a) *Application.* CMS may impose a directed plan of correction when an HHA:

(1) Has one or more deficiencies that warrant directing the HHA to take specific actions; or

(2) Fails to submit an acceptable plan of correction.

(b) *Procedures.* (1) Before imposing this sanction, CMS provides the HHA notice of the impending sanction.

(2) CMS or the temporary manager (with CMS approval) may direct the HHA to take corrective action to achieve specific outcomes within specific timeframes.

(c) *Duration and effect of sanction.* If the HHA fails to achieve compliance with the conditions of participation within the timeframes specified in the directed plan of correction, CMS:

(1) May impose one or more other sanctions set forth in § 488.820; or

(2) Terminates the provider agreement.

§ 488.855 Directed in-service training.

(a) *Application.* CMS may require the staff of an HHA to attend in-service training program(s) if CMS determines that—

(1) The HHA has deficiencies that indicate noncompliance;

(2) Education is likely to correct the deficiencies; and

(3) The programs are conducted by established centers of health education and training or consultants with background in education and training with Medicare Home Health Providers, or as deemed acceptable by CMS and/or the State (by review of a copy of curriculum vitas and/or resumes/references to determine the educator's qualifications).

(b) *Procedures.* (1) *Action following training.* After the HHA staff has received in-service training, if the HHA has not achieved compliance, CMS may impose one or more other sanctions specified in § 488.820.

(2) *Payment.* The HHA pays for the directed in-service training for its staff.

§ 488.860 Continuation of payments to an HHA with deficiencies.

(a) *Continued payments.* CMS may continue payments to an HHA with condition-level deficiencies that do not constitute immediate jeopardy for up to 6 months from the last day of the survey if the criteria in paragraph (a)(1) of this section are met.

(1) *Criteria.* CMS may continue payments to an HHA not in compliance with the conditions of participation for the period specified in paragraph (a) of this section if all of the following criteria are met:

(i) The HHA has been imposed an alternative sanction or sanctions and termination has not been imposed.

(ii) The HHA has submitted a plan of correction approved by CMS.

(iii) The HHA agrees to repay the Federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.

(2) CMS may terminate the HHA's provider agreement any time if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments for new admissions.* If termination is imposed, either on its own or in addition to an alternative sanction or sanctions, or if any of the criteria set forth in paragraph (a)(1) of this section are not met, the HHA will receive no Medicare payments, as applicable, for new admissions following the last day of the survey.

(c) *Failure to achieve compliance with the conditions of participation.* If the HHA does not achieve compliance with the conditions of participation by the end of the period specified in paragraph (a) of this section, CMS will terminate the provider agreement of the HHA in accordance with § 488.865 of this part.

§ 488.865 Termination of provider agreement.

(a) *Effect of termination by CMS.* Termination of the provider agreement ends—

(1) Payment to the HHA; and

(2) Any alternative sanction(s).

(b) *Basis for termination.* CMS terminates an HHA's provider agreement under any one of the following conditions—

(1) The HHA is not in compliance with the conditions of participation.

(2) The HHA fails to submit an acceptable plan of correction within the timeframe specified by CMS.

(3) The HHA fails to relinquish control to the temporary manager, if that sanction is imposed by CMS.

(4) The HHA fails to meet the eligibility criteria for continuation of payment as set forth in § 488.860(a)(1).

(c) *Notice.* CMS notifies the HHA and the public of the termination, in accordance with procedures set forth in § 489.53 of this chapter.

(d) *Procedures for termination.* CMS terminates the provider agreement in accordance with procedures set forth in § 489.53 of this chapter.

(e) *Appeal.* An HHA may appeal the termination of its provider agreement by CMS in accordance with part 498 of this chapter.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

16. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1128I and 1819, 1820(e), 1861, 1864(m), 1866, 1869, and 1871 of the Social Security Act (42 U.S.C. 1302, 1351i–3, 1395x, 1395aa(m), 1395cc, 1395ff, and 1395hh).

17. Section 489.53 is amended by adding paragraphs (a)(17) and (d)(2)(iii) to read as follows:

§ 489.53 Termination by CMS.

(a) * * *

(17) In the case of an HHA, it failed to correct any deficiencies within the required time frame.

* * * * *

(d) * * *

(2) * * *

(iii) *Home health agencies (HHAs).* For an HHA with deficiencies that pose immediate jeopardy to the health and safety of patients, CMS gives notice to the HHA at least 2 days before the effective date of termination of the provider agreement.

* * * * *

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFS/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

18. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 the Social Security Act (42 U.S.C. 1302 and 1395hh).

19. Section 498.3 is amended by revising paragraphs (b)(13), (b)(14) introductory text, (b)(14)(i), and (d)(10) to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) * * *

(13) Except as provided at § 498.3(d)(12) for SNFs, NFs, and HHAs the finding of noncompliance leading to the imposition of enforcement actions specified in § 488.406 or § 488.740 of this chapter, but not the determination as to which sanction was imposed. The scope of review on the imposition of a civil money penalty is specified in § 488.438(e) of this chapter.

(14) The level of noncompliance found by CMS in a SNF, NF, or HHA but only if a successful challenge on this issue would affect—

(i) The range of civil money penalty amounts that CMS could collect (for SNFs or NFs, the scope of review during a hearing on imposition of a civil money penalty is set forth in § 488.438(e) of this chapter); or

* * * * *

(d) * * *

(10) For a SNF, NF, or HHA—

(i) The finding that the provider's deficiencies pose immediate jeopardy to the health or safety of the residents or patients;

(ii) Except as provided in paragraph (b)(13) of this section, a determination by CMS as to the provider's level of noncompliance; and

(iii) For SNFs and NFs, the imposition of State monitoring.

* * * * *

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: June 27, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 28, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–16836 Filed 7–6–12; 4:15 pm]

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Part IV

Securities and Exchange Commission

17 CFR Parts 240 and 249

Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–67286; File No. S7–44–10]

RIN 3235–AK87

Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: In accordance with Section 763(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), the Securities and Exchange Commission (''Commission'') is adopting rules under the Securities Exchange Act of 1934 (''Exchange Act'') to specify the process for a registered clearing agency's submission for review of any security-based swap, or any group, category, type or class of security-based swaps, that the clearing agency plans to accept for clearing, the manner of notice the clearing agency must provide to its members of such submission and the procedure by which the Commission may stay the requirement that a security-based swap is subject to mandatory clearing while the clearing of the security-based swap is reviewed. The Commission also is adopting a rule to specify that when a security-based swap is required to be cleared, the submission of the security-based swap for clearing must be for central clearing to a clearing agency that functions as a central counterparty. In addition, the Commission is adopting rules to define and describe when notices of proposed changes to rules, procedures or operations are required to be filed by designated financial market utilities in accordance with Section 806(e) of Title VIII of the Dodd-Frank Act and to set forth the process for filing such notices with the Commission. Finally, the Commission is adopting rules to make conforming changes as required by the amendments to Section 19(b) of the Exchange Act contained in Section 916 of the Dodd-Frank Act.

DATES: *Effective Dates:* August 13, 2012 for §§ 240.3Ca–1, 240.3Ca–2, and the amendments to 240.19b–4; December 10, 2012 for all amendments to § 249.819 and Form 19b–4.

Compliance Dates: August 13, 2012 for §§ 240.3Ca–1, 240.3Ca–2, and the amendments to § 240.19b–4, except for the compliance date for § 240.19b–4(o), which is discussed in the section of the release titled ''II.G. Effective and Compliance Dates''; December 10, 2012 for all amendments to § 249.819 and Form 19b–4.

FOR FURTHER INFORMATION CONTACT: Catherine Moore, Senior Special Counsel, Kenneth Riitho, Special Counsel or Andrew Bernstein, Special Counsel, at (202) 551–5710; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

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I. Background

On July 21, 2010, the President signed the Dodd-Frank Act into law.[1] The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] Title VII and Title VIII of the Dodd-Frank Act, among other things, impose new requirements with respect to clearance and settlement systems.

Title VII of the Dodd-Frank Act (''Title VII'') provides the Commission and the Commodity Futures Trading

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, H.R. 4173).

[2] *See* Pub. L. 111–203, Preamble.

Commission (''CFTC'') with authority to regulate certain over-the-counter (''OTC'') derivatives in response to the recent financial crisis.[3] The Dodd-Frank Act is intended to bolster the existing regulatory structure and provide regulatory tools to oversee the OTC derivatives market, which has grown exponentially in recent years. Title VII provides that the CFTC will regulate ''swaps,'' the Commission will regulate ''security-based swaps,'' and the CFTC and the Commission will jointly regulate ''mixed swaps.''[4]

Title VII was designed to provide greater certainty that, wherever possible and appropriate, swap and security-based swap contracts formerly traded exclusively in the OTC market are centrally cleared.[5] The swaps and security-based swaps markets traditionally have been characterized by privately negotiated transactions entered into by two counterparties, in which each assumes the credit risk of the other counterparty.[6] Clearing of swaps and security-based swaps was at the heart of Congressional reform of the derivatives markets in Title VII.[7]

Clearing agencies are broadly defined under the Exchange Act and undertake a variety of functions.[8] One such function is to act as a central counterparty (''CCP''), which is an entity that interposes itself between the counterparties to a trade.[9] For example, when a security-based swap contract between two counterparties that are members of a CCP is executed and submitted for clearing, it is typically replaced by two new contracts—separate contracts between the CCP and each of the two original counterparties. At that point, the original counterparties are no longer counterparties to each other. Instead, each acquires the CCP as its counterparty, and the CCP assumes the counterparty credit risk of each of the original counterparties that are members of the CCP.[10] Structured and operated appropriately, CCPs may improve the management of counterparty risk and may provide additional benefits such as multilateral netting of trades.[11]

One key way in which the Dodd-Frank Act promotes clearing of such contracts is by requiring a process by which the Commission would determine whether a security-based swap is required to be cleared. Section 3C of the Exchange Act, as added by Section 763(a) of the Dodd-Frank Act (''Exchange Act Section 3C''),[12] creates, among other things, a clearing requirement with respect to certain security-based swaps. Specifically, this section provides that ''[i]t shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this Act or a clearing agency that is exempt from registration under this Act if the security-based swap is required to be cleared.''[13] Exchange Act Section 3C requires the Commission to adopt rules for a clearing agency's submission of security-based swaps, or any group, category, type or class of security-based swaps, that a clearing agency plans to accept for

[3] *See, e.g.,* Report of the Senate Committee on Banking, Housing, and Urban Affairs regarding The Restoring American Financial Stability Act of 2010, S. Rep. No. 111–176 at 29 (2010) (stating that ''[m]any factors led to the unraveling of this country's financial sector and the government intervention to correct it, but a major contributor to the financial crisis was the unregulated [OTC] derivatives market.'')

[4] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System (''Board''), shall further define the terms ''swap,'' ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement.'' The Commission and the CFTC jointly have proposed to further define the terms ''swap,'' ''security-based swap,'' and ''security-based swap agreement.'' *See Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Securities Act Release No. 9204, Securities Exchange Act Release No. 64372 (Apr. 29, 2011), 76 FR 29818 (May 23, 2011), corrected in Securities Act Release No. 9204A, Securities Exchange Act Release No. 64372A (June 1, 2011), 76 FR 32880 (June 7, 2011) (''Product Definition Proposing Release''). Further, the Commission and CFTC jointly have adopted rules to further define the terms ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' and eligible contract participant,'' *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* Securities Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012). Moreover, section 712(a)(8) of the Dodd-Frank Act provides that the Commission and the CFTC, after consultation with the Board, shall jointly promulgate such regulations regarding ''mixed swaps'' as may be necessary to carry out the purposes of Title VII. The Commission and the CFTC have jointly proposed such regulations. *See* Product Definition Proposing Release.

[5] *See, e.g.,* Report of the Senate Committee on Banking, Housing, and Urban Affairs regarding The Restoring American Financial Stability Act of 2010, S. Rep. No. 111–176 at 34 (stating that ''[s]ome parts of the OTC market may not be suitable for clearing and exchange trading due to individual business needs of certain users. Those users should retain the ability to engage in customized, uncleared contracts while bringing in as much of the OTC market under the centrally cleared and exchange-traded framework as possible.'').

[6] *See, e.g.,* Financial Stability Board, *Implementing OTC Derivatives Market Reforms* (Oct. 25, 2010), available at: *http://www.financialstabilityboard.org/publications/r_101025.pdf.*

[7] As previously noted, the Dodd-Frank Act seeks to ensure that, wherever possible and appropriate, derivatives contracts formerly traded exclusively in the OTC market be cleared. *See supra* note 5; *see also* Letter from Christopher Dodd, Chairman, Committee on Banking, Housing and Urban Affairs, United States Senate and Blanche Lincoln, Chairman, Committee on Agriculture, Nutrition, and Forestry, United States Senate, to Barney Frank, Chairman, Financial Services Committee, United States House of Representatives and Colin Peterson, Chairman, Committee on Agriculture, United States House of Representatives (June 30, 2010) (on file with the United States Senate).

[8] Section 3(a)(23)(A) of the Exchange Act defines the term ''clearing agency'' to mean any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for the comparison of data regarding the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. 15 U.S.C. 78c(a)(23)(A).

[9] *See id.* An entity that acts as a CCP for securities transactions is a clearing agency as defined in the Exchange Act and is required to register with the Commission.

[10] *See* Cecchetti, Gyntelberg and Hollanders, *Central counterparties for over-the-counter derivatives,* BIS Quarterly Review, Sept. 2009, available at: *http://www.bis.org/publ/qtrpdf/r_qt0909f.pdf.*

[11] *See id.* at 46 (stating that the structure of a CCP ''has three clear benefits. First, it improves the management of counterparty risk. Second, it allows the CCP to perform multilateral netting of exposures as well as payments. Third, it increases transparency by making information on market activity and exposures—both prices and quantities—available to regulators and the public''); *see also* Bank for International Settlements' Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Guidance on the application of the 2004 CPSS–IOSCO Recommendations for Central Counterparties to OTC derivatives CCPs: Consultative report,* (May 2010), available at: *http://www.bis.org/publ/cpss89.pdf.*

[12] 15 U.S.C. 78c–3 *et seq.*

[13] *See* 15 U.S.C. 78c–3(a)(1) (as added by Section 763(a) of the Dodd-Frank Act). The requirement that a security-based swap be cleared will stem from the determination to be made by the Commission. Such determination may be made in connection with the review of a clearing agency's submission regarding a security-based swap, or any group, category, type or class of security-based swaps, that the clearing agency plans to accept for clearing. *See* 15 U.S.C. 78c–3(b)(2)(C)(ii) (as added by Section 763(a) of the Dodd-Frank Act) (''[t]he Commission shall * * * review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared.''). In addition, Exchange Act Section 3C(b)(1) provides that ''[t]he Commission on an ongoing basis shall review each security-based swap, or any group, category, type, or class of security-based swaps to make a determination that such security-based swap, or group, category, type, or class of security-based swaps should be required to be cleared.''

clearing (''Security-Based Swap Submission'') and to determine the manner of notice the clearing agency must provide to its members of such Security-Based Swap Submission.[14]

If the Commission makes a determination that a security-based swap is required to be cleared, then parties may not engage in such security-based swap without submitting it for clearing to a clearing agency that is either registered with the Commission (or exempt from registration) unless an exception to the clearing requirement applies.[15] If the Commission determines that a security-based swap is not required to be cleared, such security-based swap may still be cleared on a non-mandatory basis by the clearing agency if the clearing agency has rules that permit it to clear such security-based swap. In addition, Exchange Act Section 3C(b)(1) provides that ''[t]he Commission on an ongoing basis shall review each security-based swap, or any group, category, type, or class of security-based swaps to make a determination that such security-based swap, or group, category, type, or class of security-based swaps should be required to be cleared'' (''Commission-initiated Review'').[16]

Title VIII of the Dodd-Frank Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'' or ''Title VIII''), provides for enhanced regulation of financial market utilities, such as clearing agencies, that manage or operate a multilateral system for the purpose of transferring, clearing or settling payments, securities or other financial transactions among financial institutions or between financial institutions and the financial market utility.[17] The regulatory regime in Title VIII will only apply, however, to financial market utilities that the Financial Stability Oversight Council (''Council'') designates as systemically important (or likely to become systemically important) in accordance with Section 804 of the Clearing Supervision Act.[18] Among other requirements prescribed under Title VIII, Section 806(e) of the Clearing Supervision Act (''Section 806(e)'') requires any financial market utility designated by the Council as systemically important to file 60 days advance notice of changes to its rules, procedures or operations that could materially affect the nature or level of risk presented by the financial market utility (''Advance Notice'').[19] In addition, Section 806(e) requires each Supervisory Agency[20] to adopt rules, in consultation with the Board, that define and describe when a designated financial market utility is required to file an Advance Notice with its Supervisory Agency.[21]

Clearing agencies registered with the Commission are financial market utilities, as defined in Section 803(6) of Title VIII;[22] thus, the Commission may be the Supervisory Agency of a clearing agency that is designated as systemically important by the Council (''designated clearing agency'').[23] A clearing agency must begin filing Advance Notices pursuant to Section 806(e) once the Council designates the clearing agency as systemically important as of the compliance date of new Rule 19b–4(o), which the Commission is adopting today.

On December 15, 2010, the Commission proposed amendments to Rule 19b–4 under the Exchange Act to implement these new requirements by requiring that Security-Based Swap Submissions under Exchange Act Section 3C and Advance Notices under Section 806(e) be filed with the Commission on Form 19b–4.[24] The Proposing Release also contained two new rules that were proposed in accordance with the authority granted to the Commission pursuant to Exchange Act Section 3C: (i) Proposed Rule 3Ca–1, which would establish a procedure by which the Commission, at the request of a counterparty or on its

[14] *See* 15 U.S.C. 78c–3(b)(2)(A) and (5) (as added by Section 763(a) of the Dodd-Frank Act). For purposes of the amendments to Rule 19b–4 and Form 19b–4 that the Commission is adopting today, and as generally used in this release, the term ''Security-Based Swap Submission'' means both the identifying information that clearing agencies are required to submit to the Commission pursuant to Exchange Act Section 3C(b)(2) for each security-based swap (or any group, category, type or class of security-based swaps) that such clearing agency plans to accept for clearing, and, in addition, the accompanying information that a clearing agency is required to provide pursuant to new Rule 19b–4(o)(3).

Exchange Act Section 3C(b)(2)(C)(i) requires that the Commission make available to the public any submission received under Exchange Act Section 3C(b)(2)(A). 15 U.S.C. 78c3–1(b)(2)(C)(i) (as added by Section 763(a) of the Dodd-Frank Act). Also, the additional information that clearing agencies are required to provide pursuant to the amendments being adopted today with respect to Rule 19b–4 and Form 19b–4 in general will be published in the notice of the Security-Based Swap Submission and required to be posted on the clearing agency's Web site. The Commission notes, however, that a clearing agency may request confidential treatment of the additional information pursuant to Rule 24b–2 under the Exchange Act regarding information it desires be kept undisclosed. 17 CFR 240.24b–2.

[15] 15 U.S.C. 78c–3(a)(1) (as added by Section 763(a) of the Dodd-Frank Act).

[16] *See* 15 U.S.C. 78c–3(b)(1) (as added by Section 763(a) of the Dodd-Frank Act). The Dodd-Frank Act does not require rulemaking with respect to Commission-initiated Reviews.

[17] The definition of ''financial market utility'' in Section 803(6) of the Clearing Supervision Act contains a number of exclusions that include, but are not limited to, certain designated contract markets, registered futures associations, swap data repositories, swap execution facilities, national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, security-based swap execution facilities, brokers, dealers, transfer agents, investment companies and futures commission merchants. 12 U.S.C. 5462(6)(B) (as added by Title VIII).

[18] Pursuant to Section 803(9) of the Clearing Supervision Act, a financial market utility is systemically important if the failure of or a disruption to the functioning of such financial market utility could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. 12 U.S.C. 5462(9) (as added by Title VIII). Under Section 804 of the Clearing Supervision Act, the Council has the authority, on a non-delegable basis and by a vote of not fewer than two-thirds of the members then serving, including the affirmative vote of its chairperson, to designate those financial market utilities that the Council determines are, or are likely to become, systemically important. The Council may, using the same procedures as discussed above, rescind such designation if it determines that the financial market utility no longer meets the standards for systemic importance. Before making either determination, the Council is required to consult with the Board and the relevant Supervisory Agency (as determined in accordance with Section 803(8) of the Clearing Supervision Act). Finally, Section 804 of the Clearing Supervision Act sets forth the procedures for giving entities a 30-day notice and the opportunity for a hearing prior to a designation or rescission of the designation of systemic importance. 12 U.S.C. 5463 (as added by Title VIII). On July 18, 2011, the Council adopted final rules describing the criteria that will inform and the processes and procedures established under the Clearing Supervision Act for the Council's designation of financial market utilities as systemically important. *See Authority to Designate Financial Market Utilities as Systemically Important,* 76 FR 44763 (July 27, 2011).

[19] *See* 12 U.S.C. 5465(e)(1)(A) (as added by Title VIII).

[20] Section 803(8) of the Clearing Supervision Act defines the term ''Supervisory Agency'' in reference to the primary regulatory authority for the financial market utility. For example, Section 803(8) of the Clearing Supervision Act provides that the Commission is the Supervisory Agency for any financial market utility that is a Commission-registered clearing agency. *See* 12 U.S.C. 5462(8) (as added by Title VIII). To the extent that an entity is both a Commission-registered clearing agency and registered with another agency, such as a CFTC-registered derivatives clearing organization, the statute requires the two agencies to agree on one agency to act as the Supervisory Agency, and if the agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of the Clearing Supervision Act. 12 U.S.C. 5462(8) (as added by Title VIII).

[21] *See* 12 U.S.C. 5465(e)(1)(B) (as added by Title VIII).

[22] 12 U.S.C. 5462(6) (as added by Title VIII).

[23] *See supra* note 20 discussing the definition of ''Supervisory Agency'' under the Dodd-Frank Act.

[24] *See Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations,* Securities Exchange Act Release No. 34–63557 (Dec. 15, 2010), 75 FR 82490 (Dec. 30, 2010) (''Proposing Release'').

own initiative, may stay the requirement that a security-based swap is subject to mandatory clearing, and (ii) proposed Rule 3Ca–2, which was intended to prevent evasions of the clearing requirement by specifying that security-based swaps required to be cleared must be submitted for central clearing to a clearing agency that functions as a CCP. Finally, the Commission proposed technical, conforming and clarifying amendments to Rule 19b–4 and Form 19b–4 to conform the rule and form with new deadlines and approval, disapproval and temporary suspension standards with respect to proposed rule changes filed under Section 19(b) of the Exchange Act, as modified by Section 916 of the Dodd-Frank Act (''Exchange Act Section 19(b)'').[25]

The Commission received 19 comment letters on the Proposing Release from clearing agencies, financial institutions, industry trade groups and other interested persons.[26] Commenters were generally supportive of the Commission's proposals. Some commenters did, however, urge the Commission to take a different approach to certain parts of the proposal. For example, a number of commenters provided suggestions on the proposed rules setting forth the information that clearing agencies will need to provide to the Commission in connection with a Security-Based Swap Submission. As discussed below, the Commission is adopting these rules substantially as proposed, with certain modifications to address commenters' concerns.[27]

II. Discussion

The Commission is adopting rules to implement the new requirements imposed by Title VII and Title VIII discussed above. In accordance with the requirements set forth in Exchange Act Section 3C (as added by Title VII), the Commission is adopting amendments to Rule 19b–4 and Form 19b–4 and new Rule 3Ca–1 under the Exchange Act to establish processes for (i) how clearing agencies registered with the Commission must submit Security-Based Swap Submissions to the Commission for a determination by the Commission of whether the security-based swap (or group, category, type or class of security-based swaps) referenced in the submission is required to be cleared, and to determine the manner of notice the clearing agency must provide to its members of such submission and (ii) how the Commission may stay the requirement that a security-based swap is subject to mandatory clearing. The Commission also is adopting new Rule 3Ca–2 to prevent evasion of the clearing requirement.

In addition, the Commission is adopting amendments to Rule 19b–4 and Form 19b–4 to implement Section 806(e), which requires any designated clearing agency for which the Commission is the Supervisory Agency to provide an Advance Notice to the Commission. Moreover, the Commission is adopting amendments to Rule 19b–4 and Form 19b–4 to conform to the requirements specified in Exchange Act Section 19(b), as amended by Section 916 of the Dodd Frank Act.[28] Section 916 provided for new deadlines by which the Commission must publish and act upon a proposed rule change submitted by a self-regulatory organization (''SRO'') and new standards for the approval, disapproval and temporary suspension of a proposed rule change. Finally, the Commission is adopting a number of technical and clarifying amendments to Rule 19b–4 and Form 19b–4.

As set forth in the Proposing Release, Security-Based Swap Submissions and Advance Notices will be required to be filed with the Commission on Form 19b–4 using the existing Electronic Form 19b–4 Filing System (''EFFS''). Currently, EFFS is used by SROs, which include registered clearing agencies,[29] to file proposed rule changes electronically with the Commission pursuant to Exchange Act Section 19(b) and Rule 19b–4.[30] The Commission is requiring clearing agencies to use EFFS for the filing of Security-Based Swap Submissions and Advance Notices because registered clearing agencies already use this system for Exchange Act Section 19(b) filings and because there are similarities between the existing requirement to file proposed rule changes with the Commission under Exchange Act Section 19(b) and the new requirements under the Dodd-Frank Act to file Security-Based Swap Submissions and under the Clearing Supervision Act to file Advance Notices.

A. Security-Based Swap Submissions

1. Process for Making Security-Based Swap Submissions to the Commission

Exchange Act Section 3C requires each clearing agency that plans to accept a security-based swap for clearing to file a Security-Based Swap Submission with the Commission for a determination by the Commission of whether the security-based swap (or any group, category, type or class of security-based swaps) referenced in the submission is required to be cleared.[31] Accordingly, the Commission is adopting new Rule 19b–4(o)(1), which sets forth the underlying requirement to make these submissions, substantially as proposed, with slight modifications made solely for the purpose of eliminating duplicative language in other parts of the rule and conforming the rule as necessary for certain other non-substantive changes made to other parts of Rule 19b–4 (as discussed below).

To facilitate this filing requirement, the Commission is adopting Rule 19b–4(o)(2) to require clearing agencies to use EFFS and Form 19b–4 for Security-Based Swap Submissions. As discussed in the Proposing Release, registered clearing agencies, as SROs, are already required to file proposed rule changes on Form 19b–4 on EFFS. Using the same filing process for Security-Based Swap Submissions would leverage existing technology and reduce the resources clearing agencies would have to expend on meeting Commission filing requirements. Moreover, in situations where a single clearing agency action would trigger more than one filing requirement, allowing for each filing to be made pursuant to a single Form 19b–4 submission would improve efficiency in the filing process. The Commission is adopting the requirements in new Rule 19b–4(o)(2) substantially as proposed, with modifications made to allow for

[25] 15 U.S.C. 78s(b) (as amended by Section 916 of the Dodd-Frank Act).

[26] Copies of comments received on the proposal are available on the Commission's Web site at: *http://www.sec.gov/comments/s7-44-10/s74410.shtml.*

[27] In addition to the changes discussed throughout this release, the Commission has made a number of minor typographical and clarifying revisions to the final rules as compared to what was included in the Proposing Release, including: (i) Inserting a missing word in each of new Rule 3Ca–1(d) and new Rule 19b–4(n)(3), (ii) amending the header to Rule 19b–4 to reflect the two new types of filings, (iii) replacing the word ''or'' with ''of'' in new Rule 19b–4(n)(2)(iii), (iv) replacing the term ''designated financial market utility'' with ''designated clearing agency'' in new Rules 19b–4(n)(2)(iii)(A) and (B) and (v) making numerous changes to the rule text to reflect the style requirements for proper inclusion of the final rules into the Code of Federal Regulations. Based on the non-substantive nature of these revisions, the Commission finds notice of the revisions is not necessary. *See* 5 U.S.C. 553(b).

[28] 15 U.S.C. 78s(b) (as amended by Section 916 of the Dodd-Frank Act).

[29] The definition of SRO in Section 3(a)(26) of the Exchange Act includes any registered clearing agency. 15 U.S.C. 78c(a)(26).

[30] SROs are required to file with the Commission, in accordance with rules prescribed by the Commission, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of the SRO (collectively referred to as a ''proposed rule change''). *See* 15 U.S.C. 78s(b)(1).

[31] *See* 15 U.S.C. 78c–3(b)(2) (as added by Section 763(a) of the Dodd-Frank Act).

the transition to EFFS filing. Specifically, the Commission is currently in the process of designing and implementing the Commission system upgrades that are necessary in order for Security-Based Swap Submissions to be filed on EFFS. The Commission expects the system upgrades to EFFS to be completed no later than December 10, 2012. In order to avoid delaying clearing agencies from making Security-Based Swap Submissions, the Commission has decided to provide for a temporary means of submission. As a result, the Commission is adopting Rule 19b–4(o)(2) to provide that Security-Based Swap Submissions filed before December 10, 2012 must be filed with the Commission by submitting the Security-Based Swap Submission to a dedicated email inbox to be established by the Commission. A clearing agency that files a Security-Based Swap Submission by email must include in the submission the same information that is required to be included for Security-Based Swap Submissions in the General Instructions for Form 19b–4, as such form has been modified by the rules the Commission is adopting today. Security-Based Swap Submissions filed on or after December 10, 2012 on Form 19b–4 would include the same substantive information.[32] Additional conforming changes have been made to Rule 19b–4(o)(2) to accommodate the phased implementation of the submission process.

The Commission did not receive any comments on its proposal to use EFFS and the existing Form 19b–4 filing process for Security-Based Swap Submissions. Some commenters did, however, raise questions related to other processes involving the clearing of security-based swaps, namely the interplay between the process by which the Commission will determine whether to approve a new security-based swap for clearing and the process by which the Commission will determine whether a security-based swap is required to be cleared.[33] Although these comments were not directly responsive to the proposed process by which clearing agencies will file Security-Based Swap Submissions, the Commission appreciates receiving feedback and questions from interested persons regarding how it should ultimately make determinations on which security-based swaps will be subject to mandatory clearing. Of the commenters that discussed the relationship between a mandatory clearing determination and an action approving the voluntary clearing of security-based swaps, one commenter requested that the Commission clarify the circumstances under which a clearing agency would be required to make a Security-Based Swap Submission with the Commission when it already has Commission-approved rules permitting it to clear the security-based swap in question.[34] Another commenter requested that the Commission ''de-couple the determination that a clearing agency may clear a security-based swap from the determination that a security-based swap should be subject to a mandatory clearing obligation.'' [35] Finally, one commenter asked for confirmation that ''the Commission intends that a clearing agency 'eligibility to clear' review is to be separate from and precede a security-based swap mandatory clearing review and [that] it is not intended that both reviews can commence simultaneously.'' [36]

In response to the three comments described above, the Commission notes that its process for determining whether a security-based swap is required to be cleared pursuant to Exchange Act Section 3C (which process is triggered by the filing of a Security-Based Swap Submission in accordance with the amendments being adopted today to Rule 19b–4 and Form 19b–4) is separate and distinct from the Commission's process for determining whether to approve a request by a clearing agency to commence voluntary clearing of a security-based swap (which process will be triggered by the filing of a proposed rule change pursuant to Exchange Act Section 19(b)).[37] Each filing process, as well as each resulting Commission determination, is governed by separate sections of the Exchange Act, and each operates under separate timeframes. Thus, a clearing agency will be required to make a Security-Based Swap Submission regardless of whether it has existing rules permitting it to clear the security-based swap referred to in the submission.

However, the Commission anticipates that a clearing agency's decision to plan to clear a security-based swap (or any group, category, type or class of security-based swaps) could require filings under both Exchange Act Section 19(b) and Exchange Act Section 3C. This is because a clearing agency's decision to clear a security-based swap may require the clearing agency to change its rules and thus file with the Commission a proposed rule change under Exchange Act Section 19(b). In this scenario, the clearing agency would be required to file a Security-Based Swap Submission with the Commission for a determination by the Commission of whether the security-based swap (or any group, category, type or class of security-based swaps) referenced in the submission is required to be cleared.[38] In other words, the two filing requirements are not mutually exclusive. Because a clearing agency may be required to file the same proposal under Exchange Act Section 3C and Exchange Act Section 19(b), and because there may be instances where the same information is required under both statutory provisions,[39] the Commission believes that the most efficient use of the Commission's and clearing agencies' resources would be to require clearing agencies to use the existing EFFS system for these two related, though legally separate, types of filings (and, to the extent that the filings are made at the same time, pursuant to a single Form 19b–4 submission).

In addition, while the Commission recognizes the concerns raised by the commenter requesting that these two processes not commence

[32] The Commission notes that a clearing agency must also continue to meet the filing requirements of Rule 19b–4 and Form 19b–4. For example, if the decision to clear a security-based swap referenced in a Security-Based Swap Submission also requires the clearing agency to file a proposed rule change under Exchange Act Section 19(b), the clearing agency must file the proposed rule change with the Commission on Form 19b–4 using EFFS and separately file the Security-Based Swap Submission with the Commission by email.

[33] *See, e.g.,* comment letter of CME Group, Inc. (Feb. 14, 2011) (''CME Letter''); comment letter of LCH.Clearnet Group (Feb. 14, 2011) (''LCH.Clearnet Letter''); comment letter of the International Swaps and Derivatives Association, Inc. (''ISDA'') (Feb. 14, 2011) (''ISDA Letter''); and comment letter of The Options Clearing Corporation (Feb. 14, 2011) (''OCC Letter'').

[34] *See* OCC Letter at 3.

[35] *See* LCH.Clearnet Letter at 2–3.

[36] *See* ISDA Letter at 4.

[37] A more detailed discussion regarding the separation of the two filing requirements (and subsequent Commission actions) is contained in section II.F of this release. Notably, the requirement to submit a proposed rule change is not affected by the rules the Commission is adopting today related to the process for filing Security-Based Swap Submissions.

[38] A clearing agency rule is defined broadly in the Exchange Act to include ''the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing * * * and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.'' *See* 15 U.S.C. 78c(a)(27). The Commission anticipates that a proposal to clear a new type, category or class of security-based swap will, in many cases, also be a change to the rules of a registered clearing agency that must be filed with the Commission for approval pursuant to Exchange Act Section 19(b).

[39] *See infra* section II.F.

simultaneously,[40] the Commission notes that the timing and sequencing of each of these processes ultimately will be determined based on the individual facts and circumstances of a particular filing. The Commission generally believes that when a security-based swap is submitted for review under Exchange Act Section 3C and concurrently filed under Exchange Act Section 19(b) as a proposed rule change, the two separate reviews will be carried out on the same general timeline and likely involving the same staff, both as a practical matter and to promote efficiency in the use of Commission resources. However, in circumstances where no proposed rule change filing would be required, such as a case where a clearing agency's rules already permit it to clear the security-based swap in question, EFFS and Form 19b–4 still will be used for the Security-Based Swap Submission.

The Commission also received a comment letter that attached a copy of a separate letter that the commenter submitted to the CFTC requesting, among other things, that the CFTC clarify that a designated clearing organization (''DCO'') would not be required to make any submission to the CFTC for swaps previously listed for clearing by a DCO prior to the date of enactment of Section 723 of the Dodd-Frank Act (''pre-enactment swaps'') or for any swaps that a DCO cleared prior to the effective date of the CFTC's final rules setting forth its swap submission process.[41] While this commenter did not explicitly make a concurrent request with respect to security-based swaps, the Commission notes that it will need to have certain information regarding any security-based swap (or any group, category, type, or class of security-based swaps) listed for clearing by a clearing agency as of the date of enactment of Exchange Act Section 3C (*i.e.,* July 21, 2010) (''pre-enactment security-based swaps'') in light of Exchange Act Section 3C(b)(2)(B) on which to base its determination of whether the security-based swap is required to be cleared.[42] Accordingly, the Commission will continue to work directly with any clearing agency that listed pre-enactment security-based swaps as of the date of enactment of Exchange Act Section 3C to obtain any information necessary for making a mandatory clearing determination.[43]

Finally, one commenter requested that the Commission clarify that, to the extent that a rule of a clearing agency is changed ''not through any action of the clearing agency but through the action of ISDA or other external authority, such an event would not constitute a rule change or necessitate an additional [Security-Based Swap] Submission.'' [44] This commenter noted that clearing agencies sometimes have rules that incorporate ISDA terms by reference or state that determinations made by an ISDA committee will apply to the security-based swaps that the clearing agency clears.[45] In response to this commenter, the Commission notes that as a general matter, registered clearing agencies have an ongoing responsibility to ensure that their rules are in compliance with Section 17A of the Exchange Act, regardless of the source of, or justification behind, a new rule or rule change. Accordingly, the Commission would need to review actions on a case-by-case basis to determine whether specific actions taken by ISDA or another industry organization would require the filing of a separate proposed rule change or Security-Based Swap Submission. In that respect, the Commission encourages clearing agencies to discuss particular actions with Commission staff in order to determine whether a filing is required.

a. Substance of Security-Based Swap Submissions: Consistency With Section 17A of the Exchange Act

New Rule 19b–4(o)(3)(i), which the Commission is adopting as proposed, requires that each Security-Based Swap Submission contain a statement explaining how the submission is consistent with Section 17A of the Exchange Act. The requirement to submit the information specified in Rule 19b–4(o)(3)(i) is intended to assist the Commission in its review of the Security-Based Swap Submission in accordance with the standards set forth in Exchange Act Section 3C(b)(4)(A).[46] Section 17A specifies, among other things, that the Commission is directed, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities.[47]

In complying with this requirement, registered clearing agencies should be able to utilize their prior experience with the requirement to comply with a similar rule in the context of filing proposed rule changes with the Commission pursuant to Exchange Act Section 19(b). Specifically, Exchange Act Section 19(b)(2)(C)(i) requires the Commission, prior to approving a proposed rule change filed by any SRO (including a registered clearing agency), to determine that the proposed rule change is consistent with the requirements of the Exchange Act (which would include Section 17A) and the rules and regulations issued thereunder applicable to such organization.[48] In connection with proposed rule changes, an SRO is required to ''explain why the proposed rule change is consistent with the requirements of the [Exchange] Act and the rules and regulations thereunder applicable to the [SRO]. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient.'' [49]

[40] *See supra* note 36 and accompanying text.

[41] *See* Exhibit A to CME Letter.

[42] 15 U.S.C. 78c–3(b)(2)(B) (as added by Section 763(a) of the Dodd-Frank Act) (''[a]ny security-based swap or group, category, type, or class of security-based swaps listed for clearing by a clearing agency as of the date of enactment of this subsection shall be considered submitted to the Commission.'').

[43] The Commission notes that only two clearing agencies listed security-based swaps for clearing as of July 21, 2010. To begin the process of reviewing pre-enactment swaps, Commission staff has requested, pursuant to Section 17A of the Exchange Act, that each registered clearing agency submit information similar to that which will be required under Rule 19b–4(o)(3) so that the Commission can make the statutorily required determination. The Commission believes that receiving this information directly from the clearing agencies, as opposed to having to gather it from other sources, should help ensure that the Commission is able to make mandatory clearing determinations. Moreover, such information would be based on timely, accurate and comprehensive information obtained from the party most directly involved in the clearing process as it pertains to a particular security-based swap. In addition, providing this information in response to a Commission request is consistent with a clearing agency's general obligations in connection with its registration with the Commission. After the effective date of Rule 19b–4(o) and once the Commission has verified that the previously submitted information is complete on its face, the Commission will publish the submissions for public comment. The Commission confirms that a clearing agency that is clearing pre-enactment security-based swaps may continue to clear them on a voluntary basis and does not have to wait for a determination from the Commission as to whether the security-based swaps are required to be cleared.

[44] *See* OCC Letter at 4.

[45] *See id.*

[46] *See* 15 U.S.C. 78c–3(b)(4)(A) (as added by Section 763(a) of the Dodd-Frank Act) (''[i]n reviewing a [Security-Based Swap Submission], the Commission shall review whether the submission is consistent with section 17A.'').

[47] 15 U.S.C. 78q–1.

[48] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[49] Item 3(b) of the General Instructions for Form 19b–4. 17 CFR 240.819. *See also* Exchange Act Section 19(b), which requires that an SRO provide a statement of the basis of the proposed rule change and provides that the Commission shall approve a

Continued

Presently, in complying with the requirement to file proposed rule changes with the Commission pursuant to Exchange Act Section 19(b), registered clearing agencies are required to specify, among other things, how the proposed rule change is consistent with the requirements under Section 17A(b)(3) of the Exchange Act. In addition, all registered clearing agencies must comply with the standards in Section 17A of the Exchange Act, which include requirements under Section 17A(b)(3) of the Exchange Act to maintain rules for promoting the prompt and accurate clearance and settlement of securities transactions, assuring the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protecting investors and the public interest.[50] A registered clearing agency also is required under Section 17A(b)(3) of the Exchange Act to provide fair access to clearing and to have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, as well as to safeguard securities and funds in its custody or control or for which it is responsible.[51]

The Commission did not receive any comments on the requirement contained in Rule 19b–4(o)(3)(i) that a clearing agency explain how the Security-Based Swap Submission is consistent with Section 17A of the Exchange Act. However, one commenter recommended that the Commission provide further specificity as to precisely what elements of Section 17A(b)(3) of the Exchange Act ''are relevant to the decision to clear a security-based swap and thus must be addressed in a clearing agency's submission.'' [52] Because each Security-Based Swap Submission will be tailored to a particular security-based swap (or group, category, type or class of security-based swaps) and to the clearing arrangement established by the particular clearing agency filing the submission, each submission will raise different issues for the Commission to consider. As such, the Commission is unable to state definitely which elements of Section 17A(b)(3) would be relevant to individual submissions. However, the Commission notes that all registered clearing agencies are required to maintain compliance with each of the standards set forth in Section 17A of the Exchange Act as a condition to registration, and a clearing agency should have considered whether clearing a security-based swap (or group, category, type or class of security-based swaps) is consistent with the requirements of Section 17A of the Exchange Act at the time the clearing agency first reached a decision to clear the particular instrument. Accordingly, and in response to the question raised by the commenter, a clearing agency should consider whether it needs to include a statement in the submission discussing the process the clearing agency followed when it reached its initial decision to clear the security-based swap (or group, category, type or class of security-based swaps). To the extent possible, such discussion could include information on the clearing agency's consideration of the factors set forth in Rule 19b–4(o)(3)(ii) at the time the clearing agency decided to commence clearing the product and the weight, if any, each such factor (or other factors determined to be appropriate by the clearing agency) was given in reaching its conclusion. If additional procedures were followed, over and above those associated with other types of rule changes or designed to assist the clearing agency in considering the particular risk or other characteristics of the security-based swap (or group, category, type or class of security-based swaps) that is the subject of the submission, the clearing agency could specify such procedures. The Commission also encourages clearing agencies to specify and briefly describe any departures from processes contemplated by clearing agency rules in reaching a decision to commence clearing the security-based swap, such as exercises of discretion not to consult established management committees, board committees or participant committees.

To the extent relevant to its initial conclusion to clear a security-based swap, the clearing agency could include a clear statement whether it believes that the security-based swap (or group, category, type or class of security-based swaps) that is the subject of the Security-Based Swap Submission should or should not be required to be cleared by the Commission, together with a discussion of the reasons for its belief. If the Commission's decision to require or not to require the security-based swap (or group, category, type or class of security-based swaps) that is the subject of the submission to be cleared would or would not materially affect the clearing agency's judgment that the clearing proposal is consistent with Section 17A of the Exchange Act, the clearing agency is encouraged to include a statement of this nature and explain why this is the case.[53]

b. Substance of Security-Based Swap Submissions: Quantitative and Qualitative Factors

The Commission also is adopting new Rule 19b–4(o)(3)(ii) to specify what qualitative and quantitative factors should be discussed by a clearing agency in its Security-Based Swap Submission. This rule is being adopted substantially as proposed, with certain non-substantive changes having been made to correct paragraph numbering. To provide context for the requirements to provide this information, Exchange Act Section 3C(b)(4)(B) requires the Commission, prior to making a mandatory clearing determination, to analyze five specific qualitative and quantitative factors.[54] New Rule 19b–4(o)(3)(ii) requires clearing agencies to submit information to assist the Commission in its consideration of the five factors specified in Exchange Act

proposed rule change only if it finds that it is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. 15 U.S.C. 78s(b).

[50] *See* 15 U.S.C. 78q–1(b)(3)(F).

[51] *See* 15 U.S.C. 78q–1(b)(3)(A), (B) and (F).

[52] *See* CME Letter at 2, n.1. In its comment letter, CME Group, Inc. states that Exchange Act Section 3C ''governs the Commission's responsibility to determine whether a security-based swap that a clearing agency chooses to clear may be cleared'' and also ''requires the Commission to make determinations respecting whether a security-based swap is subject to the mandatory clearing requirement.'' The Commission notes, however, that Exchange Act Section 3C only relates to mandatory clearing determinations. The question of whether a clearing agency *may* clear a security-based swap will depend on whether clearing of the security-based swap is permitted under the clearing agency's rules. To the extent that a clearing agency's rules must also be modified to permit clearing of a new security-based swap (or group, category, type or class of security-based swaps), such change would need to be approved as a proposed rule change governed by Exchange Act Section 19(b). Other than certain technical changes made pursuant to Section 916 of the Dodd-Frank Act, the process for submitting proposed rule changes with the Commission is not being modified by the rules being adopted today. *See supra* note 37 and accompanying text.

[53] As compliance with each of the standards of Section 17A of the Exchange Act is required of each registered clearing agency, the information specified throughout this paragraph is expected to be provided by each clearing agency for any security-based swap (or group, category, type or class of security-based swaps) being considered by the Commission, including pre-enactment swaps.

[54] *See* 15 U.S.C. 78c–3(b)(4)(B)(i)–(v) (as added by Section 763(a) of the Dodd-Frank Act).

Section 3C(b)(4)(B), including, but not limited to:

(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

(ii) The availability of a rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

(iv) The effect on competition, including appropriate fees and charges applied to clearing.

(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or one or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

Some commenters requested that the Commission limit the breadth of the information that clearing agencies will be required to submit to the Commission pursuant to Rule 19b–4(o)(3)(ii) pertaining to the five qualitative and quantitative factors.[55] For example, one commenter urged Commission staff to exercise judgment and flexibility in determining the scope of information required in connection with the five qualitative and quantitative factors, noting that some of these factors would require ''at most a very cursory mention'' in a specific Security-Based Swap Submission, particularly where the responsive information is already well-known to the Commission or where the Commission has extensive knowledge of the clearing agency's rules or operations.[56] Further, this commenter requested that the Commission clarify that when a Rule 19b–4 filing is both a proposed rule change and a Security-Based Swap Submission, any information that is self-evident from the text of the proposed rule need not be repeated for the Security-Based Swap Submission aspect of the filing.[57]

In response to this comment, the Commission reiterates that registered clearing agencies will be required to submit Security-Based Swap Submissions for the sole purpose of submitting the information necessary for the Commission to determine, pursuant to Exchange Act Section 3C(b)(2)(C)(ii), whether the security-based swap described in the submission is required to be cleared (*i.e.,* subject to mandatory clearing). As discussed in section II.A.1 and throughout this release, the process by which the Commission will determine whether a security-based swap is required to be cleared following the submission of a Security-Based Swap Submission is separate and distinct from the process by which the Commission will determine whether to approve a new security-based swap for voluntary clearing following the filing of a proposed rule change pursuant to Exchange Act Section 19(b).[58] In cases where the Rule 19b–4 filing is both a proposed rule change and a Security-Based Swap Submission, each filing should be complete in accordance with the particular rules applicable to the different types of filings. At the same time, the Commission agrees with this commenter that clearing agencies should not be required to provide unnecessarily duplicative information. Accordingly, if more than one type of filing is made pursuant to a single Form 19b–4 submission, clearing agencies may be able to refer to and cross-reference relevant information in the proposed rule change that also is relevant to the Security-Based Swap Submission filing so long as the requirements of each applicable rule are individually satisfied and if the clearing agency clearly explains how the information included in the proposed rule change is applicable to the specific information required to be provided in the Security-Based Swap Submission.

Another commenter suggested that the Commission should limit the information required to be in a Security-Based Swap Submission to include only information addressing whether clearing a security-based swap comports with Section 17A of the Exchange Act.[59] In particular, this commenter maintained that the qualitative and quantitative factors set forth in Exchange Act Section 3C(b)(4)(B) were most relevant to the Commission in making its determination as to whether a security-based swap is required to be cleared and less relevant in the context of a submission by a clearing agency seeking approval to clear a security-based swap.[60] This commenter maintained that requiring clearing agencies to perform an analysis of the qualitative and quantitative factors set forth in Exchange Act Section 3C(b)(4)(B) in connection with seeking approval to clear a security-based swap would be ''broad and burdensome,'' noting that the Commission has a great deal of information necessary to address the statutory factors by virtue of the extensive reporting requirements under the Dodd-Frank Act.[61]

Similarly, a separate commenter requested that the Commission amend the information requirements in the proposed rule ''such that a clearing agency is required to include in its submission only that information which is necessary for determining the suitability of a security-based swap for clearing and the *eligibility* of a clearing agency to clear that security-based swap (but not the information required to support the determination of whether a security-based swap should be subject to a mandatory clearing obligation).''[62] In furtherance of this suggestion, the commenter suggested specific deletions to the information requirements in the proposed rules that were based on the five statutory factors set forth in Exchange Act Section 3C(b)(4)(B).[63]

In response to the commenters discussed in the two preceding paragraphs, the Commission notes that the factors specified in new Rule 19b–4(o)(3)(ii) are identical to the qualitative and quantitative factors that the Commission is required to consider pursuant to Exchange Act Section 3C(b)(4)(B) when determining whether a security-based swap (or group, category, type or class of security-based swaps) will be subject to a mandatory clearing requirement. Moreover, and in response to the commenter that requested that the information required in the submission relate only to the suitability of the security-based swap for clearing and the

[55] *See, e.g.,* CME Letter, LCH.Clearnet Letter and OCC Letter.

[56] *See* OCC Letter at 3–5.

[57] *See id.*

[58] As previously noted, although the Commission will accept both Security-Based Swap Submissions and proposed rule changes on Form 19b–4 through EFFS for the sake of efficiency, each filing will be considered a separate submission to be reviewed in accordance with the appropriate statutory provision—even to the extent that both filings are made at the same time using the same form.

[59] *See* CME Letter at 3. In addition, the CME Letter attached as an exhibit a comment letter, dated Jan. 3, 2011, that CME Group, Inc. submitted to the CFTC in connection with a similar set of proposed rules. *See* Exhibit A to CME Letter. In this letter, CME Group, Inc. recommended that the CFTC delete a number of items required to be included in a submission to the CFTC in connection with a mandatory clearing determination for swaps. These recommended deletions included each of the five qualitative and quantitative factors set forth in Section 2(h)(2)(D) of the Commodity Exchange Act (which are identical to the factors contained in Exchange Act Section 3C(b)(4)(B)). Specifically, CME Group, Inc. expressed its belief that these requirements were unclear, unduly burdensome, could defeat the purposes of the Dodd-Frank Act and, in some cases, called for information that the clearing agency does not possess.

[60] *See id.*

[61] *See id.*

[62] *See* LCH.Clearnet Letter at 3.

[63] *See id.* at 4

eligibility of the clearing agency to clear the security-based swap, the Commission notes that the information related to the statutory factors are necessary in connection with the Commission's statutory obligation to make a mandatory clearing determination. The Commission believes that it is appropriate to require such information to be included in Security-Based Swap Submissions because clearing agencies ordinarily have primary access to this information, making it easier for them to submit the information to the Commission than it would be for the Commission to gather the information from other sources, resulting in a more effective and efficient process for both the Commission and clearing agencies.

Furthermore, the Commission does not believe that requiring clearing agencies to submit information responsive to new Rule 19b–4(o)(3)(ii) would be overly burdensome or require clearing agencies to provide material that is not in their possession. In particular, and based on its prior experience with the operations and governance of clearing agencies, the Commission would expect that clearing agencies would consider the factors set forth in the statute and the rule as part of their decision-making process, particularly in connection with determining whether to list the relevant security-based swaps for clearing (and knowing that such listing could result in the Commission determining that the security-based swap may be required to be cleared). Based on all of the reasons outlined above, particularly the requirement that the Commission consider each of the factors set forth in Exchange Act Section 3C(b)(4)(B) prior to making a mandatory clearing determination, each Security-Based Swap Submission will be required to include information regarding the factors listed in paragraphs (A) through (E) of Rule 19b–4(o)(3)(ii).

In addition, the Proposing Release included examples of information that a clearing agency ''could'' consider including in its Security-Based Swap Submission in order to respond to the quantitative and qualitative factors specified in Exchange Act Section 3C.[64] Some commenters urged the Commission to incorporate these examples into its final rules, thereby requiring all of this information to be included in a clearing agency's Security-Based Swap Submission.[65] For example, one commenter suggested that the proposed rules did not include requirements to ensure that Security-Based Swap Submissions provide sufficiently detailed information; this commenter stated that the range of information discussed in the proposed rule as information a clearing agency ''could'' include appears to be essential information that the Commission could use to ''efficiently and effectively determine whether the clearing agency should be allowed to clear the swap, or whether the swap should be required to clear.'' [66] A second commenter requested that the Commission, at a minimum, replace the word ''could'' with ''shall'' in the list of disclosures required to be included in a Security-Based Swap Submission.[67]

A third commenter urged the Commission to ''require every clearing agency to submit all of the information identified in the [Proposing] Release and in the instructions as potentially relevant to the five factors'' set forth in Exchange Act Section 3C(b)(4)(B).[68] The same commenter also requested that the proposed rules be expanded to require clearing agencies to submit additional information regarding pricing, liquidity and risk management as part of a Security-Based Swap Submission, and to include an explicit statement in the final rules whereby the Commission would make clear that ''a given level of contract-specific systemic risk is not a prerequisite for a determination that a security-based swap is subject to mandatory clearing.'' [69] Finally, this commenter urged the Commission to require clearing agencies to include information regarding the decision-making process they follow when deciding whether or not to make a Security-Based Swap Submission.[70]

In response to the three commenters discussed above, the Commission believes that the requirements contained in new Rule 19b–4(o)(3)(ii) strike an appropriate balance by requiring clearing agencies to submit the

[64] *See* Proposing Release, *supra* note 24, at section II.A.1.b.

[65] *See, e.g.,* comment letter of Americans for Financial Reform (Feb. 14, 2011) (''AFR Letter''); comment letter of American Federation of State, County and Municipal Employees (''AFSCME'') (Feb. 14, 2011) (''AFSCME Letter''); and comment letter of Better Markets, Inc. (Feb. 14, 2011) (''Better Markets Letter'').

[66] *See* AFR Letter at 2.

[67] *See* AFSCME Letter at 3–4. While AFSCME suggested that all of the examples identified in the release be incorporated into the rule, it highlighted as particularly relevant the reference to information on product specifications, including copies of any standardized legal documentation, generally accepted contract terms, standard practices for managing and communicating any life cycle events associated with the security-based swap and related adjustments, and the manner in which the information contained in the confirmation of the security-based swap trade is transmitted.

[68] *See* Better Markets Letter at 3–5.

[69] *See id* at 5–7. The additional information suggested by Better Markets, Inc. (''Better Markets'') includes: (1) Information about any price indices used for pricing the security-based swap; (2) information regarding liquidity over the life of a security-based swap; (3) information regarding risk management procedures, particularly with respect to cross-contract netting and credits relating to initial margin, including correlations to be used and algorithms that result in the netting or credits; and (4) certain information on the hedging relationships between the security-based swaps proposed to be cleared and other security-based swaps that are cleared by the clearing agency or by other clearing agencies.

[70] *See* Better Markets Letter at 7–8. Specifically, Better Markets urged the Commission to require clearing agencies to: (1) Include a summary of member support for clearing the security-based swap as proposed, as well as member objections; (2) notify the Commission and the public of the type of security-based swap being considered at the time it notifies members of the submission or possible submission; (3) submit input from both the public and customers regarding the decision to make a submission, which can be considered alongside member views (including the methods used to solicit such input and the outcome); and (4) notify the Commission of the decision not to make a submission if the decision is made after the clearing agency risk committee (or similar body) solicits input from members, customers or others regarding a submission, which notification should include the objections and supporting statements received regarding the proposed submission. Similarly, Americans for Financial Reform urged the Commission to require clearing agencies to file submissions (which should be made publicly available) when the clearing agency ''rejects a class of swaps for clearing.'' *See* AFR Letter at 2.

While the Commission has provided full responses to these comments later in this section, with respect to the commenters requesting that a clearing agency notify the Commission when it decides not to make a Security-Based Swap Submission or when it ''rejects a class'' of security-based swaps for clearing, the Commission notes that, to the extent that these commenters' suggestion is directed toward the Commission's ability to ensure that clearing agencies do not reject new security-based swaps for clearing for improper reasons, such as anticompetitive reasons, other provisions of the Exchange Act provide the Commission with the ability to investigate and address potential anticompetitive behavior if it occurs. For example, Section 17A of the Exchange Act provides that clearing agency rules must not be designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency and that the rules may not impose a burden of competition that is not necessary or appropriate in furtherance of the provisions of the Exchange Act. *See* 15 U.S.C. 78q–1(b)(3)(F) and (I). All proposed rule changes filed by clearing agency with the Commission under Exchange Act Section 19(b)(2) are subject to approval by the Commission and all Security-Based Swap Submissions will be subject to Commission review to determine whether a security-based swap should be required to be cleared. Pursuant to Rule 17a–1, a registered clearing agency must keep copies of all documents made or received by it in the course of its business as such and provide copies of any such documents to the Commission upon request. *See* 17 CFR 17a–1. The Commission has broad authority under Section 17(b) of the Exchange Act to conduct examinations of clearing agencies. *See* 15 U.S.C. 78q. And ultimately, under Section 19(h) of the Exchange Act, the Commission has the authority to bring an enforcement action against a clearing agency that has violated or is unable to comply with any provision of the Exchange Act, the rules or regulations thereunder, or its own rules. *See* 15 U.S.C. 78s.

information necessary to allow the Commission to make informed and timely mandatory clearing determinations. In particular, the Commission believes that the information requirements contained in Rule 19b–4(o)(3)(ii) provide for the submission of a comprehensive set of information to be included in a preliminary Security-Based Swap Submission. For example, the Commission believes that most of the information discussed in the proposed rule as information a clearing agency ''could'' include in a Security-Based Swap Submission is already contemplated by the rules the Commission is adopting today. In fact, in the discussion set forth both the Proposing Release and in the paragraph immediately below, the Commission has attempted to tie each example identified as information a clearing agency ''could'' include in a Security-Based Swap Submission to a specific section of new Rule 19b–4(o)(3)(ii). As a result, the Commission does not believe that it is necessary to incorporate this information directly into the rule text, as suggested by three commenters.[71] Similarly, the Commission believes that the information identified by the commenter who suggested that the final rules be expanded by requiring, among other things, information regarding pricing, liquidity, risk management, and certain decision-making processes also is generally contemplated by one of the requirements of new Rule 19b–4(o).[72] Moreover, to the extent that information suggested to be included in the final rules by commenters is not addressed in other provisions (including, for example, information on certain hedging relationships between security-based swaps and information on decisions not to accept a security-based swap for clearing) or omitted from a Security-Based Swap Submission, the Commission notes that it can require the production of additional information from clearing agencies pursuant to Rule 19b–4(o)(6) (to the extent that the information is requested in connection with an actual Security-Based Swap Submission) or in all cases pursuant to the Commission's general supervisory authority to the extent that it believes such information will be relevant to its consideration of the Security-Based Swap Submission or otherwise.

Nevertheless, and as described in the Proposing Release, the Commission believes that while the content of each Security-Based Swap Submission will depend on the specific product referenced therein and the particular set of circumstances related to the clearing arrangement, many common types of information likely will be responsive to a large number of these types of submissions. For example, with respect to Rule 19b–4(o)(3)(ii)(A), a statement describing the existence of outstanding notional exposures, trading liquidity and adequate pricing data could address pricing sources, models and procedures demonstrating an ability to obtain price data to measure credit exposures in a timely and accurate manner, as well as measures of historical market liquidity and trading activity, and expected market liquidity and trading activity if the security-based swap is required to be cleared (including information on the sources of such measures). With respect to Rule 19b–4(o)(3)(ii)(B), a statement describing the availability of a rule framework could include a discussion of the rules, policies or procedures applicable to the clearing of the relevant security-based swap. Additionally, a discussion of credit support infrastructure could include the methods to address and communicate requests for, and posting of, collateral. With respect to Rule 19b–4(o)(3)(ii)(C), a discussion of systemic risk could include a statement on the clearing agency's risk management procedures including, among other things, the measurement and monitoring of credit exposures, initial and variation margin methodology, methodologies for stress testing and back testing, settlement procedures and default management procedures. With respect to Rule 19b–4(o)(3)(ii)(D), a discussion of fees and charges could address any volume incentive programs that may apply or impact the fees and charges. With respect to Rule 19b–4(o)(3)(ii)(E), a discussion of legal certainty in the event of an insolvency could address segregation of accounts and all other customer protection measures under insolvency.

In addition, the Commission continues to believe that when describing the security-based swap (or group, category, type or class of security-based swaps) referenced in the Security-Based Swap Submission, the clearing agency could discuss the relevant product specifications, including any standardized legal documentation, generally accepted contract terms,[73] standard practices for managing and communicating any life cycle events associated with the security-based swap and related adjustments,[74] and the manner in which the information contained in the confirmation of the security-based swap trade is transmitted. Further, the clearing agency also could discuss its financial and operational capacity to provide clearing services to all customers potentially subject to the clearing requirements as applicable to the particular security-based swap. Finally, the clearing agency could include an analysis of the effect of a clearing requirement on the market for the group, category, type, or class of security-based swaps, both domestically and globally, including the potential effect on market liquidity, trading activity, use of security-based swaps by direct and indirect market participants and any potential market disruption or benefits. This analysis could include whether the members of the clearing agency are operationally and financially capable of absorbing clearing business (including indirect access market participants) that may result from a determination that the security-based swap (or group, category, type or class of security-based swaps) is required to be cleared.[75]

[71] *See supra* notes 65 to 68 and accompanying text.

[72] *See supra* notes 69 to 70 and accompanying text. For example, Better Markets suggested that the Commission require clearing agencies to submit certain information on price indices used for pricing the security-based swap and information on liquidity over the life of the security-based swap. The Commission believes that this information generally falls within the scope of new Rule 19b–4(o)(3)(ii)(A), which requires the clearing agency to provide information about the existence of significant outstanding notional exposures, trading liquidity and adequate pricing data. In addition, Better Markets suggested that the Commission require clearing agencies to submit certain information regarding the clearing agency's risk management procedures which the Commission believes is already contemplated by new Rule19b–4(o)(3)(ii)(B) and (C), which require the clearing agency to provide information about the availability of a rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded as well as the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract. With respect to the information suggested by Better Markets regarding certain decision-making processes used by the clearing agency when it makes a Security-Based Swap Submission, the Commission believes that much of this information is contemplated by new Rule 19b–4(o)(3)(i), which requires clearing agencies to explain how the submission is consistent with Section 17A of the Exchange Act.

[73] For example, for some security-based swaps, industry standard documentation would include the applicable ISDA Master Agreement and any related asset-class-specific definitions.

[74] The Commission included a definition of ''life cycle event'' in proposed Regulation SBSR. *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Securities Exchange Act Release No. 63346 (Nov. 19, 2010), 75 FR 75208 (Dec. 2, 2010).

[75] In addition to the information required to be submitted to the Commission pursuant to new Rule

Continued

The Commission believes that basing the information submission requirements in new Rule 19b–4(o)(3)(ii) on the five statutory factors set forth in Exchange Act Section 3C(b)(4)(B), and supplementing these requirements by providing the above examples of information that the Commission believes could be responsive, is an appropriate approach to implementing the statute because it retains the flexibility provided for in the Proposing Release to allow clearing agencies to address the statutory factors based on the facts and circumstances of a particular submission without requiring specific data points that could be overly prescriptive at the outset. At the same time, the Commission recognizes that a requirement that does not provide enough detail could result in an inefficient use of clearing agency and Commission resources if Security-Based Swap Submissions contain a large amount of unnecessary or irrelevant information. To that extent, the Commission encourages clearing agencies to discuss, at least initially, prospective Security-Based Swap Submissions with Commission staff to help determine what materials would be responsive to the requirements of new Rule 19b–4(o)(3)(ii) and Exchange Act Section 3C(b)(4)(B) in the context of a particular submission.

c. Substance of Security-Based Swap Submissions: Open Access

Exchange Act Section 3C also requires that the rules of a clearing agency that clears security-based swaps subject to the clearing requirement provide for open access.[76] In the course of reviewing a Security-Based Swap Submission, the Commission may assess whether a clearing agency's rules provide for open access, particularly with respect to the relevant Security-Based Swap Submission. Accordingly, new Rule 19b–4(o)(3)(ii), which is being adopted as proposed, requires that a Security-Based Swap Submission include a statement regarding how the clearing agency's rules:

(i) Prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

(ii) Provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.

One commenter requested that the Commission delete the requirement that a clearing agency submit information responsive to the factors related to open access in its Security-Based Swap Submission on the basis that requiring this information is ''broad and burdensome'' and outside of the authority granted to the Commission by the Dodd-Frank Act.[77] While the Commission recognizes that the factors related to open access are not included in the five qualitative and quantitative factors that the Commission is required to consider when reviewing a Security-Based Swap Submission, the Commission notes that Exchange Act Section 3C(a)(2) provides the authority for including this requirement in new Rule 19b–4(o)(3)(ii) in that it requires that the rules of a clearing agency that clears security-based swaps subject to the clearing requirement be in compliance with the two open access provisions.[78] By requiring that compliance with the open access requirements be assessed each time a clearing agency files a Security-Based Swap Submission, the clearing agency will be required to demonstrate that it continues to satisfy these ongoing conditions prior to listing a new security-based swap (or group, category, type, or class of security-based swap) for clearing. Because clearing in a particular security-based swap is limited to a small number of clearing agencies, it is critical that access to the clearing agency be open and available to market participants having due regard for risk management considerations.[79] Further, the Commission believes that requiring clearing agencies to address the two open access requirements in a Security-Based Swap Submission generally would not require a clearing agency to conduct a completely novel analysis or to consider factors with which it is unfamiliar as clearing agencies are already required to address open access issues as part of their compliance with certain requirements contained in Section 17A of the Exchange Act.[80] Accordingly, the rules the Commission is adopting today, which are unchanged from what was proposed, require that clearing agencies address in their Security-Based Swap Submission how their rules meet such open access requirements.

d. Timing of Security-Based Swap Submissions

Pursuant to Exchange Act Section 3C(b)(3), the Commission is required to make its determination of whether a security-based swap described in a clearing agency's Security-Based Swap Submission is required to be cleared not later than 90 days after receiving such Security-Based Swap Submission.[81] The statute further provides that this 90-day determination period may be extended with the consent of the clearing agency making such Security-Based Swap Submission.[82] In addition, the statute requires the Commission to make available to the public any Security-

19b–4(o)(3), and any information identified in this release as an example of information that clearing agencies may wish to provide in their submissions, the Commission may also require additional information as necessary to assess any of the factors it determines to be appropriate in order to make a determination of whether the clearing requirement applies. *See infra* section II.A.1.g (discussing new Rule 19b–4(o)(6)).

[76] *See* 15 U.S.C. 78c–3(a)(2) (''OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and (B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.'').

[77] *See* CME Letter at 3.

[78] *See* 15 U.S.C. 78c–3(a)(2) (as added by Section 763(a) of the Dodd-Frank Act).

[79] The Commission has previously recognized that certain conflicts of interest at clearing agencies or among their members could restrict open access to the clearing agency. *See Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges with Respect to Security-Based Swaps under Regulation MC,* Securities Exchange Act Release No. 63107 (Oct. 14, 2010), 75 FR 65882 (Oct. 26, 2010) (noting that ''[a] consequence of increased use of central clearing services, however, is that participants that control or influence a security-based swap clearing agency may gain a competitive advantage in the security-based swaps market by restricting access to the clearing agency. If that occurred, financial institutions and marketplaces that do not have access to central clearing would have limited ability to trade in or list security-based swaps.''). The Commission also recognized, however, that clearing agencies may legitimately impose minimum participation standards that could affect open access. *See id* (''The provisions in Section 17A recognize that a clearing agency may discriminate among persons in the admission to, or the use of, the clearing agency, by requiring that participants meet certain financial, operational, and other fitness standards. However, Section 17A also requires that sanctioned discriminations must not be unfair.'').

[80] *See* 15 U.S.C. 78q–1(b)(3)(F) (requiring that the rules of a clearing agency, among other things, not be designed ''to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency'').

[81] 15 U.S.C. 78c–3(b)(3) (as added by Section 763(a) of the Dodd-Frank Act). Further, pursuant to new Rule 19b–4(o)(2), if any information submitted to the Commission by a clearing agency on Form 19b–4 were not complete or otherwise in compliance with Rule 19b–4 and Form 19b–4, such information would not be considered a Security-Based Swap Submission and the Commission would be required to inform the clearing agency within twenty-one business days of such submission.

[82] 15 U.S.C. 78c–3(b)(3) (as added by Section 763(a) of the Dodd-Frank Act).

Based Swap Submission it receives and to ''provide at least a 30-day public comment period regarding its determination whether the clearing requirement shall apply to the submission.'' [83]

Because the Commission's obligation to provide for notice and public comment of Security-Based Swap Submissions is set forth in detail in Exchange Act Section 3C, it was not necessary for the Commission to adopt rules regarding these procedures. However, the Commission believes that it is important to provide guidance on how it intends to implement these statutory requirements in practice. Specifically, the Commission believes that the statutory requirement to ''provide at least a 30-day public comment'' was intended, at least in part, to enable the public to have an opportunity to comment on the Security-Based Swap Submission and to provide information for the Commission to consider as part of making its determination whether the clearing requirement should apply to the submission. Accordingly, the Commission will indicate in each notice that it publishes of a Security-Based Swap Submission that public comment will be accepted during the period specified in the notice (which will in no event be less than 30 days). In addition, the comment period will begin and end within the 90-day determination period (as opposed to beginning after the Commission has made its final determination). The Commission expects to publish notice of the Security-Based Swap Submission in the **Federal Register** and it also intends to publish notice on the Commission's publicly-available Web site at *www.sec.gov*. Such notice would include the solicitation of public comment for the period specified in the notice. This process is consistent with the current process that is in place for proposed rule changes under Exchange Act Section 19(b)(2) and Rule 19b–4.

Although the Commission did not propose rules with respect to the procedure it will follow in publishing Security-Based Swap Submissions for public comment, one commenter requested that the Commission extend the minimum public review period to 45 days.[84] This commenter also recommended that the comment period should not commence until after: (1) The clearing agency has proven the ability to clear the product through testing; (2) the clearing agency has sufficient operational resources and established connectivity to the market using standard protocols; (3) all market standardization issues defining the product, life events, etc. have been resolved; (4) pricing standards and margin calculations have been agreed by the clearing agency's risk committee; and (5) the Commission has all the information it needs and such information has been verified as consistent with data received from security-based swap data repositories, security-based swap dealers and major security-based swap participants.[85] In response to this comment letter, the Commission notes that the comment period specified in the notice will be at least 30 days, as is required under the statute.[86] The Commission believes the statute permits it to specify a comment period that is longer than 30 days, and the Commission will state the length of the comment period in each notice. Generally, however, the Commission believes that a 30-day comment period for Security-Based Swap Submissions strikes an appropriate balance by providing commenters with sufficient time to formulate their ideas while still giving the Commission time to consider all of the comments received and to factor them into the mandatory clearing determination, particularly as the Commission has a statutory obligation to make a clearing determination not later than 90 days after receiving the submission. In response to the comment suggesting that the Commission should delay the commencement of the comment period until the actions outlined by the above commenter are completed, the Commission notes that most of the information identified by the commenter is already required by the five quantitative and qualitative factors set forth in Exchange Act Section 3C(b)(4)(B) and new Rule 19b–4(o)(3)(ii).[87] Moreover, the Commission is concerned that delaying the commencement of the public comment process would delay the Commission's potential receipt of feedback from the public which, in the Commission's experience reviewing proposed rule changes, is often an important source of information for supplementing or challenging the material submitted by the SRO.

In addition, a commenter recommended that the Commission adopt an extended transition period between the date that a determination is made that a security-based swap is required to be cleared and the date clearing becomes mandatory for that product.[88] This commenter also recommended a second transition period from ''when the 'exchange/security-based swap execution facility trading' requirement is determined to when such requirement takes effect.'' [89] Finally, this commenter recommended ''full transparency of clearing agency requirements and performance during such period(s).'' [90] Although the substance of the Commission's mandatory clearing determinations and the timing of implementation of those determinations are not addressed in the rules being adopted today, which focus on the process by which clearing agencies submit filings, the Commission understands the importance of ensuring that clearing agencies and market participants are given an appropriate amount of time and guidance to comply with a clearing mandate. In many cases, the determination of when and how a clearing requirement should be implemented will depend on the particular product that the Commission determines is required to be cleared. The Commission further notes that Exchange Act Section 3C(b)(4)(C) provides that the Commission, in making a mandatory clearing determination, may require such terms and conditions as the Commission determines to be appropriate.[91]

e. Notice to Clearing Agency Members

Exchange Act Section 3C(b)(2)(A) requires that a clearing agency provide notice to its members, in a manner determined by the Commission, of its Security-Based Swap Submissions.[92] To meet this requirement, new Rule 19b–4(o)(5), which is being adopted as proposed, requires clearing agencies to post all Security-Based Swap Submissions, and any amendments thereto, on their Web sites. This public posting must be completed within two business days following the submission to the Commission. The Commission received one comment expressing general support for this requirement.[93]

[83] 15 U.S.C. 78c–3(b)(2)(C)(iii) (as added by Section 763(a) of the Dodd-Frank Act).

[84] *See* ISDA Letter at 11.

[85] *See id.*

[86] *See* 15 U.S.C. 78c–3(b)(2)(C)(iii) (as added by Section 763(a) of the Dodd-Frank Act).

[87] To the extent that a Security-Based Swap Submission does not include the minimum information set forth in new Rule 19b–4(o)(3), such incomplete submission would, pursuant to new Rule 19b–4(o)(2), be deemed not to have been submitted and the Commission would be required to notify that clearing agency of the rejection of the Security-Based Swap Submission within twenty-one business days of the original submission.

[88] *See* ISDA Letter at 10–11.

[89] *See id.*

[90] *See id.* at 11.

[91] *See* 15 U.S.C. 78c–3(b)(4)(C).

[92] *See* 15 U.S.C. 78c–3(b)(2)(A) (as added by Section 763(a) of the Dodd-Frank Act).

[93] *See* AFR Letter at 2.

This Commission believes that a two-business-day timeframe is appropriate because it is consistent with the notice requirement that currently applies to proposed rule changes,[94] and that such timeframe will provide members of the clearing agency and the public with timely notice of the submission. New Rule 19b–4(o)(5) requires a clearing agency to maintain this posting on its Web site until the Commission makes a determination regarding the Security-Based Swap Submission, the clearing agency withdraws the Security-Based Swap Submission or the clearing agency is notified that the Security-Based Swap Submission is not properly filed.[95] These requirements should help ensure that submissions that are being actively considered by the Commission are readily available to the members of the clearing agency and the public and help provide for a more transparent process.

The Commission notes that the current instructions for Form 19b–4 require an SRO to file with the Commission copies of notices issued by the SRO soliciting comment on the proposed rule change and copies of all written comments on the proposed rule change received by the SRO (whether or not comments were solicited) from its members or participants.[96] Any correspondence the SRO receives after it files a proposed rule change, but before the Commission takes final action on the proposed rule change, also is required to be filed with the Commission.[97] The SRO is required to summarize the substance of all such comments received and respond in detail to any significant issues raised in the comments about the proposed rule change.[98] In accordance with the changes the Commission is adopting today, clearing agencies will be subject to these same requirements in connection with Security-Based Swap Submissions. The Commission believes that applying these requirements in the instructions to Form 19b–4 to Security-Based Swap Submissions will provide the Commission with an opportunity to consider the various viewpoints expressed by commenters by making sure relevant comments are included in the Security-Based Swap Submission.

Finally, one commenter requested that the Commission require clearing agencies ''to notify the Commission, as well as the public, of the type of swap being considered at the time it notifies members of the submission or possible submission.'' [99] The Commission appreciates this suggestion, but has ultimately decided not to modify new Rule 19b–4(o)(5) in this manner as the Commission believes that requiring Web site disclosure of the Security-Based Swap Submission within two business days of the submission itself will provide interested persons and the public with sufficient opportunity to provide feedback on the submission before the Commission makes a mandatory clearing determination.

f. Submissions of a Group, Category, Type or Class of Security-Based Swaps

New Rule 19b–4(o)(4), which is being adopted as proposed, requires that clearing agencies submit security-based swaps to the Commission for review by group, category, type, or class to the extent that doing so is practicable and reasonable. Any aggregation will require a clear description in the applicable Security-Based Swap Submission so that market participants and the public know which security-based swaps may be subject to a clearing requirement. The Proposing Release contained a number of requests for comment with respect to how the Commission should apply this rule including, among other things, questions pertaining to how a clearing agency should identify the scope of the group, category, type or class of security-based swaps it plans to clear, the relevant characteristics of security-based swaps that permit aggregation by group, category, type or class, factors that would make aggregation more difficult, and factors that may be specific to a particular clearing agency.

Two commenters requested that the Commission further define the meaning and scope of the terms ''category,'' ''class,'' ''type,'' and ''group'' with respect to security-based swaps.[100] In particular, one of these commenters further suggested using the following characteristics of security-based swaps to define different products: (1) Instrument description; (2) acceptable currencies (and whether the contract is single currency); (3) acceptable indices; (4) types (*e.g.,* total return or price return); (5) maximum residual term; (6) notional amount (minimum to maximum of the relevant currency unit); (7) applicable day count fraction; (8) applicable business day convention; (9) minimum residual term of the trade (*i.e.,* the period from the date of submission of the trade to the date of termination); and (10) applicable calculation periods.[101]

Although the commenter did provide specific suggestions of certain characteristics that could be used to create groups, categories, types or classes of security-based swaps, the Commission did not receive any comment letters responding to its requests for suggestions as to how best to utilize the individual characteristics, which may include among other things the underlying security, tenor, and coupon of the security-based swap, to aggregate security-based swaps into groups, categories, types or classes. In addition, the Commission notes that it has not yet received any Security-Based Swap Submissions and does not have detailed information about how clearing agencies would create groups, categories, types or classes of security-based swaps in determining whether to clear such security-based swaps. For these reasons, the Commission believes that allowing these key terms to evolve over time as an iterative process between the clearing agencies and the Commission is preferable to prematurely hard-coding definitions into the rules without the benefit of experience.

Nevertheless, the Commission continues to believe that requiring multiple security-based swaps in each submission—to the extent that such groupings are practicable and reasonable (*e.g.,* by taking into consideration appropriate risk management issues applicable to the aggregation)—would streamline the submission process for Commission staff and the clearing agencies. This approach would allow more security-based swaps to be reviewed in a timely manner. At the same time, the manner in which the Commission will ultimately determine which security-based swaps are appropriately aggregated into groups, categories, types, or classes likely will depend on the particular facts and circumstances of the products under consideration. This in turn will be informed by how the clearing agency defines the relevant security-based swap (or relevant group,

[94] Commission rules currently require SROs to post on their Web sites a copy of any proposed rule change the SRO filed with the Commission, and any amendments thereto. Such posting is required within two business days after filing the proposed rule change with the Commission. *See* 17 CFR 240.19b–4(l). In adopting this rule, the Commission stated that all market participants, investors and other interested parties should have access to proposed rule changes filed with the Commission, and any amendments, as soon as practicable, and that it did not believe that a two-business-day timeframe would be impractical or unduly burdensome on SROs. *See Final Rules Regarding Proposed Rule Changes of Self-Regulatory Organizations,* Securities Exchange Act Release No. 50486 (Oct. 4, 2004), 69 FR 60287 (Oct. 8, 2004).

[95] Proposed Rule 19b–4(o)(5).

[96] *See* Items 5 and 9 (Exhibit 2) of the General Instructions for Form 19b–4. 17 CFR 240.819.

[97] *See id.*

[98] Item 5 of the General Instructions for Form 19b–4. 17 CFR 240.819.

[99] *See* Better Markets Letter at 8.

[100] *See* Exhibit A to CME Letter and ISDA Letter.

[101] *See* ISDA Letter at 3–4.

category, type, or class of security-based swaps), how the clearing agency manages the product (both operationally and in its rulebook) and the comments received by the Commission during the public comment period.

Prior to the Commission providing further guidance regarding aggregation, clearing agencies may organize their Security-Based Swap Submissions using a reasonable basis that they determine to be appropriate and responsive to the requirements of the Exchange Act. For example, to the extent possible, the groups, categories, types or classes of security-based swaps that are filed with the Commission as a Security-Based Swap Submission could mirror the groups, categories, types or classes that the clearing agency evaluates in determining whether to list such security-based swap for clearing. In addition, clearing agencies could also consider other factors that they deem to be appropriate, including the characteristics identified in the comment letter referred to above.[102] In reaching a determination regarding any aggregation, the Commission also expects to conduct its own analysis, which will take into account, at a minimum, the five qualitative and quantitative factors that the Commission is required to consider pursuant to Exchange Act Section 3C(b)(4)(B) when making a mandatory clearing determination.

g. Other Issues Related to Security-Based Swap Submissions

Proposed Rule 19b–4(o)(6)(i) provided that, in making a mandatory clearing determination, the Commission would take into account the factors addressed in the Security-Based Swap Submission and any additional factors the Commission determines to be appropriate. Proposed Rule 19b–4(o)(6)(i) also required a clearing agency to provide any additional information requested by the Commission as necessary to make a determination. In addition, proposed Rule 19b–4(o)(6)(ii) provided that, in making a determination of whether or not the clearing requirement would apply to the security-based swap (or any group, category, type, or class of security-based swaps) described in the submission, the Commission may require such terms and conditions as the Commission determines to be appropriate in the public interest.[103]

In connection with proposed Rule 19b–4(o)(6), one commenter urged the Commission to remove the language allowing the Commission, in addition to considering the five statutory factors set forth in Exchange Act Section 3C(b)(4)(B), to consider ''any additional factors the Commission determines to be appropriate'' in connection with a mandatory clearing determination. The commenter believes that this language exceeds the Commission's statutory authority and would expose the proposed rules to potential litigation.[104]

The Commission has carefully considered the comments it received in respect of proposed Rule 19b–4(o)(6). While the Commission disagrees with the commenter that the Commission lacks authority to promulgate a rule allowing it to consider ''any additional factors the Commission determines to be appropriate'' in connection with a mandatory clearing determination,[105] the Commission has nonetheless decided not to adopt the language in the final rule. The Commission believes the language is unnecessary because Exchange Act Section 3C already requires that the Commission shall take into account the five factors in Exchange Act Section 3C(b)(4)(B) in making a mandatory clearing determination and new Rule 19b–4(o)(6)(i), as adopted, requires clearing agencies to provide any additional information requested by the Commission as necessary to assess any of the factors it determines to be appropriate in order to make a mandatory clearing determination in connection with a Security-Based Swap Submission. The Commission believes that this rule, as adopted, already empowers it to require the provision of any additional information relevant to making mandatory clearing determinations under Exchange Act Section 3C.

The Commission also has decided not to adopt: (i) The preamble to proposed Rule 19b–4(o)(6), which had stated that upon receipt of a Security-Based Swap Submission, the Commission was required to review the submission and determine whether the relevant security-based swap (or group, category, type or class of security-based swaps) would be required to be cleared and (ii) proposed Rule 19b–4(o)(6)(ii), which had stated that the Commission may include such terms and conditions as it determined to be appropriate in the public interest in connection with making a mandatory clearing determination. In each case, the Commission notes that these provisions simply mirror statutory provisions set forth in Exchange Act 3C.[106] As noted above in connection with the Commission's modifications to proposed Rule 19b(o)(6)(i), promulgating rules to reiterate existing Commission powers and obligations is unnecessary, and the Commission believes that it would be prudent to remove these types of provisions so as to simplify the final rule to focus on the process by which clearing agencies will be required to make Security-Based Swap Submissions with the Commission.

In the Proposing Release, the Commission also requested comment on whether a clearing agency, in connection with each submission or in some circumstances, should be required to include an independent validation of its margin methodology and its ability to maintain sufficient financial resources. In response to this request, one commenter expressed an opinion that independent validations may be helpful in verifying elements of a submission, but that the Commission should use caution in allowing them to become a substitute for the Commission's own judgment. This commenter also urged the Commission to pay careful attention to the question of what constitutes ''independence'' for these purposes.[107] Another commenter noted that a clearing agency should have an ongoing internal process for validating its internal risk models, which process should be independent of the internal models' development, implementation, and operation.[108] As such, this commenter believes that it should be permissible for the review personnel to be employed by the clearing agency, so long as they are not involved in the development, implementation, and operation of the risk models.[109] This

[102] *See id.*

[103] *See* 15 U.S.C. 78c–3(b)(4)(C) (as added by Section 763(a) of the Dodd-Frank Act) and proposed Rule 19b–4(o)(6)(ii).

[104] *See* Better Markets Letter at 8–10.

[105] The Commission does not read Exchange Act Section 3C as restricting its existing authority to obtain information from registered clearing agencies. The Commission notes that Section 23(a) of the Exchange Act allows the Commission to ''make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which [it is] responsible or for the execution of the functions vested in [it] by this title.'' *See* 15 U.S.C. 78w(a)(1).

[106] *See* 15 U.S.C. 78c–3(b)(2)(C)(ii) (as added by Section 763(a) of the Dodd-Frank Act) (requiring the Commission to review each Security-Based Swap Submission and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared) and 15 U.S.C. 78c–3(b)(4)(C) (as added by Section 763(a) of the Dodd-Frank Act) (providing that the Commission, in making a mandatory clearing determination, may require such terms and conditions to the requirement as the Commission determines to be appropriate).

[107] *See* AFR Letter at 3.

[108] *See* OCC Letter at 3.

[109] *See id.*

commenter further recommended that the independent validation evaluate ''empirical evidence and documentation supporting the methodologies used, important model assumptions and their limitations, adequacy and robustness of empirical data used in parameter estimation and model calibration, and evidence of a model's strengths and weaknesses.'' [110] After reviewing the comments received, the Commission has determined that it is not necessary to include an express requirement in new Rule 19b–4(o)(3) that a Security-Based Swap Submission refer to an independent validation of the clearing agency's margin methodology and its ability to maintain sufficient financial resources. The Commission believes such requirement is already contemplated by the final rules, particularly new Rule 19b–4(o)(3)(ii)(B). Specifically, in discussing a clearing agency's rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the security-based swap (or group, category, type or class of security-based swaps) under consideration, as required by this provision, it may be appropriate for a Security-Based Swap Submission to refer to any independent validation of the clearing agency's margin methodology or other processes satisfactory to the clearing agency that have assessed the fundamental soundness of all of the assumptions contained in the model as it exists at the time of the submission and that have assessed the appropriateness of the model during a relevant time period.

Finally, one commenter requested that the Commission promulgate rules governing Commission-initiated Reviews.[111] The commenter further stated that these rules should make clear that during a Commission-initiated Review, the Commission will apply standards that are no different than the standards applied to a review of Security-Based Swap Submissions.[112] The Commission notes that the Dodd-Frank Act does not require rulemaking regarding Commission-initiated Reviews. Commission staff are in the process of determining how these reviews will proceed, particularly with respect to sources of and access to the information the Commission will need to conduct Commission-initiated Reviews, and whether any rulemaking related to these reviews is necessary, either now or in the future.

h. Additional Comments

The Commission also received a number of comments that did not directly relate to the process of filing Security-Based Swap Submissions or to any specific provision in new Rule 19b–4(o). In particular, many of these comments related to the clearing of security-based swaps in general and to the rationale underlying the Commission's specific mandatory clearing determinations. While the Commission appreciates receiving the benefit of the public's views on a wide range of issues, the Commission nevertheless reiterates that the rules that are being adopted today are limited solely to the process by which clearing agencies will be required to make Security-Based Swap Submissions with the Commission. Accordingly, the Commission is not modifying the final rules in response to the comments summarized below. However, the Commission continues to consider a number of important issues related to its substantive mandatory clearing determinations, including many of the points raised in these comment letters. To the extent that these issues are raised by a particular Security-Based Swap Submission, the Commission will address them at the appropriate time.

For example, one commenter urged the Commission to exempt certain structured security-based swaps from the mandatory clearing requirement on the basis that such instruments are ''not clearable'' as they are not standardized, their underlying collateral pool cannot be evaluated, they would transfer risk to the clearing entity and clearing would require the posting of collateral.[113] This comment was related to the determinations to be made by the Commission under Exchange Act Section 3C and not to the process for filing Security-Based Swap Submissions with the Commission. Another commenter provided detailed suggestions to the Commission with respect to how it should evaluate information responsive to the five qualitative and quantitative factors set forth in Exchange Act Section 3C(b)(4)(B), and additional considerations regarding: (1) Standardization, (2) exceptions, (3) affiliate (intra-group) transactions, (4) wrong way risk, (5) implementation timing, and (6) moral hazard concerns.[114] Similarly, a commenter advocated that the Commission consider information that is different from what was included in a clearing agency's Security-Based Swap Submission and to draw upon information provided by other members of the Council.[115]

Commenters representing seven foreign headquartered banks requested that the Commission adopt implementing regulations under the Dodd-Frank Act ''that enable and encourage foreign banks engaged in swap dealing activities to book their swaps businesses in a single well-capitalized, highly rated foreign-based banking institution.'' [116] As a follow-up to this request, 12 foreign-headquartered financial institutions provided specific suggestions of a possible framework for achieving this goal and for dealing with other aspects of the potential extraterritorial application of certain parts of Title VII.[117] Similarly, commenters representing three Japanese bank groups requested that the Commission adopt regulations under the Dodd-Frank Act ''with the effect that Japanese banks, including their U.S. branches, are not made subject to the application of Title VII requirements.'' [118]

In addition, one commenter provided the Commission with a copy of a separate comment that it submitted to the Commission in connection with proposed rules regarding the registration and regulation of security-based swap execution facilities (''SB SEFs''), suggesting that one aspect of proposed Rule 19b–4(o) relates to a proposed rule for SB SEFs.[119] Another commenter

[110] *See id.*

[111] *See* Better Markets Letter at 11–12.

[112] *See id.*

[113] *See* comment letter of American Securitization Forum (Feb. 14, 2011).

[114] *See* ISDA Letter at 9–12.

[115] *See* AFR Letter at 4.

[116] *See* comment letter of Barclays Bank PLC, BNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group plc, Société Générale and UBS AG (Jan. 11, 2011).

[117] *See* comment letter of Barclays Bank PLC, BNP Paribas S.A., Credit Suisse AG, Deutsche Bank AG, HSBC, Nomura Securities International, Inc., Rabobank Nederland, Royal Bank of Canada, The Royal Bank of Scotland Group plc, Société Générale, The Toronto-Dominion Bank and UBS AG (Feb. 17, 2011).

[118] *See* comment letter from the Bank of Tokyo-Mitsubishi UFJ, Ltd., Mizuho Corporate Bank, Ltd., and Sumitomo Mitsui Banking Corporation (May 6, 2011). In the alternative, these commenters requested that the regulations issued pursuant to Title VII: (1) Not apply to transactions between affiliates of a bank group regulated as a bank holding company and (2) not apply to a foreign dealer—particularly one that is subject to comprehensive home country regulation—with respect to requirements that would otherwise apply due to transactions entered into by the foreign dealer with a U.S. based dealer regulated as a swap dealer or security-based swap dealer pursuant to Title VII. Finally, these commenters requested that the effective dates of all adopting regulations under Title VII be deferred until December 31, 2012, which is the deadline for compliance with the G–20 mandate, so as to avoid overlapping and inconsistent regulatory regimes.

[119] *See* comment letter of GFI Group Inc. (''GFI'') (Apr. 4, 2011) and *Registration and Regulation of Security-Based Swap Execution Facilities,* Securities Exchange Act Release No. 34–63825 (Feb.

provided a number of suggestions for expanding access to central clearing of security-based swaps for buy-side participants.[120] Two commenters urged the Commission to clarify explicitly in its rules that security-based swap transactions entered into between affiliates within the same corporate group should not be subject to the mandatory clearing requirement.[121] Finally, two commenters expressed support for the Commission's proposed rules in the context of actions the Commission could take to reduce potential short selling abuses in the securities markets.[122]

As previously noted, all of the comments discussed above pertain to areas that are not governed by Rule 19b–4(o), which is limited entirely to the process by which clearing agencies will be required to make Security-Based Swap Submissions with the Commission and the information that is required to be included in Security-Based Swap Submissions. These comments do not address the process or information requirements in the proposed rules. Although some of the comments relate to future actions that may be taken by the Commission, such as mandatory clearing determinations or future rulemakings, those comments are outside the context of the process rules being adopted today, but the Commission will consider the issues raised in these letters as they pertain to relevant areas outside of this rulemaking.[123]

2. Prevention of Evasion of the Clearing Requirement

New Rule 3Ca–2 is being adopted as proposed. Specifically, the new rule clarifies that the phrase ''submits such security-based swap for clearing to a clearing agency'' found in Exchange Act Section 3C(a)(1)—which establishes the mandatory clearing requirement for security-based swaps—to mean that the security-based swap subject to the clearing requirement must be submitted for central clearing to a clearing agency that functions as a CCP. Exchange Act Section 3C(d)(1) directs the Commission to prescribe rules (and interpretations of rules) the Commission determines to be necessary to prevent evasions of the clearing requirements.[124]

Specifically, the term ''clearing agency'' is defined broadly under the Exchange Act,[125] and clearing agencies may offer a spectrum of clearing services. The Commission has identified the following entities and activities as falling within the definition of clearing agency: (i) Clearing corporations; (ii) securities depositories; and (iii) matching services.[126] As a result, there may be entities that operate as registered clearing agencies for security-based swaps that do not provide central clearing and act as a CCP. The Commission believes that the broad definition of the term ''clearing agency'' could be used by market participants to evade the clearing requirement of Exchange Act Section 3C(a)(1), which states that ''[i]t shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this Act or a clearing agency that is exempt from registration under this Act if the security-based swap is required to be cleared.'' [127] For example, market participants seeking to evade the requirement to clear a security-based swap set forth in Exchange Act Section 3C(a)(1) could, in the absence of new Rule 3Ca–2, attempt to satisfy the clearing requirement by submitting the security-based swap for matching services (rather than for central clearing) to a clearing agency that is either registered with the Commission or exempt from registration under the Exchange Act.

The Commission believes that other types of clearing functions and services offered by clearing agencies would not achieve the goal of central clearing articulated under the Dodd-Frank Act—improving the management of counterparty risk. As previously noted, a CCP guarantees both sides of a trade executed by two counterparties and, accordingly, lowers the counterparty credit risk of each of the original counterparties that are members of the CCP.[128] The Commission believes that new Rule 3Ca–2 will prevent potential evasions of the clearing requirement by requiring market participants to submit security-based swaps to a clearing agency for central clearing as opposed to other clearing functions or services. Accordingly, Rule 3Ca–2 clarifies the reference to ''submits such security-based swap for clearing to a clearing agency'' in Exchange Act Section 3C(a)(1) to mean that the security-based swap must be submitted for central clearing to a clearing agency that functions as a CCP. Upon the effective

2, 2011), 76 FR 10948 (Feb. 28, 2011) (''SB SEF Release''). Specifically, in the SB SEF Release, the Commission proposed Rule 812 to implement Section 3D(d)(3) of the Exchange Act, which would require that an SB SEF permit trading only in security-based swaps that are not readily to susceptible to manipulation. Proposed Rule 812(b) would provide that, prior to permitting the trading of any security-based swap, an SB SEF's swap review committee must have determined, after taking into account all of the terms and conditions of the security-based swap and the markets for the security-based swap and any underlying security or securities, that such swap is not readily susceptible to manipulation. GFI requested that the Commission specify that an SB SEF would be deemed to have satisfied the requirement in proposed Rule 812 with respect to a security-based swap if the Commission has previously required such security-based swap to be cleared. The Commission notes that this comment is unrelated to the process rules being adopted today. However, the Commission notes that it will consider this comment in the context of the SB SEF Release.

[120] *See* comment letter of the Managed Funds Association (Mar. 24, 2011). Specifically, the Managed Funds Association addressed, among other things, issues regarding: (1) Requirements that dealers be prepared to onboard buy-side market participants on the basis of reasonable objective criteria and reasonable commercial terms; (2) the removal of open interest caps at CCPs and the implementation of a ''reasonable cohort of initial products available for clearing'' and a detailed cleared product roll-out schedule; (3) requirements that CCPs that clear buy-side transactions ''have a robust, transparent, and efficient margin mechanism, well defined and understood default waterfalls, efficient and robust trade processing and reporting that can handle block trading and allocations, effective and efficient risk compression, proven segregation of customer funds and pre- and post-default portability of positions, clear legal documentation of give-up agreements and trade confirmations, and appropriate buy-side representation on governance boards;'' and (4) the elimination of regulatory uncertainty.

[121] *See* comment letter of J.P. Morgan (June 3, 2011) and comment letter of the ABA Securities Association, American Council of Life Insurers, Financial Services Roundtable, Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association (Sept. 8, 2011).

[122] *See* comment letter of Naphtali M. Hamlet (Jan. 22, 2011) and comment letter of Suzanne H. Shatto (Jan. 21, 2011).

[123] For example, with respect to the international application of mandatory clearing determinations, rather than addressing the international implications of Title VII in a piecemeal approach, the Commission is considering addressing the relevant international issues holistically in a single proposal. Such a proposal would give investors, market participants, foreign regulators, and other interested parties an opportunity to consider the Commission's proposed approach to the application of Title VII to cross-border security-based swap transactions and non-U.S. persons that act in capacities regulated under the Dodd-Frank Act. This approach should generate thoughtful and constructive comments for us to consider regarding the application of Title VII to cross-border transactions.

[124] *See* 15 U.S.C. 78c–3(d)(1) (as added by Section 763(a) of the Dodd-Frank Act) (stating that ''[t]he Commission shall prescribe rules under this section (and issue interpretations of rules prescribed under this section), as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.'').

[125] *See supra* note 8 (discussing the definition of ''clearing agency'' pursuant to Exchange Act Section 3(a)(23)).

[126] *See Order Approving the Clearing Agency Registration of Four Depositories and Four Clearing Corporations,* Securities Exchange Act Release No. 20221 (Sept. 23, 1983), 48 FR 45167 (Oct. 3, 1983), and *Confirmation and Affirmation of Securities Trades; Matching,* Securities Exchange Act Release No. 39829 (Apr. 6, 1998), 63 FR 17943 (Apr. 13, 1998).

[127] *See* 15 U.S.C. 78c–3(a)(1) (as added by Section 763(a) of the Dodd-Frank Act).

[128] *See supra* notes 10–11 and accompanying text.

and compliance dates for Rule 3Ca–2, counterparties must submit security-based swaps to a clearing agency for central clearing in order to meet the clearing requirement set forth in Exchange Act Section 3C(a)(1).[129] The Commission believes that submission to a clearing agency for clearing services other than central clearing would not satisfy a mandatory clearing requirement because only a clearing agency that functions as a CCP guarantees performance on the trade and thus mitigates counterparty credit risk between the bilateral parties to the trade.

The Commission received two comments on Rule 3Ca–2, of which one expressed strong support for the rule to be adopted as proposed.[130] The second commenter suggested that the Commission propose rules to address the potential for evasion through ''spurious customization,'' such as situations where parties to a security-based swap intentionally include terms in the relevant contract that have no economic purpose other than to cause the contract to fall outside the scope of the clearing agency's rules.[131] The Commission is adopting Rule 3Ca–2 as proposed, but will continue to monitor the clearing of security-based swaps as the market develops and will consider whether additional action should be taken to implement the anti-evasion provisions of Exchange Act Section 3C, including the suggestion raised by the commenter described above.

B. Stay of the Clearing Requirement and Review by the Commission

New Rule 3Ca–1 establishes a procedure for staying a mandatory clearing requirement and for the Commission's subsequent review of the terms of the relevant security-based swap (or group, category, type or class of security-based swaps) and the clearing arrangement pursuant to Exchange Act Section 3C(c)(1).[132] Pursuant to new Rule 3Ca–1, a counterparty to a security-based swap subject to the clearing requirement wishing to apply for a stay of the clearing requirement is required to submit a written statement to the Commission that includes (i) a request for a stay of the clearing requirement, (ii) the identity of the counterparties to the security-based swap and a contact at the counterparty requesting the stay, (iii) the identity of the clearing agency clearing the security-based swap, (iv) the terms of the security-based swap subject to the clearing requirement and a description of the clearing arrangement and (v) the reasons a stay should be granted and the security-based swap should not be subject to a clearing requirement, specifically addressing the same factors a clearing agency must address in its Security-Based-Swap Submission pursuant to new Rule 19b–4(o)(3).

The Commission believes that such information will assist the Commission in determining whether to grant the stay and, if the stay is granted, in conducting a review during the stay period of the terms of the relevant security-based swap (or group, category, type or class of security-based swaps) and the clearing arrangement. In particular, there is likely to be considerable overlap in the Commission's prior justification and analysis for requiring that a security-based swap be cleared (*i.e.,* the initial mandatory clearing determination) and the factors the Commission would consider when determining whether to subsequently reverse the prior determination. Accordingly, requiring a party seeking a stay to address the same factors that a clearing agency was required to include in the original Security-Based Swap Submission provides the Commission with a logical point from which to begin its analysis. Moreover, because the application for the stay will, pursuant to Exchange Act Section 3C(c)(1), be made by a counterparty to a security-based swap subject to a clearing requirement,[133] the Commission will need basic information on the clearing agency that clears the relevant security-based swap, particularly if the Commission needs to request additional information from the clearing agency in order to make a determination whether to grant the stay or whether to modify the existing clearing requirement. As such, to the extent that the Commission determines that it requires additional information in the possession of the clearing agency (as distinguished from the information it received from the counterparty), new Rule 3Ca–1(d) requires that any clearing agency that has accepted for clearing the security-based swap subject to the stay provide information requested by the Commission in the course of its review during the stay.[134]

New Rule 3Ca–1(e)(1), which is being adopted as proposed, provides that, upon completion of its review,[135] the Commission may determine unconditionally, or subject to such terms and conditions as the Commission determines to be appropriate in the public interest, that the security-based swap (or group, category, type or class of security-based swaps) must be cleared.[136] Alternatively, new Rule 3Ca–1(e)(2), which also is being adopted as proposed, provides that the Commission may determine that the clearing requirement does not apply to the security-based swap (or group, category, type or class of security-based swaps).[137] If the Commission were to make a determination that the clearing requirement does not apply to a security-based swap (or group, category, type or class of security-based swaps), the new rule provides that clearing may continue on a non-mandatory basis.[138]

In order to provide the public with notice of the submission of a counterparty's request for a stay of the clearing requirement, the Commission intends to make each application for a stay available to the public on the Commission's Web site. A stay of the clearing requirement may be applicable to the counterparty requesting the stay or more broadly, to the security-based swap (or any group, category, type or class of security-based swaps) subject to the clearing requirement. The

[129] *See* 15 U.S.C. 78c–3(a)(1).

[130] *See* AFR Letter at 2–3.

[131] *See* OCC Letter at 5–6.

[132] *See* 15 U.S.C. 78c–3(c)(1) (as added by Section 763(a) of the Dodd-Frank Act) (providing that, after making a determination that a security-based swap (or group, category, type or class of security-based swaps) is required to be cleared, the Commission, on application of a counterparty to a security-based swap or on the Commission's own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the security-based swap and the clearing arrangement). In connection with a stay of the clearing requirement and subsequent review of the terms of the security-based swap and the clearing arrangement, the Commission is required to adopt rules for reviewing a clearing agency's clearing of a security-based swap, or any group, category, type or class of security-based swaps, that the clearing agency has accepted for clearing. *See* 15 U.S.C. 78c–3(c)(4) (as added by Section 763(a) of the Dodd-Frank Act).

[133] *See* 15 U.S.C. 78c–3(c)(1) (as added by Section 763(a) of the Dodd-Frank Act) (indicating that a stay could be initiated either pursuant to an application of a counterparty to a security-based swap or on the Commission's own initiative).

[134] Rule 3Ca–1(d) is being adopted substantially as proposed, with the one modification being the deletion of the phrase ''but need not be limited to'' when describing what the Commission's review of a request for a stay should consider. The reasons for this deletion from the proposal and the Commission's explanation as to why it does not substantively affect the rule are discussed at the end of this section. 17 CFR 240.3Ca–1(d).

[135] Exchange Act Section 3C(c)(2) requires the Commission to complete such clearing review not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap agrees to an extension of the time limit. *See* 15 U.S.C. 78c–3(c)(2) (as added by Section 763(a) of the Dodd-Frank Act).

[136] 17 CFR 240.3Ca–1(e)(1). New Rule 3Ca–1(c) provides that a stay of the clearing requirement may be granted with respect to a security-based swap, or the group, category, type, or class of security-based swaps, as determined by the Commission.

[137] 17 CFR 240.3Ca–1(e)(2).

[138] *See id.*

Commission intends to provide notice to the public each time it grants a stay of a mandatory clearing requirement.

The Commission received two comment letters regarding proposed Rule 3Ca–1.[139] One commenter provided examples of circumstances that may warrant a stay of the mandatory clearing requirement.[140] Specifically, this commenter cited situations in which there is an absence of competition, where there is an unresolved clearing member default at the only clearing agency then clearing the relevant product, where the Commission determines to impose a mandatory clearing requirement where no clearing agency has elected to clear the product, or where a product subject to mandatory clearing becomes so illiquid as to threaten the clearing agency's ability to calculate margin or to manage a default.[141] In response to these comments, the Commission notes that the purpose of new Rule 3Ca–1 is, similar to new Rules 19b–4(n) and (o), to establish the process by which certain parties are required to submit information to the Commission. Nevertheless, the Commission appreciates the commenter's views and will consider them to the extent the issues raised by the commenter are implicated in a particular application for a stay.

A second commenter requested that the Commission delete the phrase ''but need not be limited to'' from proposed Rule 3Ca–1(d) when describing what the Commission's review of a request for a stay should consider.[142] The commenter believes that this language exceeds the Commission's statutory authority and that the language in Exchange Act Section 3C permits the Commission only to consider the five qualitative and quantitative factors that the Commission is required to consider when making an initial mandatory clearing determination. The commenter further believes that the purpose of the stay provision is to ''afford the Commission more time to complete its review.'' [143] In response to these comments, the Commission notes that statutory provisions regarding the Commission's ability to grant a stay of the clearing requirement refers expressly to security-based swaps for which the Commission already has made a mandatory clearing determination.[144] The stay provides time for the Commission to re-consider its initial determination or to re-evaluate the determination in light of changed circumstances or new information. The statute does not address specific factors the Commission must consider when making a stay determination. As such, the Commission believes that it may consider any relevant factors (including ones beyond the five qualitative and quantitative factors set forth in Exchange Act Section 3C(b)(4)) when making a determination regarding a potential stay of the clearing requirement without exceeding the statutory authority set forth in Exchange Act Section 3C(c)(3).[145] Nevertheless, the Commission has chosen not to adopt the phrase ''but need not be limited to'' in proposed Rule 3Ca–1(d) so as to simplify the final rule to focus on the process by which information is submitted to the Commission in connection with an application by a counterparty requesting a stay of a mandatory clearing requirement, particularly since the Commission already has the power to consider other factors in making a determination on the request for a stay without the inclusion of this language.[146]

C. Title VIII Notice Filing Requirements for Designated Clearing Agencies

As proposed, the Commission also is amending Rule 19b–4 to add a new paragraph (n) in order to implement the requirement to file Advance Notices in accordance with Title VIII. As discussed in Section I of this release, Section 806(e) requires any financial market utility designated by the Council as systemically important to file 60 days advance notice of changes to its rules, procedures or operations that could materially affect the nature or level of risk presented by the financial market utility.[147] To implement this filing requirement, new Rule 19b–4(n) will require that an Advance Notice be submitted to the Commission electronically on Form 19b–4. In addition, Rule 19b–4(n) will define when a proposed change to a clearing agency's rules, procedures or operations could materially affect the nature or level of risks presented by the designated financial market utility. This definition will determine when an Advance Notice under Section 806(e) must be filed with the Commission. Further, the Commission is adopting, as proposed, corresponding amendments to Form 19b–4 as discussed in more detail in section II.D.

As with Security-Based Swap Submissions filed pursuant to Exchange Act Section 3C, the Commission anticipates that in many cases a proposed change may be required to be filed as an Advance Notice under Section 806(e) and as a proposed rule change under Exchange Act Section 19(b). This is because a proposal that qualifies as a proposed change to a rule, procedure or operation that materially affects the nature or level of risk presented by the designated clearing agency under Section 806(e) may also qualify as a proposed rule change under Exchange Act Section 19(b).[148] As a result, a designated clearing agency may be required to file a proposal as an Advance Notice and as a proposed rule change. Designated clearing agencies, as SROs, will already be required to file proposed rule changes on Form 19b–4 using EFFS.[149] Accordingly, and consistent with the proposal for Security-Based Swap Submissions, the Commission is requiring designated clearing agencies to use the existing filing system, EFFS, and Form 19b–4 for the filing of Advance Notices under Section 806(e). This will allow designated clearing agencies to comply with the advance notice requirement in Section 806(e) using the same system they use for submitting proposed rule changes under Exchange Act Section 19(b) and, as applicable, Security-Based Swap Submissions under Exchange Act

[139] *See* ISDA Letter and Better Markets Letter.

[140] *See* ISDA Letter at 12.

[141] *See id.*

[142] *See* Better Markets Letter at 10–11.

[143] *See id.*

[144] *See* 78c–3(c)(1) (''[*a*]*fter making a determination pursuant to subsection (b)(2),* the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type, or class of security-based swaps) and the clearing arrangement.'') (emphasis added).

[145] *See supra* note 105 and accompanying text.

[146] *See also supra* section II.A.1.g.

[147] *See* 12 U.S.C. 5465(e)(1)(A) (as added by Title VIII).

[148] For example, if the proposed change described in the Advance Notice requires a change in addition to, or a deletion from, the rules of a designated clearing agency, the action also would require the filing of a proposed rule change under Exchange Act Section 19(b). Section 3(a)(27) of the Exchange Act defines ''rules'' broadly to include ''the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing * * * and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.'' 15 U.S.C. 78c(a)(27).

[149] As discussed below in Section I.F., the processes under Exchange Act Section 19(b) and Section 806(e) may not always overlap. For example, certain changes to the operations of a designated clearing agency may not be required to be filed as a proposed rule change pursuant to Exchange Act Section 19(b), which does not specifically apply to changes in operations. Such changes may, however, trigger a requirement to file an Advance Notice if they would materially affect the nature or level of risks presented by the designated clearing agency. Nevertheless, the two processes are sufficiently similar as to warrant using the same method for filing.

Section 3C. Leveraging the existing filing system, EFFS, for the submission of Advance Notices is intended to utilize efficiently Commission and designated clearing agency resources. The Commission did not receive any comments related to its decision to require Advance Notices to be submitted using EFFS and is adopting this aspect of Rule 19b–4(n)(1), substantially as proposed, with one minor technical modification to account for the need to finalize certain technological changes.

Specifically, the Commission is currently in the process of designing and implementing the system upgrades that are necessary in order for Advance Notices to be filed on EFFS. The Commission expects the system upgrades to EFFS to be completed no later than December 10, 2012. However, the Commission recognizes that there is a possibility that the Council may designate a clearing agency as systemically important before the system upgrades are completed. In such a circumstance, a designated clearing agency would be unable to file the Advance Notice on Form 19b–4 and would need to file the Advance Notice with the Commission by other means. As a result, the Commission is revising proposed Rule 19b–4(n)(1) to provide that Advance Notices filed before December 10, 2012 must be filed with the Commission by submitting the Advance Notice to a dedicated email inbox to be established by the Commission.[150] A designated clearing agency that files an Advance Notice by email must include in the notice the same information that is required to be included for Advance Notices in the General Instructions for Form 19b–4, as such form has been modified by the rules the Commission is adopting today.[151] Advance Notices filed on or after December 10, 2012 on Form 19b–4 would include the same substantive information.

1. Standards for Determining When Advance Notice Is Required

Section 806(e)(1)(A) requires a designated financial market utility to provide 60 days advance notice to its Supervisory Agency of any proposed change to its rules, procedures or operations that could materially affect the nature or level of risks presented by the designated financial market utility.[152] For purposes of this requirement, the phrase ''materially affect the nature or level of risks presented'' is defined in new Rule 19b–4(n)(2)(i) to mean the existence of a ''reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the designated clearing agency.'' This definition was designed to include all changes that would affect the risk management functions performed by the clearing agency that are related to systemic risk, as well as changes that could affect the clearing agency's ability to continue to perform its core clearance and settlement functions because the Commission believes that such changes could materially affect the nature or level of risk presented by the clearing agency.[153]

In order to help designated clearing agencies determine whether an Advance Notice is required, new Rule 19b–4(n)(2)(ii), which is being adopted as proposed, includes a list of categories of changes to rules, procedures or operations that the Commission believes could materially affect the nature or level of risks presented by a designated clearing agency. The list of such changes includes, but is not limited to, changes that materially affect participant and product eligibility, daily or intraday settlement procedures, default procedures, system safeguards, governance or financial resources of the designated clearing agency. The Commission believes that changes in these areas pertain to core functions of a clearing agency and, as a result, may affect the ability of a designated clearing agency to manage its risks appropriately and to continue to conduct systemically important clearance and settlement services. For example, participant and product eligibility requirements of a designated clearing agency are designed to ensure that the clearing agency's members have sufficient financial resources and operational capacity to meet obligations arising from participation in the clearing agency, and to ensure that the products cleared by the clearing agency are sufficiently liquid and that adequate pricing data is available. In addition, a designated clearing agency's default procedures exist to ensure that, should a default occur, the clearing agency has the financial resources, liquidity and operational abilities to continue to make payments to non-defaulting participants on time. Additional examples of the types of matters that could fall within the categories listed above include changes to the methods for making margin calculations, liquidity arrangements and significant new services of the clearing agency.

Moreover, while a broad interpretation of the materiality threshold is consistent with the underlying principles of the Clearing Supervision Act and desirable to permit a review of all matters that affect the risks presented by clearing agencies, not every change to a designated clearing agency's rules, procedures or operations will be material. Accordingly, new Rule 19b–4(n)(2)(iii), which is being adopted as proposed, includes two broad categories of examples of changes to rules, procedures or operations that the Commission believes would not materially affect the nature or level of risks presented by a designated clearing agency, and therefore would not require the filing of an Advance Notice. The first category includes, but is not limited to, changes to an existing procedure, control, or service that do not modify the rights or obligations of the designated clearing agency or persons using its payment, clearing, or settlement services and that do not adversely affect the safeguarding of securities, collateral, or funds in the custody or control of the designated clearing agency or for which it is responsible. The second category includes, but is not limited to, changes concerned solely with the administration of the designated clearing agency or related to the routine, daily administration, direction and control of employees. The Commission believes that both categories of changes do not pertain to the core functions performed by a clearing agency and, therefore, would not materially affect the nature or level of risk presented by the clearing agency.

The Commission received two comments about the scope of the definition of ''materially affect the nature or level of risks presented,'' as set

[150] The Commission's Office of Information Technology maintains a system, known as the EMail Encryption Solution, that allows persons outside the agency to compose and send encrypted emails to users within the Commission. The guide for external users wishing to utilize the EMail Encryption Solution is available at: *http://wapps.sec.gov/oitintranet/oit_learn/pdf/Smail-external-guide-01-05-2011.pdf.*

[151] The Commission notes that a designated clearing agency must also continue to meet the filing requirements of Rule 19b–4 and Form 19b–4. For example, if the change that requires the designated clearing agency to file an Advance Notice with the Commission is also a proposed rule change under Exchange Act Section 19(b), the designated clearing agency must file the proposed rule change with the Commission on Form 19b–4 using EFFS and separately file the Advance Notice with the Commission by email.

[152] 12 U.S.C. 5465(e)(1)(A) (as added by Title VIII).

[153] Core clearance and settlement functions may include, but are not limited to, the processing, comparison, netting, or guaranteeing of securities transactions as well as any processes or procedures, such as internal risk management controls, that support these functions.

forth in proposed Rule 19b–4(n)(2).[154] One commenter suggested that the proposed definition is too broad and could require unnecessary or impractical submissions of Advance Notices.[155] This commenter argued that the definition would include ''all changes that would affect the risk management functions performed by the clearing agency that are related to systemic risk, as well as changes that could affect the clearing agency's ability to continue to perform its core clearance and settlement functions.'' [156] This commenter also suggested that the Commission distinguish between ''changes that tend to increase systemic risk and those that tend to decrease it.'' [157] This commenter urged the Commission to ''consider limiting the changes for which Advance Notice is required to those changes that are reasonably likely to have a materially adverse effect on the nature or level of risks presented.'' [158]

The same commenter also expressed the view that providing Advance Notice to the Commission of the terms of a line of credit in accordance with Section 806(e), prior to finalizing the financing, would be impractical.[159] This commenter further requested that a renewal of a liquidity facility be excluded from the requirement to file Advance Notices with the Commission.[160] At most, the commenter believes that it would be ''practical and appropriate to require an Advance Notice for a *termination or reduction* of a liquidity arrangement at the *instance of the clearing agency.*'' [161]

A second commenter expressed concern regarding the potential scope and burden of the requirement to submit Advance Notices in general, with a specific emphasis on the Commission's proposed definition of ''materially affect the nature or level of risks presented'' in Rule 19b–4(n)(2).[162] In particular, the commenter argued that the requirement to submit Advance Notices should apply only to ''matters of true importance that require attention by the Commission and comment by the public.'' [163] Accordingly, the commenter urged the Commission to avoid an overly expansive application of the requirement so as not to create undue strain on the designated clearing agency's resources, and to take into account the designated clearing agency's prior experience and judgment in filing proposed rule changes with the Commission pursuant to Exchange Act Section 19(b), the positions taken by the designated clearing agency during its consultations with the Commission regarding a change that could potentially result in an obligation to file an Advance Notice and the role and views of other entities responsible for supervising the designated clearing agency.[164]

After careful consideration of these two commenters' views that the definition of ''materially affect the nature or level of risk presented'' is over broad, the Commission has decided to adopt Rule 19b–4(n)(2), as proposed. As discussed in the Proposing Release, the Commission believes that the proposed definition of ''materially affect the nature or level of risks presented'' provides sufficient guidance to allow designated clearing agencies to know when an Advance Notice under Section 806(e) is required, while also being broad enough to capture all relevant proposed changes as specific circumstances warrant. The Commission does not believe the definition is so broad as to include proposed changes to be made by a designated clearing agency that would not materially affect the nature or level of risk presented by the clearing agency, and the Commission included examples in the rule to provide guidance regarding when a proposed change would or would not be required to be filed with the Commission. Furthermore, the Commission believes that a standard that would require Advance Notices be filed only for ''matters of true importance,'' as suggested by one commenter, would provide less clarity and be more open to interpretation than the definition the Commission is adopting today. As suggested by the same commenter, the Commission does intend to take into account a clearing agency's prior experience and judgment in determining whether a proposed change would materially affect the nature or level of risk presented by the clearing agency. As stated in the Proposing Release, the Commission encourages designated clearing agencies to discuss proposed changes with Commission staff to help determine whether an Advance Notice under Section 806(e) is required to be filed with respect to a proposed change to the clearing agency's rules, procedures or operations.[165]

In response to one commenter's suggestion that Advance Notices be required only when a proposed change would be reasonably likely to have a materially adverse effect on the nature or level of risks presented by a designated clearing agency (as opposed to changes that would decrease risk), the Commission notes that as a practical matter, many changes to the rules, procedures or operations of a designated clearing agency may have both risk-increasing effects in some respects of a designated clearing agency's operations and risk-reducing effects in other respects. For example, a change in the clearing agency's margin calculation methodology could result in increased margin requirements for some members of the clearing agency and decreased margin requirements for other members. For that reason, Section 806(e) establishes the requirement to file Advance Notices with the Commission without distinguishing between changes that could materially increase or decrease the nature or level of risk.

Finally, and in response to a commenter's suggestion that proposed changes relating to a line of credit or the renewal of a liquidity facility be excluded from the Advance Notice requirement on the basis that imposing a 60 day delay in a designated clearing agency's ability to rely on such financing could be impractical and potentially increase risk for the clearing agency, the Commission notes that Section 806(e)(1)(I) permits a designated clearing agency to implement a change in less than 60 days if the Commission notifies the designated clearing agency in writing that it does not object to the proposed change to the designated clearing agency's rules, procedures or operations and authorizes the designated clearing agency to implement the change on an earlier date, subject to any conditions imposed by the Commission.[166] Accordingly, a designated clearing agency that wishes to implement a change in less than 60 days may request that the Commission expedite review of the Advance Notice

[154] *See* OCC Letter at 6–7; and comment letter of The Depository Trust & Clearing Corporation (Oct. 3, 2011) (''DTCC Letter'') at 3–5.

[155] *See* OCC Letter at 6–7.

[156] *See id.*

[157] *See id.*

[158] *See id.*

[159] *See id.*

[160] *See id.*

[161] *See id.*

[162] *See* DTCC Letter at 3–4.

[163] *See id.* The Commission notes that Section 806(e) of the Clearing Supervision Act, which establishes the requirement that a financial market utility submit Advance Notices to its Supervisory Agency, also contemplates review of the Advance Notice by the Board and consultation between the Board and the applicable Supervisory Agency. *See* 12 U.S.C. 5465(e)(3) and (4) (as added by Title VIII).

[164] *See id.*

[165] One commenter agreed with the approach of encouraging designated clearing agencies to consult with staff and commended the Commission's recognition of the need for cooperation and dialogue in this area. *See* OCC Letter at 7.

[166] 12 U.S.C. 5465(e)(1)(I) (as added by Title VIII).

and provide the written notification under Section 806(e)(1)(I).

2. Providing Notice of the Matters Included in an Advance Notice to the Board and Interested Persons

Given the role of clearing agencies in supporting financial markets, the Commission recognizes that members of the public may have an interest in proposed changes to the rules, procedures or operations of systemically important clearing agencies. New Rule 19b–4(n)(1) provides that, upon the filing of any Advance Notice by a designated clearing agency, the Commission would provide for prompt publication thereof in the **Federal Register**, together with the terms of the substance of the proposed change to the rules, procedures or operations of the designated clearing agency and a description of the subjects and issues involved. This requirement is consistent with the existing procedures for proposed rule changes under Exchange Act Section 19(b) and the new procedures for Security-Based Swap Submissions under Exchange Act Section 3C. In addition, new Rule 19b–4(n)(3) requires designated clearing agencies to post Advance Notices and any amendments thereto on their Web sites within two business days of filing the notice or amendments in order to ensure that interested parties have timely and transparent access to the matters discussed therein, particularly in circumstances where a proposed change is not required to be filed under Exchange Act Section 19(b) and, as a result, would not otherwise be published for comment. These two provisions were intended to allow the Commission to give interested persons an opportunity to review and to submit written data, views and arguments concerning the matters referred to in the Advance Notice.[167] The Commission will consider all comments and other information received when determining whether to object to an Advance Notice.

One commenter requested that the Commission modify the public notice provisions contained in new Rule 19b–4(n) in order to permit designated clearing agencies to request confidential treatment with respect to an Advance Notice and any related material (including, in certain circumstances, the fact of the filing itself) where the public disclosure of the notice or any such related material would (i) jeopardize the ability of the designated clearing agency to successfully achieve the objective of the proposed change which is the subject of the Advance Notice or (ii) disclose sensitive non-public information.[168] This commenter noted specifically that because changes requiring the filing of an Advance Notice by their nature affect risk and risk management controls, ''they may intrinsically involve matters of great sensitivity, which are not appropriate for public disclosure.'' [169] Section 806(e) does not require that an Advance Notice be made publicly available. However, the Commission is requiring publication of these notices by rule in order to give interested persons an opportunity to express their views with respect to a proposed change filed under Section 806(e). Although as a general matter the Commission believes that providing for a public comment period will benefit its review of Advance Notices, the Commission also understands the commenter's concern that changes requiring the filing of an Advance Notice could, in some cases intrinsically involve proprietary information regarding a designated clearing agency's risk management, the public disclosure of which could potentially harm the operations of the clearing agency. In such circumstances, the Commission believes that it is appropriate that an Advance Notice be permitted to be non-public. Accordingly, the Commission has added new Rule 19b–4(n)(6) to provide that the provisions of new Rule 19b–4(n) requiring publication of the Advance Notice in the **Federal Register** and the posting of the notice on the designated clearing agency's Web site will not apply to any information contained in an Advance Notice for which the designated clearing agency has requested confidential treatment following the procedures set forth in Rule 24b–2 of the Exchange Act.[170] The Commission emphasizes, however, that new Rule 19b–4(n)(6) applies only to information submitted to the Commission as an Advance Notice under Section 806(e). Specifically, Rule 19b–4(n)(6) does not relieve a designated clearing agency of its obligation to post any information on its Web site in connection with a Security-Based Swap Submission pursuant to Exchange Act Section 3C or a proposed rule change pursuant to Exchange Act Section 19(b), nor does it affect the Commission's publication of either a Security-Based Swap Submission or a proposed rule change in the **Federal Register** pursuant to those statutory provisions.[171]

In addition, new Rule 19b–4(n)(4), which is being adopted as proposed, requires a designated clearing agency to post a notice on its Web site that the proposed change described in an Advance Notice has been permitted to take effect within two business days of such date as determined in accordance with the timeframe set forth in Section 806(e). The purpose of this rule is to provide a means for public notice when a proposed change under Title VIII is permitted to become effective, since the Commission will not affirmatively approve an Advance Notice under Section 806(e). Because Sections 806(e)(1)(G) and (I) provide that a designated clearing agency may implement a proposed change that is the subject of an Advance Notice if the Commission does not object to it, the Commission will not issue a public order granting approval of the relevant change, as it does with proposed rule changes under Exchange Act Section 19(b). Because there will not be a Commission action to indicate when an Advance Notice has been permitted to take effect, the Commission is adopting new Rule 19b–4(n)(4)(i) to require the designated clearing agency to post notice on its Web site. Moreover, new Rule 19b–4(b)(n)(ii), which is being adopted as proposed, requires the designated clearing agency to post notice on its Web site of the time at which the proposed change becomes effective if that date is different from the date on which the proposed change is permitted to become effective. In order to give interested parties timely notice of the change, this notice will be required to be posted within two business days of the effective date. The Commission is allowing two business days for the designated clearing agency

[167] Under the Commission's current practice with respect to Exchange Act Section 19(b), proposed rule changes are generally published with a twenty-one day comment period. The Commission expects that Advance Notices will be published for the same comment period.

[168] *See* DTCC Letter at 7–8.

[169] *See id.*

[170] 17 CFR 240.24b–2.

[171] *See infra* section II.F. Both Exchange Act Sections 3C and 19(b) contain statutory requirements providing for public comment with respect to Security-Based Swap Submissions and proposed rule changes, respectively. *See* 15 U.S.C. 78c–3(b)(3) (as amended by Section 763(a) of the Dodd-Frank Act) (requiring the Commission to make available to the public any Security-Based Swap Submission it receives and to provide at least a 30-day public comment period ''regarding its determination whether the clearing requirement shall apply to the submission'') and 15 U.S.C. 78s(b)(1) (requiring that the Commission, ''upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved.''). Although a similar requirement does not exist in Section 806(e), the Commission believes that requiring an opportunity for public input on the changes discussed in an Advance Notice is an important step toward ensuring transparency with respect to proposed changes to the rules, procedures, or operations of designated clearing agencies.

to post such notice because the existing notice requirement in Rule 19b–4(l), which requires SROs to post a proposed rule change filed under Exchange Act Section 19(b) and any amendments thereto on its Web site, is two business days after filing of the proposed rule change, and any amendments thereto, with the Commission.[172] Once the notice of the effectiveness of the proposed change has been posted, the designated clearing agency will be permitted to remove its original posting of the Advance Notice (and any amendments thereto) from its Web site because notice of the change will no longer be necessary after the public is notified that the change has taken effect. Pursuant to new Rule 19b–4(n)(3)(i), which is being adopted as proposed, a designated clearing agency also may remove the Advance Notice from its Web site if it withdrew the notice or if it was notified that such notice was not properly filed. The Commission did not receive any comments related to any of the provisions described above.

Section 806(e)(3) also requires that the Commission provide the Board with a complete copy of any information it receives in connection with the Advance Notice.[173] To satisfy this requirement, new Rule 19b–4(n)(5) requires a designated clearing agency to provide to the Board copies of all materials submitted to the Commission relating to an Advance Notice contemporaneously with such submission to the Commission. Such copies were proposed to be provided to the Board in triplicate and in hard copy format, pursuant to proposed changes to the General Instructions for Form 19b–4. Two commenters suggested that the requirement to provide these copies in hard copy format was inefficient and burdensome and encouraged the Commission to work with the Board to facilitate the submission of filings pursuant to Section 806(e)(3) in electronic format absent a highly compelling reason to do otherwise.[174] In response to this comment, the Commission is amending the General Instructions for Form 19b–4 to make clear that filers may instead provide the copies to the Board in an electronic format permitted by the Board. Along with this change to the General Instructions for Form 19b–4, the Commission is adopting Rule 19b–4(n)(5), as proposed.

3. Timing and Determination of Advance Notices Pursuant to Section 806(e)

Section 806(e)(1)(E) requires that the Commission notify a designated clearing agency of any objection to a proposed change included in an Advance Notice within 60 days of the Commission's receipt of the Advance Notice, unless the Commission requests additional information in consideration of the notice, in which case the 60-day period will recommence on the date such information is received by the Commission.[175] The Commission, may however, pursuant to Section 806(e)(1)(H), extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Commission providing the designated clearing agency with prompt written notice of the extension.[176] Finally, Section 806(e)(4) requires that the Commission consult with the Board before taking any action on, or completing its review of, the change referred to in the Advance Notice.[177] The timeframes set forth in Section 806(e) determine when a proposed change to a designated clearing agency's rules, procedures or operations will become effective, and the Commission does not believe additional rulemaking related to these timeframes is necessary at this time.

4. Implementation of Proposed Changes and Emergency Changes Pursuant to Section 806(e)

Section 806(e)(1)(F) provides generally that a designated clearing agency may not implement a proposed change filed as an Advance Notice during the applicable review period,[178] which is typically 60 days from the Commission's receipt of the Advance Notice, but may be longer if the Commission requests additional information or extends the review period in accordance with the statute.[179] Section 806(e), however, provides two mechanisms by which a designated clearing agency could implement a proposed change prior to the expiration of the applicable review period. First, Section 806(e)(1)(I) permits the designated clearing agency to implement a change before the review period expires if the Commission notifies the designated clearing agency in writing that it does not object to the proposed change to the designated clearing agency's rules, procedures or operations and authorizes the designated clearing agency to implement the change on an earlier date, subject to any conditions imposed by the Commission.[180] As noted above, however, before taking any action on, or completing its review of, a change proposed by a designated clearing agency in an Advance Notice, the Commission is required to consult with the Board.[181]

Second, Section 806(e)(2) allows a designated clearing agency to implement a change that would otherwise require providing an Advance Notice to the Commission if the designated clearing agency determines that (i) an emergency exists and (ii) immediate implementation of the change is necessary for the designated clearing agency to continue to provide its services in a safe and sound manner.[182] If a designated clearing agency determines to implement an emergency change, it must provide notice to the Commission as soon as practicable, and in no event later than 24 hours after implementation of the relevant change.[183] Such emergency notice must contain all of the information otherwise required to be in an Advance Notice as well as a description of (i) the nature of the emergency and (ii) the reason the change was necessary in order for the designated clearing agency to continue to provide its services in a safe and sound manner.[184] In reviewing the emergency notice, the Commission may require modification or rescission of the relevant change if it determines that the change is not consistent with the purposes of the Clearing Supervision Act, including all applicable rules, orders, or the risk management

[172] 17 CFR 240.19b–4(l).

[173] 12 U.S.C. 5465(e)(3) (as added by Title VIII). In addition, the Commission is required to provide the Board with any information it issues or submits in connection therewith.

[174] *See* OCC Letter at 7–8 and DTCC Letter at 8.

[175] 12 U.S.C. 5465(e)(1)(E) (as added by Title VIII). The Commission expects that a designated clearing agency would submit a comment letter to the Secretary of the Commission each time that it provides any additional information to the Commission on EFFS in response to a Commission request for information made pursuant to Section 806(e)(1)(D). For purposes of the time periods set forth in Sections 806(e)(1)(E) and (G), the new 60-day period will begin on the date the Commission receives the additional information and the comment letter. Because the Commission will include a copy of this letter in its specific comment file for the Advance Notice, which is available on the Commission's Web site, this approach will provide the means for notifying the public that the information was submitted.

[176] 12 U.S.C. 5465(e)(1)(H) (as added by Title VIII).

[177] 12 U.S.C. 5465(e)(4) (as added by Title VIII).

[178] 12 U.S.C. 5465(e)(1)(F) (as added by Title VIII).

[179] 12 U.S.C. 5465(e)(1)(E) and (H) (as added by Title VIII).

[180] 12 U.S.C. 5465(e)(1)(I) (as added by Title VIII).

[181] 12 U.S.C. 5465(e)(4) (as added by Title VIII).

[182] 12 U.S.C. 5465(e)(2)(A) (as added by Title VIII).

[183] 12 U.S.C. 5465(e)(2)(B) (as added by Title VIII).

[184] 12 U.S.C. 5465(e)(2)(C) (as added by Title VIII).

standards prescribed under Section 805(a) of the Clearing Supervision Act.[185] The Commission did not receive any comments on a designated clearing agency's ability to act on an emergency basis. Designated clearing agencies would be required to provide such emergency notice on Form 19b–4, pursuant to the General Instructions, which are being adopted substantially as proposed.

D. Amendments to Form 19b–4

In conjunction with new Rules 19b–4(n) and (o), the Commission is adopting amendments to Form 19b–4 to reflect the requirements to file Security-Based Swap Submissions and Advance Notices with the Commission. Specifically, the Commission is modifying the cover page of Form 19b–4 to add additional checkboxes so that a clearing agency may indicate that the filing is being submitted as a Security-Based Swap Submission or an Advance Notice (in the case of a designated clearing agency) as well as a proposed rule change under Exchange Act Section 19(b), in each case to the extent applicable. A clearing agency will be able to select more than one filing type, check the appropriate box or boxes to indicate the filing type and submit all related information as a single filing. In other words, in cases where a proposed change must be filed pursuant to all three filing requirements, the clearing agency would be able, after December 10, 2012, to meet all applicable filing requirements by submitting a single Form 19b–4 electronically on the existing filing system, EFFS, to the Commission.

The Commission also is amending the General Instructions for Form 19b–4 regarding the filing requirements for Security-Based Swap Submissions and Advance Notices. The Commission is revising the instructions to include specific information that is required to be filed as part of a Security-Based Swap Submission or an Advance Notice.

With respect to Security-Based Swap Submissions, the amendments to the Form 19b–4 General Instructions will require clearing agencies to include a statement that includes, but is not limited to: (i) How the submission is consistent with Section 17A of the Exchange Act; (ii) information that will assist the Commission in the quantitative and qualitative assessment of the factors specified in Exchange Act Section 3C; and (iii) how the rules of the clearing agency meet the criteria for open access. Additionally, in order to facilitate the Commission's review of a Security-Based Swap Submission, the revised instructions provide examples of the types of information the clearing agency could consider including in its Security-Based Swap Submission in order to respond to the quantitative and qualitative factors specified in Exchange Act Section 3C and the requirements set forth in new Rule 19b–4(o)(3).

With respect to Advance Notices, the Commission is adopting amendments to the General Instructions for Form 19b–4 to require the designated clearing agency to provide a description of the nature of the proposed change and the expected effects on risks to the designated clearing agency, its participants, or the market, along with a description of how the designated clearing agency will manage any identified risks. These instructions also require that a designated clearing agency provide any additional information requested by the Commission necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated clearing agency's payment, clearing or settlement activities and the sufficiency of any proposed risk management techniques.

The Commission also is adopting a new Exhibit 1A to the General Instructions for the **Federal Register** notice template used by clearing agencies as an exhibit to the Form 19b–4 filing. New Exhibit 1A will be used only by clearing agencies. All other SROs will continue to use the current Exhibit 1 to prepare the **Federal Register** notice for proposed rule changes. The Commission is adopting a separate exhibit for clearing agencies because the rules requiring notice of Security-Based Swap Submissions and Advance Notices to be published in the **Federal Register** will apply only to clearing agencies. Instructions on preparing a **Federal Register** notice for Security-Based Swap Submissions and Advance Notices are unnecessary for all other SROs. In order to avoid any confusion, the Commission is providing clearing agencies with Exhibit 1A to use to prepare a **Federal Register** notice for a proposed rule change, Security-Based Swap Submission, or Advance Notice, or any combination of the three. The amendments to the General Instructions for Form 19b–4 also incorporate the statutory timeframes and other procedural requirements that are contained in Exchange Act Section 3C and Section 806(e).

Moreover, pursuant to existing Rule 19b–4(j), SROs are required to sign Form 19b–4 electronically in connection with filing a proposed rule change and to retain a copy of the signature page in accordance with Rule 17a–1. Under the rules the Commission is adopting today, Rule 19b–4(j) has been modified such that it also would apply to Security-Based Swap Submissions filed in accordance with Exchange Act Section 3C and Advance Notices filed in accordance with Section 806(e).

In addition, the Commission is adopting changes to the General Instructions for Form 19b–4, as proposed, to reflect the new deadlines by which the Commission must publish and act upon proposed rule changes submitted by SROs and the new standards for approval, disapproval or suspension of proposed rule changes pursuant to the amendments to Exchange Act Section 19(b) contained in Section 916 of the Dodd-Frank Act. The Commission is also adopting a number of technical and clarifying amendments to Rule 19b–4 and Form 19b–4 to make the instructions consistent with the new requirements in Section 916 of the Dodd-Frank Act and with current practices of SRO filers.[186]

Section 916 of the Dodd-Frank Act also modified Exchange Act Section 19(b)(3)(A), which permits certain types of proposed rule changes to take effect immediately upon filing with the Commission and without the notice and approval procedures required by Exchange Act Section 19(b)(2), to make clear that any rule establishing or changing a fee, due or other charge imposed by the SRO qualifies for this designation, regardless of whether the fee, due or other charge is applicable only to a member.[187] The Commission

[185] 12 U.S.C. 5465(e)(2)(D) (as added by Title VIII). Pursuant to Section 806(e)(3), the Commission is required to provide the Board concurrently with a complete copy of any notice, request or other information it receives. However, the Commission is proposing that the designated clearing agency file copies of any such notice, requests or other information directly with the Board in order to help meet this requirement.

[186] *See* amendments to the General Instructions for Form 19b–4.

[187] 15 U.S.C. 78s(b)(3)(A). When an SRO submits a proposed rule change to the Commission pursuant to Section 19(b)(3)(A) of the Exchange Act, the Commission still reviews the filing and has the power summarily to temporarily suspend the change in rules of the SRO within sixty days of its filing if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, it is then required to institute proceedings to determine whether the proposed rule change should be approved or disapproved. Temporary suspension of a proposed rule change and any subsequent action to approve or disapprove such change shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under Section 25 of the Exchange Act, nor shall it be deemed to be ''final agency action'' for purposes of 5 U.S.C. 704. *See* 15 U.S.C. 78s(b)(3)(A).

is also adopting modifications to the General Instructions for Form 19b–4 to reflect this clarification.

The Commission did not receive any comments on the proposed amendments to Form 19b–4, and the Commission is adopting these amendments substantially as proposed. Several minor conforming edits and corrections have, however, been made to Form 19b–4 and the General Instructions thereto, as compared to the version that was included in the Proposing Release, to conform to changes made to new Rule 19b–4(o)(3), as described in detail in section II.A.1.b of this release, and to make other necessary clarifications to the form to reflect typographical edits, changes to the form made pursuant to an interim final rule that was adopted after publication of the Proposing Release,[188] and other non-substantive revisions to eliminate or correct potentially vague or confusing language.[189]

E. Amendments to Rule 19b–4 Relating to Section 916 of the Dodd-Frank Act

Under Exchange Act Section 19(b)(2)(E),[190] as added by the Dodd-Frank Act, the Commission is required to send the notice of a proposed rule change filed by an SRO to the **Federal Register** for publication thereof within 15 days of the date on which the SRO's Web site publication is made. The Commission is amending Rule 19b–4(l) to provide that if an SRO does not post a proposed rule change on its Web site on the same day that it files the proposal with the Commission, then the SRO shall inform the Commission of the date on which it posted such proposal on its Web site. The purpose of this change is to advise the Commission of the date the SRO posted the proposed rule change filing to its Web site, as such posting initiates the Commission's requirement to send notice of the proposed rule change to the **Federal Register**. The Commission did not receive any comments on the amendments and is adopting them as proposed.

F. New Requirements Under Exchange Act Section 3C and Section 806(e) and the Existing Filing Requirements in Exchange Act Section 19(b)

As discussed previously, the Commission is adopting amendments to Rule 19b–4 and Form 19b–4 to incorporate two new requirements under the Dodd-Frank Act that are similar to the existing filing requirement for proposed rule changes under Exchange Act Section 19(b). The first is the requirement to file Security-Based Swap Submissions under new Exchange Act Section 3C. The second is the requirement to file Advance Notices under Section 806(e). The Commission anticipates that in many cases a clearing agency may take an action that would trigger more than one of these filing requirements,[191] and the Commission seeks to streamline the filing processes for Exchange Act Section 3C, Section 806(e) and Exchange Act Section 19(b) by proposing that all such filings be made electronically on Form 19b–4.

New Rules 19b–4(n) and (o) and the corresponding amendments to Form 19b–4 are being adopted to avoid duplicative filings and to streamline the process and burden on clearing agencies and the Commission. However, the filing requirements of Exchange Act Section 3C, Section 806(e) and Exchange Act Section 19(b) are distinct from each other and subject to different statutory standards for Commission review. As a result, a clearing agency that files pursuant to more than one of these sections must meet the requirements of the applicable regulatory scheme before the applicable change may become effective.

Accordingly, it is likely that many proposals made by clearing agencies may be filed and require review under more than one of the three Commission review procedures discussed herein. For example, a designated clearing agency may be required to submit an Advance Notice in connection with its Security-Based Swap Submission if the requirement to clear the security-based swap described in the submission would materially affect the nature or level of risks presented by the designated clearing agency. Moreover, if the designated clearing agency did not have existing authority under its rules to clear the relevant security-based swap, such action also would require a proposed rule change filing under Exchange Act Section 19(b).

In other cases, only one of the three Commission-review procedures may apply because the scope of proposals requiring review under each of Section 806(e) and Exchange Act Section 3C is in some ways broader and in other ways narrower in comparison to Exchange Act Section 19(b). There is, for example, the potential that certain changes to the operations of a designated clearing agency may not require the filing of a proposed rule change under Exchange Act Section 19(b) or a Security-Based Swap Submission under Exchange Act Section 3C, but may trigger a requirement to file an Advance Notice under Section 806(e). By contrast, because the notice requirement under Section 806(e) applies only to matters that materially affect the nature or level of risk presented by a designated clearing agency, in some cases a rule change filed under Exchange Act Section 19(b) would not trigger the advance notice requirement under Section 806(e).

When a clearing agency submits a filing for more than one purpose (*i.e.,* proposed rule change, Security-Based Swap Submission and/or Advance Notice), the Commission will endeavor to evaluate such filings in tandem as part of a parallel process. Although the timing for review under each of Exchange Act Section 3C, Section 806(e) and Exchange Act Section 19(b) is

[188] *See Amendment to Rule Filing Requirements for Dually-Registered Clearing Agencies,* Securities Exchange Act Release No. 34–64832 (July 7, 2011), 76 FR 41056 (July 13, 2011).

[189] In addition to the changes described in this section, the Commission has also made a number of minor typographical and clarifying revisions to the form as compared to what was included in the Proposing Release, including: (i) Correcting typographical errors and inserting missing graphics on the face of the form, (ii) correcting typographical errors in the descriptions of the components of the form and inserting missing language in the description of Exhibit 1A, (iii) inserting parentheses to distinguish existing language from new language in Item A of the General Instructions, (iv) inserting language into Item B of the General Instructions to make clear that Advance Notices and Security-Based Swap Submissions are submitted to the Commission pursuant to different statutes, (v) inserting a missing word and closed parenthesis in Item D of the General Instructions, (vi) deleting the word ''also'' in the second sentence in Item 1(a) to make clear that the text of the proposed rule change should be included ''either'' in Exhibit 5 or Exhibit 1 (or Exhibit 1A in the filing of a clearing agency) (vii) revising the title of Exhibit 1A in Item 11 of the General Instructions, (viii) clarifying a defined term in Item 3 of the General Instructions (Note 3), (ix) adding the phrase ''If the proposed rule change is subject to Commission approval'' to the beginning of the sentence in Item 6 to reflect the fact that only certain types of proposed rule changes are subject to Commission approval and (x) modifying Item II of Exhibit 1A to clarify which items of the General Instructions are specifically applicable to the exhibit. Based on the non-substantive nature of these revisions, the Commission finds notice of the revisions is not necessary. *See* 5 U.S.C. 553(b).

[190] 15 U.S.C. 78s(b)(2)(E).

[191] Title VII contains a clause, which provides in pertinent part, that ''[u]nless otherwise provided by its terms, [Subtitle B] does not divest * * * the Securities and Exchange Commission * * * of any authority derived from any other provision of applicable law.'' *See* Section 771 of the Dodd-Frank Act. Similarly, Section 811 of the Dodd-Frank Act provides that ''[u]nless otherwise provided by its terms, this title does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any [risk management] standards prescribed by the [Board] under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.'' Accordingly the new requirements under Titles VII and VIII do not supersede the existing requirements under the Exchange Act that would require clearing agencies (which are all SROs) to file a proposed rule change when the matter described in a Security-Based Swap Submission or Advance Notice also meets the criteria for a proposed rule change.

different,[192] all three processes contain some degree of flexibility, and the Commission will attempt to streamline the review processes to avoid any unnecessary delays or duplicative requests for information.

However, each of the three processes will remain distinct from the other processes. Each proposed rule change, Security-Based Swap Submission and Advance Notice will be reviewed and evaluated independently by the Commission in accordance with the applicable statute and regulatory authority. Moreover, the new requirements being adopted today to file Advance Notices with the Commission and to make Security-Based Swap Submissions would not replace the existing Exchange Act Section 19(b) rule filing process, nor will a filing made under Exchange Act Section 3C or Section 806(e) eliminate the need to satisfy the requirements of the other processes to the extent they are applicable. In other words, the Commission review required by Exchange Act Section 3C is different from the review required under Section 806(e), which in turn is different from the review required under Exchange Act Section 19(b).

Section 806(e) requires an analysis of the risk management issues that may impact the clearing agency, its participants, or the market. Exchange Act Section 19(b), by contrast, requires a broader evaluation and an analysis as to whether the proposed rule change is consistent with the requirements of the Exchange Act and the rules thereunder. Finally, Exchange Act Section 3C only applies when a clearing agency plans to accept for clearing a security-based swap (or a group, category, type or class of security-based swaps), and the standard for review is based on a number of specified factors, including but not limited to: (i) How the submission is consistent with Section 17A of the Exchange Act and (ii) the factors specified in Exchange Act Section 3C relating to the security-based swap, the market for the security-based swaps, and the clearing agency.

The Commission believes that these distinct reviews make it possible for a submission made on Form 19b–4 to be acceptable under the standards for review for one of the three purposes but not under the others.[193] For example, in cases where a clearing agency's plan to accept a new security-based swap (or any group, category, type or class of security-based swaps) for clearing requires it to file both a proposed rule change and a Security-Based Swap Submission, once the proposed rule change is approved and effective, the clearing agency may begin clearing the security-based swap on a voluntary basis, subject to any separate determination that may be made related to the Security-Based Swap Submission to require mandatory clearing. Even if a determination is made not to require mandatory clearing, such security-based swap may continue to be cleared on a voluntary basis. In cases where only the requirements of one of Exchange Act Section 19(b), Exchange Act Section 3C or Section 806(e) are implicated, only the applicable process would need to be completed before the proposal could become effective. The Commission discussed its views regarding the distinct processes under Sections 19(b), 3C, and 806(e) in the Proposing Release and did not receive any comments on these views.

G. Effective and Compliance Dates

The effective date for §§ 240.3Ca–1, 240.3Ca–2, and the amendments to § 240.19b–4, is August 13, 2012. Similarly, the compliance date for §§ 240.3Ca–1, 240.3Ca–2, and the amendments to § 240.19b–4, except for § 240.19b–4(o), which is discussed below, is August 13, 2012.

With respect to the compliance date for new Rule 19b–4(o), which sets forth the process for filing Security-Based Swaps, the Commission recognizes that clearing agencies will require time to gather and synthesize the information required to be included in a submission. To accommodate this transition period, the Commission believes that it is appropriate to delay the compliance date for Rule 19b–4(o) to allow clearing agencies to make any changes to their internal procedures to incorporate the statutory factors and to make any related adjustments, particularly as commenters have stated that a significant amount of data would need to be provided in connection with a Security-Based Swap Submission. More broadly, the Commission is cognizant of the general need to provide for the orderly and methodical implementation of mandatory clearing determinations, commencing with the determinations made with respect to pre-enactment security-based swaps.[194] After considering these issues, the Commission has determined that the compliance date for new Rule 19b–4(o) will be the date that is 60 days after the date the Commission issues its first written determination pursuant to Exchange Act Section 3C(b)(2)(C)(ii)[195] determining whether a security-based swap, or group, category, type, or class of security-based swaps, is required to be cleared.

The Commission expects that such first determination will address pre-enactment security-based swaps (*i.e.,* security-based swaps listed for clearing by a clearing agency as of the date of enactment of Exchange Act Section 3C), which, pursuant to Exchange Act Section 3C(b)(2)(B), were deemed to be submitted to the Commission as of such date.[196] Two clearing agencies listed security-based swaps for clearing as of July 21, 2010, and provided an extension to the 90-day review period in Exchange Act Section 3C(b)(3), which otherwise would have commenced on July 21, 2010. However, as with other Security-Based Swap Submissions, the Commission is required by the Exchange Act Section 3C to make a determination with respect to such pre-enactment submissions within the applicable review period. As described above, that section also requires the Commission to make the submission of pre-enactment security-based swaps available to the public and to provide at least a 30-day public comment period regarding its determination whether a clearing requirement should apply to such security-based swaps.[197] Accordingly, the Commission believes that the compliance date is appropriate since there will be a public notice and comment process prior to the first written determination pursuant to Exchange Act Section 3C(b)(2)(C)(ii). The Commission expects to include in

[192] *See* 15 U.S.C. 78s(b)(2) (as amended by Section 916 of the Dodd-Frank Act) (establishing the timeframes under which the Commission must either approve, disapprove or institute proceedings with respect to a proposed rule change following receipt of the filing); 15 U.S.C. 78c–3(b)(3) (as added by Section 763(a) of the Dodd-Frank Act) (stating that the Commission must make its determination on a Security-Based Swap Submission within 90 days after receipt, unless the clearing agency agrees to an extension of this time limitation) and 12 U.S.C. 5465(e)(1)(G) (as added by Title VIII) (explaining that the Commission must notify a designated clearing agency of any objection to a proposed change filed as an Advance Notice under Section 806(e) within 60 days after receiving the notice filing, unless the Commission requests additional information in consideration of the notice, in which case the 60-day period will recommence on the date such information is received by the Commission).

[193] The Commission notes, however, that when a proposal is required to be filed as both a proposed rule change and an Advance Notice, the proposal would not become effective until the statutory provisions applicable to both types of filings are satisfied. For example, a rule proposal may provide for sound risk management practices but also have an anticompetitive aspect that would not satisfy the requirements of the Exchange Act.

[194] *See supra* note 43 and accompanying text.

[195] 15 U.S.C. 78c–3(b)(2)(C)(iii) (as added by Section 763(a) of the Dodd-Frank Act).

[196] *See* 15 U.S.C. 78c–3(b)(2)(B).

[197] *See* 15 U.S.C. 78c–3(b)(2)(C)(i) and (iii).

such notice and written determination references to the impending compliance date and thus clearing agencies will be on notice and will have time to prepare for the filing of their Submissions. Sixty days following the date that the Commission issues that first written determination, clearing agencies will be required to begin filing Security-Based Swap Submissions with the Commission under new Rule 19b–4(o).

In addition, the Commission is currently in the process of designing and implementing the system upgrades that are necessary in order for Advance Notices and Security-Based Swap Submissions to be filed on EFFS. The Commission intends to have the system upgrades to EFFS operational by December 10, 2012. Because of the time required to finalize these upgrades, the final rules provide that Advance Notices and Security-Based Swap Submissions filed prior to December 10, 2012 must be filed with the Commission by submitting the applicable filing to a dedicated email inbox to be established by the Commission. Accordingly, the compliance and effective dates for the amendments to § 249.819 and Form 19b–4 is December 10, 2012.

III. Paperwork Reduction Act

Rule 19b–4, Form 19b–4 and Rule 3Ca–1 contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[198] Accordingly, the Commission has submitted the information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. Specifically, the Commission has submitted revisions to the current collection of information titled ''Rule 19b–4 Filings with Respect to Proposed Rule Changes by Self-Regulatory Organizations'' (OMB Control No. 3235–0045). The Commission also has submitted revisions to the current collection of information titled ''Form 19b–4 under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0045). Finally, the Commission has submitted a new collection of information titled ''Rule 3Ca–1 Stay of Clearing Requirement and Review by the Commission under the Securities Exchange Act of 1934'' to OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. OMB has not yet assigned a control number to the new collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Any information submitted to the Commission will be made publicly available.

In the Proposing Release, the Commission solicited comments on the collection of information requirements.[199] No written comments were received on the estimates in the Proposing Release, although the Commission received informal comments from eight clearing agencies prior to issuing the Proposing Release in order to inform its estimates in that release. For the most part, the Commission is not making any changes to the estimates in the Proposing Release; however, some initial burden estimates have been adjusted, as discussed below, to reflect updated information on such burden estimates.

A. Summary of Collection of Information

1. Amendments to Rule 19b–4 and Form 19b–4

Rule 19b–4 currently requires an SRO seeking Commission approval for a proposed rule change to provide the information stipulated in Form 19b–4. Form 19b–4 currently requires a description of the terms of a proposed rule change, the proposed rule change's impact on various market segments and the relationship between the proposed rule change and the SRO's existing rules. Form 19b–4 also requires an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, the proposal's impact on competition and a summary of any written comments received by the SRO from SRO members. An SRO also is required to submit Form 19b–4 to the Commission electronically, post a proposed rule change on its Web site within two business days of its filing, and to post and maintain a current and complete set of its rules on its Web site.

The Commission is amending Rule 19b–4 to require two new collections of information on Form 19b–4 related to new filing requirements applicable to clearing agencies under the Dodd-Frank Act. The amendments will not otherwise change the collection of information requirements currently in Rule 19b–4 and Form 19b–4. These new reporting requirements are in addition to the information currently required by Rule 19b–4 and Form 19b–4.

New Rules 19b–4(n) and (o) will require clearing agencies to file information with the Commission under Section 806(e) and Exchange Act Section 3C, respectively, on Form 19b–4. Clearing agencies that are required to file a Security-Based Swap Submission or an Advance Notice prior to December 3, 2012 will file such notice with the Commission by email. Exchange Act Section 3C requires clearing agencies to submit for a Commission determination of whether mandatory clearing applies, any security-based swap (or any group, category, type or class of security-based swaps) that the clearing agency plans to accept for clearing and to provide notice to its members of such submission. Section 806(e) requires that a clearing agency designated as systemically important by the Council file with the Commission advance notice of proposed changes to its rules, procedures or operations that could materially affect the nature or level of risk presented by the designated clearing agency.

The Commission anticipates that in many cases, a clearing agency will be required to file a proposal under Exchange Act Section 3C or Section 806(e) when it is already required to file a proposed rule change under Exchange Act Section 19(b). Accordingly, clearing agencies will be able to submit on the same Form 19b–4, proposals required to be filed with the Commission under Exchange Act Section 3C or Section 806(e) that they are already required to submit under Exchange Act Section 19(b). In some cases, however, a clearing agency will be required to file a proposal under Exchange Act Section 3C or Section 806(e) and not under Exchange Act Section 19(b), for example where a proposal materially affects the nature or level of risks presented by the clearing agency but does not change the rules of the clearing agency.

In addition, Exchange Act Section 3C and Section 806(e) each require information to be provided as part of the filing that is in addition to the information required to be filed with a proposed rule change under Exchange Act Section 19(b). A clearing agency will be required to include as part of a Security-Based Swap Submission a statement that includes, but is not limited to: (i) How the submission is consistent with Exchange Act Section 17A; (ii) information that will assist the Commission in the quantitative and qualitative assessment of the factors specified in Exchange Act Section 3C; and (iii) how the rules of the clearing agency meet the criteria for open access.

Section 806(e) provides that the Advance Notice include a description of the nature of the proposed change and the expected effects on risks to the designated clearing agency, its participants, or the market and it must provide a description of how the designated clearing agency will manage any identified risks. A designated

[198] 44 U.S.C. 3501 *et seq.*

[199] *See* Proposing Release, *supra* note 24.

clearing agency also will be required to provide any additional information requested by the Commission as necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated clearing agency's payment, clearing or settlement activities and the sufficiency of any proposed risk management techniques.

The amendments to Rule 19b–4 also will require a clearing agency to post certain information on its Web site, and require an SRO that does not post a proposed rule change on its Web site on the same day that it files the proposal with the Commission to inform the Commission of the date on which it posted such proposal on its Web site.[200] Security-Based Swap Submissions and Advance Notices, and any amendments thereto, will be required to be posted on the clearing agency's Web site within two business days of filing the information with the Commission. Except for any filing or information for which a clearing agency has submitted a proper confidential treatment request, the information generally shall remain posted on the clearing agency's Web site until: (i) In the case of a Security-Based Swap Submission, the Commission makes a mandatory clearing determination, (ii) in the case of an Advance Notice, the date the clearing agency posts a notice of effectiveness in accordance with new Rule 19b–4(n)(4)(ii), or (iii) in the case of either type of filing, the date the clearing agency withdraws the filing or is notified by the Commission that it was not properly filed. A clearing agency also will be required to post notice on its Web site of the effectiveness of any change to its rules, procedures or operations referred to in an Advance Notice within two business days of the effective date determined in accordance with Section 806(e).

2. Stay of Clearing Requirement

New Rule 3Ca–1 provides that the Commission, on application of a counterparty to a security-based swap (or group, category, type, or class of security-based swaps), or on the Commission's own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the security-based swap and the clearing of the security-based swap that the clearing agency has accepted for clearing. A counterparty to a security-based swap that applies for a stay of the clearing requirement for a security-based swap (or group, category, type, or class of security-based swaps) will be required to submit to the Commission the information set forth in new Rule 3Ca–1(b).[201]

Any clearing agency that has accepted for clearing a security-based swap (or group, category, type, or class of security-based swaps) that is subject to the stay of the clearing requirement will be required to provide information requested by the Commission as it determines to be necessary and appropriate to assess any of the factors in the course of the Commission's review.

B. Use of Information

1. Amendments to Rule 19b–4 and Form 19b–4

The information currently required under Rule 19b–4 and reported on Form 19b–4 is used by the Commission to review proposed rule changes filed by SROs pursuant to Exchange Act Section 19(b)(1) [202] and to provide notice of the proposals to the general public. The Commission relies upon the information received in SRO filings, as well as public comments regarding the information, in reviewing and reaching decisions about whether to approve a proposed rule change.

The information to be provided by clearing agencies pursuant to the amendments to Rule 19b–4 and Form 19b–4 will be used by the Commission to evaluate Security-Based Swap Submissions and Advance Notices. The Commission will use the information filed on Form 19b–4 related to Security-Based Swap Submissions to determine whether the security-based swap (or any group, category, type or class of security-based swaps) described in the Security-Based Swap Submission will be required to be cleared pursuant to Exchange Act Section 3C(a)(1).

The Commission will use the information on Form 19b–4 related to Advance Notices filed under Section 806(e) to determine the effect on the nature or level of risks that would be presented by a designated clearing agency based on a proposed change to its rules, procedures or operations, and the expected effects on risk to the designated clearing agency, its participants and the market and to determine whether the Commission should make an objection to the proposed change. In addition, the information on the form will be provided to the Board because the Commission is required to provide copies of all Advance Notices and any additional information provided by the designated clearing agency relating to the Advance Notice to the Board and to consult with the Board before taking any action on or completing its review of the Advance Notice.[203] In some instances, the Commission also may use the information on the form to determine whether to allow a proposed change to take effect in less than 60 days following the receipt of the Advance Notice and to determine whether a change made on an emergency basis is warranted or whether it should be modified or rescinded.

The information to be filed on Form 19b–4 relating to Exchange Act Section 3C and Section 806(e) also will be used by participants of the clearing agency, market participants, other clearing agencies, or the general public to comment on the proposal, as the Commission requires that a clearing agency post the information on its Web site. In addition, pursuant to Exchange Act Section 3C, a clearing agency will be required to provide its members with notice of the Security-Based Swap Submission. As with proposed rule changes under Exchange Act Section 19(b), the Commission will solicit comment from interested parties on proposals filed under Exchange Act Section 3C and Section 806(e). Interested parties could use the information to comment on the proposed change and to provide feedback on the development of the clearing agency's service offerings and the rules, procedures and operations of the clearing agency.

The information collected by the Commission with respect to the date on which the SRO posted a proposed rule change on its Web site (if such posting date is not the same as the filing date) will be used to inform the Commission of the date by which the Commission must send the SRO notice to the **Federal Register** for publication.

2. Stay of Clearing Requirement

The information provided as required by new Rule 3Ca–1 will be used by the Commission to determine whether to grant the stay of the clearing requirement sought by a counterparty and to review whether the clearing requirement will continue to apply to the security-based swap (or group, category, type, or class of security-based swaps) referenced in the request for a stay.

[200] Rule 19b–4(l).

[201] *See Supra* section II.B.

[202] 15 U.S.C. 78s(b)(1).

[203] 12 U.S.C. 5465(e)(3) and (4) (as added by Title VIII).

C. Respondents

1. Amendments to Rule 19b–4 and Form 19b–4

Prior to the enactment of the Dodd-Frank Act, 25 SROs were making filings with the Commission subject to the collection of information under Rule 19b–4 and Form 19b–4. In fiscal year 2011, these SRO respondents filed 1,606 proposed rule changes subject to the current collection of information, of which 1,180 proposed rule changes ultimately became effective.[204]

Although Rule 19b–4 and Form 19b–4 apply to all SROs, the new collection of information requirements in the new rules will apply to clearing agencies and, in the case of the amendments pursuant to Section 916 of the Dodd-Frank Act, to all SROs (*i.e.,* more than the number of estimated clearing agencies below). The amendments relating to Exchange Act Section 3C will apply to the clearing agencies that currently clear security-based swaps or that the Commission estimates may do so in the future. The obligation to centrally clear security-based swap transactions is a new requirement under Title VII, and three clearing agencies that had previously operated under temporary conditional exemptions under Section 36 of the Exchange Act are now registered security-based swap clearing agencies.[205] These three clearing agencies currently clear or plan to clear[206] security-based swaps and there could conceivably be a few more in the foreseeable future.[207] In the Proposing Release, the Commission noted that four clearing agencies were at that time authorized to clear security-based swaps pursuant to the temporary conditional exemptions and estimated that four to six clearing agencies could in the future clear security-based swaps and be subject to the information collection requirements in the rules relating to Exchange Act Section 3C. The Commission used the higher estimate (six) for the PRA analysis in the Proposing Release and the Commission believes that such estimate is still appropriate given the potential for additional clearing agencies to clear security-based swaps in the future.

The amendments to Rule 19b–4 and Form 19b–4 relating to the requirement to file Advance Notices with the Commission pursuant to Section 806(e) will only apply to clearing agencies that are registered with the Commission, designated by the Council as systemically important, and for which the Commission is the Supervisory Agency. There are currently nine clearing agencies registered with the Commission; this includes four clearing agencies that were registered with the Commission to clear securities transactions prior to the effectiveness of the Dodd-Frank Act, two clearing agencies that currently do not clear any securities transactions, and three clearing agencies that were deemed registered under Section 17A(l) after the effective date of Title VII of the Dodd-Frank Act and that are currently clearing or that plan to clear security-based swaps.[208] In addition, and as noted above and in the Proposing Release, a few additional security-based swap clearing agencies could conceivably register with the Commission in the foreseeable future. Accordingly, the number of security-based swap clearing agencies used in the PRA analysis has been increased beyond the ones that currently exist to a total of six in order to account for such future clearing agencies. For purposes of the PRA analysis, the Commission estimates that the four securities clearing agencies that are currently clearing non-security-based swap securities and the six estimated clearing agencies that either currently clear or may clear security-based swaps in the future would be subject to the applicable collection of information requirements.

2. Stay of Clearing Requirement

The Commission estimates that six security-based swap clearing would potentially be subject to the collection of information under new Rule 3Ca–1 in connection with any counterparty requesting a stay of clearing requirement.

D. Total Annual Reporting and Recordkeeping Burden

1. Background

The amendments to Rule 19b–4 and Form 19b–4 are designed to facilitate the processes for providing the Commission with Security-Based Swap Submissions and Advance Notices and to make these processes efficient by utilizing the existing infrastructure for proposed rule changes, thereby conserving both clearing agency and Commission resources. As amended, Form 19b–4 enables clearing agencies to submit Security-Based Swap Submissions and Advance Notices electronically with the Commission. The amendments to Rule 19b–4 also will require a clearing agency to post on its Web site any Security-Based Swap Submissions, Advance Notices, and any amendments thereto, within two business days of the date on which they are submitted to the Commission. A further amendment to Rule 19b–4 will require an SRO that files a proposed rule change with the Commission to inform the Commission of the date on which it posted such proposal on its Web site if the posting did not occur on the same day that the SRO filed the proposal with the Commission. Finally, new Rule 3Ca–1 specifies the process for a security-based swap counterparty to apply to the Commission for a stay of the clearing requirement.

[204] Filings of proposed rule changes are available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.* To avoid duplication, the total figure does not include certain pre-filings made with the Commission pursuant to Rule 19b–4(f)(6), which allows an SRO to designate certain proposed rule changes as effective upon filing if, among other things, the SRO provides written notice of its intent to file, along with a brief description and proposed rule text (a ''pre-filing''), to the Commission at least five business days prior to an actual filing.

[205] Chicago Mercantile Exchange Inc., ICE Clear Credit LLC (formerly ICE Trust US LLC), and ICE Clear Europe Limited are registered with the Commission to clear security-based swaps. The Commission previously authorized five entities to clear credit default swaps, which are security-based swaps. *See CDS clearing by ICE Clear Europe Limited,* Securities Exchange Act Release Nos. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009) and 61973 (Apr. 23, 2010), 75 FR 22656 (Apr. 29, 2010); *CDS clearing by Eurex Clearing AG,* Securities Exchange Act Release Nos. 60373 (July 23, 2009), 74 FR 37740 (July 29, 2009) and 61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010); *CDS clearing by Chicago Mercantile Exchange Inc.,* Securities Exchange Act Release Nos. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) and 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010); *CDS clearing by ICE Clear Credit LLC (formerly ICE Trust US LLC),* Securities Exchange Act Release Nos. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009) and 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010); *Temporary CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.* Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009). Eurex Clearing AG, LIFFE A&M, and LCH.Clearnet Ltd. are not currently registered with the Commission to clear security-based swaps.

[206] By referring to a clearing agency that plans to clear security-based swaps, the Commission means a clearing agency that is permitted to do so under its rules but that has not yet begun clearing security-based swaps.

[207] Based on the significant level of capital and other financial resources necessary for the formation of a clearing agency, the Commission does not expect there to be a large number of clearing agencies that seek to clear security-based swaps.

[208] Of the four clearing agencies that were authorized to clear security-based swaps at the time the Proposing Release was issued, one was not deemed registered with the Commission under Section 17A(l) of the Exchange Act after the temporary exemptions expired. Accordingly, the Commission has adjusted its estimate of clearing agencies that currently clear or plan to clear security-based swaps. However, the Commission recognizes that this clearing agency, as well as others, may seek to clear security-based swaps in the future and the Commission has maintained the earlier estimate of six clearing agencies for purposes of the PRA analysis.

2. Rule 19b–4 and Form 19b–4

a. Introduction

As noted in the Proposing Release, the Commission conducted a survey and received informal comments from the staff of eight clearing agencies that will be subject to the new requirements in the amendments to Rule 19b–4 and Form 19b–4. These comments were received prior to the publication of the Proposing Release and the Commission did not receive any additional comments from clearing agencies or any other parties on these estimates after the Proposing Release was published. Clearing agencies indicated they would have to train personnel and develop policies and procedures in order to implement the new filing requirements under Rule 19b–4 and Form 19b–4 in connection with Security-Based Swap Submissions and Advance Notices. In addition, clearing agencies indicated they would have to submit additional information to the Commission on Form 19b–4 in order to meet the requirements for filing Security-Based Swap Submissions or Advance Notices, either as separate filings or as part of filings also submitted as proposed rule changes under Exchange Act Section 19(b).

The clearing agencies emphasized that the estimated burdens would depend in large part on the rules ultimately adopted by the Commission to define and determine how frequently Security-Based Swap Submissions and Advance Notices will be required to be filed and the nature and extent of information that will be required with each filing. In addition, the clearing agencies stated that the burden per filing could vary widely, depending on the complexity of each individual filing. For example, some clearing agency proposals may require more information or analysis to be submitted as part of the filing. The clearing agencies also stated that the annual burden also could vary widely from year to year depending on the number of new proposals the clearing agency makes in a particular year. The Commission noted in the Proposing Release that the estimates provided in that release were preliminary and could change after clearing agencies had the opportunity to review and closely evaluate the rules. However, the Commission did not receive any comments on these estimates, from clearing agencies or from other parties and, as a result, has not adjusted these estimates. The estimates of the burden per filing also varied among clearing agencies, which may reflect the different internal processes, training programs, and review procedures for new projects currently in place at the different clearing agencies. In addition, prior to the effective date of the Dodd-Frank Act some clearing agencies were registered with the Commission (''pre-Dodd-Frank Act clearing agencies'') while others were not. Pre-Dodd-Frank Act clearing agencies had been filing proposed rule changes under Exchange Act Section 19(b) prior to the effective date of the Dodd-Frank Act and have more familiarity with the collection of information requirements related to Rule 19b–4 and Form 19b–4, while the newly registered [209] clearing agencies may not be as familiar with these requirements and may incur a greater burden in connection with using EFFS and training personnel.

The Commission used the more conservative numbers estimated by the clearing agencies for its estimates for the PRA. The Commission believed the more conservative estimate was appropriate because the estimates of the burden per filing varied among clearing agencies and could vary among the filings submitted (*i.e.,* some proposals may be more complex and require more time for the clearing agency to prepare a Security-Based Swap Submission or an Advance Notice). In addition, the Commission calculated the burden for the requirements related to Advance Notices assuming that they would apply to ten clearing agencies and the burden for the requirements related to Security-Based Swap Submissions assuming they would apply to six clearing agencies.

Finally, the Commission recognized that there will likely be some substantive and procedural overlap with respect to the processes for preparing and submitting Security-Based Swap Submissions, Advance Notices and proposed rule changes that relate to the same subject matter. For example, in connection with a decision to accept for clearing a new type of security-based swap that was not previously permitted under the clearing agency's rules, a clearing agency could be required to make a filing as a Security-Based Swap Submission, an Advance Notice and a proposed rule change. In this case, because these submissions all relate to the same underlying proposal, the amount of time required to prepare a single Form 19b–4 for all three purposes is likely to be less than the aggregate amount of time ordinarily required to prepare and submit three separate filings. Nevertheless, in the Proposing Release the Commission calculated the PRA burden for each process individually without accounting for any reduction due to the anticipated overlap in order to assure that the Commission did not underestimate the burdens. Additionally, the estimates in the Proposing Release were derived from discussions between the Commission's staff and staff of the clearing agencies, as described above. A detailed description of the estimated burdens related to Rule 19b–4 and Form 19b–4 is set forth in the sections below. The Commission did not receive any comments on the PRA estimates published in the Proposing Release and, other than a minor adjustment to reflect a change in status for recently registered clearing agencies, the burden estimates for the rules have not changed.

b. Internal Policies and Procedures

At the time it issued the Proposing Release, the Commission believed that the six estimated clearing agencies that were either going to be deemed registered to clear security-based swaps pursuant to Section 17A(l) of the Exchange Act or that could on their own initiative seek to be regulated by the Commission in the future in order to clear security-based swaps could incur some one-time costs associated with training their personnel about the procedures for submitting Security-Based Swap Submissions, Advance Notices, and/or proposed rule changes in electronic format through EFFS. Based on staff discussions with the clearing agencies prior to issuing the Proposing Release, the Commission estimated that each newly-registered clearing agency would spend approximately 20 hours training all staff members who will use EFFS to submit Security-Based Swap Submissions, Advance Notices and/or proposed rule changes electronically. Accordingly, the Commission estimated that the total one-time burden of training staff members of newly-registered clearing agencies to use EFFS will be 120 hours (six respondent clearing agencies × 20 hours). After the Proposing Release was issued, three of these clearing agencies were deemed registered with the Commission pursuant to Section 17A(l) and began being required to file proposed rule changes with the Commission on EFFS. However, these clearing agencies will still need to train staff members on filing Advance Notices and Security-Based Swap Submissions. Accordingly, the Commission does not believe it necessary to modify the estimate used in the Proposing Release with respect to initial training on EFFS.

[209] Newly-registered clearing agencies refers to clearing agencies registered with the Commission to clear security-based swaps after the effective date of the Dodd-Frank Act (which includes clearing agencies that the Commission has estimated may be registered in the future to clear security-based swaps).

Accordingly, the Commission is using the estimates in the Proposing Release for the rules being adopted today.

In the Proposing Release, the Commission estimated that, after the initial training was completed, each SRO (including pre-Dodd-Frank Act clearing agencies) would spend approximately 10 hours annually training new compliance staff members and updating the training of existing compliance staff members to use EFFS. The Commission believed that only a minimal amount of EFFS training would be submission-specific and that training a person to submit either a proposed rule change, Security-Based Swap Submission or Advance Notice would generally be sufficient to allow such person to make one or more of the other types of submissions. The Commission did not receive any comments on these estimates in the Proposing Release and is using them for the rules as they are being adopted today, resulting in a total annual burden of 350 hours ((six respondent clearing agencies × 10 hours) + (29 respondent SROs that are not clearing agencies × 10 hours)).

Based on staff discussions with the clearing agencies prior to issuing the Proposing Release, the Commission estimated in the Proposing Release that there would be a one-time paperwork burden of 130 hours for each newly-registered clearing agency to draft and implement internal policies and procedures relating to using EFFS to submit Security-Based Swap Submissions, Advance Notices and proposed rule changes with the Commission, for a total of 780 hours (130 hours × six newly-registered clearing agencies). In addition, and based on conversations with staff from the clearing agencies prior to issuing the Proposing Release, the Commission estimated that there would be a one-time paperwork burden of 30 hours for each pre-Dodd-Frank Act clearing agency to draft and implement modifications to existing internal policies and procedures for using EFFS in order to update them for submitting Security-Based Swap Submissions and/or Advance Notices with the Commission for a total of 120 hours (30 hours × four pre-Dodd-Frank Act clearing agencies). The Commission believes, based on its experience with clearing agencies, that such internal policies and procedures will be drafted and updated by the in-house counsel at the clearing agencies. The Commission did not receive any comments on the burden estimates in the Proposing Release and is using these estimates for the rules the Commission is adopting today.

c. Proposed Rule Changes

An SRO rule change proposal generally is filed with the Commission after an SRO's staff has obtained approval of its board of directors. The time required to complete a filing varies significantly and is difficult to separate from the time an SRO spends in developing internally the proposed rule change. In a PRA analysis conducted in 2004 in connection with amendments to Rule 19b–4 and Form 19b–4 (''2004 PRA''), the Commission estimated that 34 hours is the amount of time that would be required to complete an average proposed rule change filing and 129 hours is the amount of time required to complete a novel or complex proposed rule change filing.[210] The Commission stated in the Proposing Release that it preliminarily believed that these estimates remained valid based on its experience with the filings currently received from SROs and relied on these figures to prepare the analysis in the Proposing Release.[211]

In fiscal year 2011, 25 SRO respondents filed 1,606 rule change proposals subject to the current collection of information. Of this total, and based on the Commission's experience in reviewing SRO filings and past estimates for Rule 19b–4 and Form 19b–4, the Commission estimates that 80 proposed rule changes could be characterized as novel or complex and 1,526 proposed rule changes could be characterized as average. The Commission estimates that the total annual reporting burden for filing proposed rule changes with the Commission under the amendments to Rule 19b–4 and Form 19b–4 will be 87,086 hours (((1,526/25) × 35 [212] average rule change proposals × 34 hours) + ((80/25) × 35 complex rule change proposals × 129 hours)). Thus, on average, the reporting burden for filing proposed rule changes is 38.74 hours (87,086 hours/(2,136 average rule change proposals + 112 complex rule change proposals)). The Commission made similar estimates in the Proposing Release, only using 2009 fiscal year numbers, and did not receive any comments on those estimates. Accordingly, the Commission believes the modified estimates with 2011 fiscal year numbers are appropriate and, accordingly, these estimates have been used for the rules being adopted today.

d. Security-Based Swap Submissions

The Commission stated in the Proposing Release that the time required by clearing agencies to prepare, review and submit Security-Based Swap Submissions to comply with new Rule 19b–4(o) likely would vary significantly based on the unique characteristics of each Security-Based Swap Submission and the submitting clearing agency. The Commission estimated based on previous discussions with staff from clearing agencies that the amount of time that a clearing agency would require to internally prepare, review and submit a Security-Based Swap Submission would be 140 hours. The Commission also estimated that each clearing agency would submit 20 Security-Based Swap Submissions annually based on previous discussions with staff from the clearing agencies. The Commission did not receive any comments on these estimated burdens in the Proposing Release. The Commission is modifying Rule 19b–4(o)(2) from the proposal to provide that clearing agencies that file a Security-Based Swap Submission before December 3, 2012 shall file such submission with the Commission by email. However, the Commission does not believe the requirement to submit Security-Based Swap Submissions electronically by email instead of on EFFS for a limited period of time would change the estimated amount of time for clearing agencies to prepare, review, and file these submissions since the information to be provided in the filing remains the same and the filing method would still be electronic. Accordingly, the Commission estimates that the total annual reporting burden for clearing agencies submitting Security-Based Swap Submissions electronically with the Commission under the amendments to Rule 19b–4 and Form 19b–4 will be 16,800 hours (20 Security-Based Swap Submissions × 140 hours × six respondent clearing agencies).

The Commission also estimated in the Proposing Release that a clearing agency would require 60 hours of outside legal work to assist in the process preparing, reviewing and submitting a Security-Based Swap Submission, based on previous discussions with staff from the

[210] *See* Securities Exchange Act Release No. 50486 (Oct. 4, 2004), 69 FR 60287 (Oct. 8, 2004), *supra* note 94.

[211] In 2011, the Commission submitted to OMB a request for approval of an extension of the existing collection of information provided for in Rule 19b–4 and Form 19b–4 (''2011 PRA''). *Submissions for OMB review; comment requests,* 76 FR 22740 (Apr. 22, 2011) and 76 FR 37161 (June 24, 2011). The 2011 PRA used the 2004 PRA estimates to determine the amount of time required to complete proposed rule change filings. Consistent with the 2011 PRA, the Commission has used the figures contained in the 2011 PRA analysis in calculating the PRA estimates in this final rule.

[212] This figure includes the 32 SROs registered with the Commission as of June 15, 2012 plus the additional clearing agencies that the Commission has estimated could potentially register in the future to clear security-based swaps.

clearing agencies. Assuming an hourly cost of $354 for an outside attorney,[213] the Commission estimated that the total annual cost in the aggregate for the six respondent clearing agencies to meet these requirements would be $2,548,800 (60 hours × $354 per hour for an outside attorney × 20 Security-Based Swap Submissions × six respondent clearing agencies). The Commission did not receive any comments on these estimated burdens in the Proposing Release and is using the estimates for the rules as adopted.

e. Advance Notices

In the Proposing Release, the Commission estimated that the amount of time that designated clearing agency representatives will require to internally prepare, review and electronically file each Advance Notice with the Commission to comply with Rule 19b–4(n)(1) would be 90 hours. This estimate in the Proposing Release was based on the staff's previous discussions with the clearing agencies. The Commission did not receive any comments on this estimate. The Commission is modifying Rule 19b–4(n)(1) from the proposal to provide that designated clearing agencies that file an Advance Notice before December 3, 2012 shall file such notice with the Commission by email. However, the Commission does not believe the requirement to submit Advance Notices by email for a limited period of time would change the estimated amount of time for clearing agencies to prepare, review, and electronically file the notices since the material required to be provided in the filing remains the same and the method for submitting the filing remains electronic. The Commission also estimated in the Proposing Release that two hours should be added to the time required to prepare each Advance Notice to comply with the requirement contained in new Rule 19b–4(n)(5) to provide to the Board copies of all materials submitted to the Commission relating to an Advance Notice contemporaneously with such submission to the Commission. The Commission estimated in the Proposing Release based on previous conversations with staff from clearing agencies that each designated clearing agency would submit 35 Advance Notices to the Commission annually. The Commission did not receive any comments on these estimated burdens in the Proposing Release and is using the estimates for the rules being adopted today. Accordingly, the Commission estimates that the total annual reporting burden on designated clearing agencies submitting Advance Notices electronically with the Commission pursuant to new Rule 19b–4(n) and Form 19b–4 will be 32,200 hours (35 Advance Notices × 92 hours × ten respondent clearing agencies).

In the Proposing Release, the Commission also estimated that a designated clearing agency would require 40 hours of outside legal work to assist in the process preparing, reviewing and submitting an Advance Notice with the Commission based on previous discussions with staff from the clearing agencies. Assuming an hourly cost of $354 for an outside attorney,[214] the total annual cost in the aggregate for ten respondent clearing agencies to meet these requirements would be $4,956,000 (40 hours × $354 per hour for an outside attorney × 35 Advance Notices × ten respondent clearing agencies). The Commission did not receive any comments on these estimates and is using them for the rule as adopted.

f. Summary

The Commission estimates that the total annual reporting burden for clearing agencies to internally prepare, file and submit Security-Based Swap Submissions, proposed rule changes and Advance Notices electronically with the Commission under the Rule 19b–4 and Form 19b–4 will be 136,086 hours (16,800 hours for Security-Based Swap Submissions + 32,200 hours for Advance Notices + 87,086 hours for proposed rule changes). The Commission also estimates that the total annual cost in the aggregate for the respondent clearing agencies to engage outside counsel to assist in the process of preparing, filing and submitting Security-Based Swap Submissions and Advance Notices electronically with the Commission under the new Rules 19b–4(n) and (o) and Form 19b–4 will be $7,504,800 ($2,548,800 for Security-Based Swap Submissions + $4,956,000 for Advance Notices).

3. Posting of Security-Based Swap Submissions, Advance Notices and Proposed Rule Changes on Clearing Agency Web Sites

In the Proposing Release, the Commission stated that it believes clearing agencies that were to be deemed registered under Section 17A(l) or that may be regulated by the Commission in the future to clear security-based swaps could incur some one-time costs associated with posting Security-Based Swap Submissions, Advance Notices and proposed rule changes on their Web sites. The Commission estimated that each newly-registered clearing agency would spend approximately 15 hours creating or updating its existing Web site in order to provide the capability to post these submissions online resulting in a total one-time burden of 90 hours (six respondent clearing agencies × 15 hours). Three of those clearing agencies were deemed registered under Section 17A(l) in July 2012 and were required to begin posting proposed rule changes on their Web sites pursuant to existing Rule 19b–4(l).[215] Because new Rules 19b–4(o)(5) and (n)(3) will require Security-Based Swap Submissions and Advance Notices to be posted on a clearing agencies' Web sites in the same manner as is required for proposed rule changes, the Commission does not believe these three clearing agencies would incur any additional costs to create or update their Web sites to post Security-Based Swap Submissions or Advance Notices pursuant to the new rules. Accordingly, the Commission is modifying the number of respondent clearing agencies to include only the three clearing agencies it estimates may be regulated by the Commission in the future in order to clear security-based swaps. The Commission did not receive any comments on the estimated burden in the Proposing Release regarding the number of hours to create or update a Web site and is using this estimated hours burden for the rules as adopted. The revised estimate is a one-time total burden of 45 hours (three respondent clearing agencies × 15 hours).

With respect to annual burdens, the Commission estimated in the Proposing Release that four hours would be required by a clearing agency to post a Security-Based Swap Submission on its Web site to comply with Rule 19b–4(o)(5). This figure was based on the current estimate for the requirement that SROs post proposed rule changes on their Web sites under Rule 19b–4(l) given the similarities between the two requirements.[216] The Commission estimated that the total annual reporting burden for clearing agencies to post Security-Based Swap Submissions on their Web sites would be 480 hours (20

[213] The hourly rate used for an attorney was from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by the Commission's staff to account for an 1800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[214] *See id.*

[215] 17 CFR 240.19b–4(l).

[216] *See* Securities and Exchange Commission, Submission for OMB Review, Comment Request, 76 FR 37161 (June 24, 2011). The Supporting Statement containing the detailed estimates for Rule 19b–4 and Form 19b–4 is available at: *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-3235-013.*

Security-Based Swap Submissions × four hours × six respondent clearing agencies). The Commission did not receive any comments on these estimates in the Proposing Release and is using them for the rules as adopted.

The Commission also estimated in the Proposing Release that four hours would be required by a designated clearing agency to post an Advance Notice on its Web site to comply with Rule 19b–4(n)(3). This figure was based on the current estimate for the requirement that SROs post proposed rule changes on their Web sites under Rule 19b–4(l) given the similarities between the two requirements.[217] The Commission estimated that the total annual reporting burden for designated clearing agencies to post Advance Notices on their Web sites would be 1,400 hours (35 Advance Notices × four hours × 10 respondent clearing agencies). The Commission did not receive any comments on these estimates in the Proposing Release and is using them for the rules as adopted.

The Commission estimated in the Proposing Release that four hours would be required for a designated clearing agency to comply with proposed Rule 19b–4(n)(4) and post notice on its Web site of any change to its rules, procedures or operations referred to in an Advance Notice once it has been permitted to take effect. This figure was based on the current estimate for the requirement that SROs post proposed rule changes on their Web sites under Rule 19b–4(l) given the similarities between the two requirements.[218] The Commission therefore estimated that the total annual reporting burden for designated clearing agencies to post notice on their Web sites of any changes to their rules, procedures or operations referred to in Advance Notices will be 1,400 hours (35 Advance Notices × four hours × 10 respondent clearing agencies). The Commission did not receive any comments on these estimates in the Proposing Release and is using them for the rules as adopted.

The Commission has previously provided PRA estimates with respect to the requirement in Rule 19b–4(l) that all SROs post proposed rule changes and amendments to proposed rule changes on their Web sites. The Commission does not believe the rules being adopted today will change those estimated hour burdens because those rules do not affect the current requirement that SROs post proposed rule changes on their Web sites. However, the Commission is increasing the number of respondent SROs given the increased number of clearing agencies that have been deemed registered under Section 17A(l) or that may seek to clear security-based swaps in the future. Clearing agencies registered with the Commission are SROs and are required to comply with the requirements in Rule 19b–4, including the requirement in Rule 19b–4(l) that they post proposed rule changes and amendments to proposed rule changes on their Web sites and to make any related updates. The Commission's previous PRA estimates are that SROs take four hours to post proposed rule change proposals under Exchange Act Section 19(b) and amendments on their Web sites and four hours to update the posted SRO rules on their Web sites once the proposed rules become effective.[219] There were 1,606 proposed rule changes filed with the Commission by 25 SROs in fiscal year 2011. Of these, 1,180 were approved or non-abrogated.[220] The Commission has used these numbers to estimate the total annual reporting burden for its estimate of the increased number of SROs that will post proposed rule change proposals on their Web sites and to update their posted rules on their Web sites. Specifically, the Commission divided the total number of filings received in 2011 by the 25 SROs submitting filings that year and multiplied it by the new total of 35 SROs. The new total annual reporting burden will be 15,602 hours ((1,180/25) × 35 SRO respondents) approved rules × four hours) + ((1,606/25) × 35 SRO respondents) rule change proposals × four hours)).

In summary, the Commission estimates that the total annual reporting burden for all clearing agencies to post submitted Security-Based Swap Submissions, Advance Notices, notices of changes to rules, procedures or operations referred to in Advance Notices once they take effect and proposed rule changes on their Web sites under Rule 19b–4 and Form 19b–4 will be 18,882 hours (480 hours for Security-Based Swap Submissions + 1,400 hours for Advance Notices + 1,400 hours for posting notices of changes to rules, procedures or operations referred to in Advance Notices + 15,602 hours for proposed rule changes).

4. Amendment To Conform to Section 916 of the Dodd-Frank Act

The Commission estimated in the Proposing Release that the requirement that an SRO inform the Commission of the date on which it posted a proposed rule change on its Web site (if the posting did not occur on the same day that the SRO filed the proposal with the Commission) would impose only a minimal burden, if any, on an SRO. The Commission stated in the Proposing Release that it believes that SROs currently post their proposed rule changes on their Web site on the same day on which they file them with the Commission. Further, the Commission believes that it is in the interest of an SRO to continue to do so, since prompt Web site posting triggers the requirement on the Commission to publish notice of the proposal. The new notice requirement would only be applicable in a situation where the SRO is unable to post its proposed rule change on the same day that it files it with the Commission, which the Commission expects would be an unlikely occurrence. However, because the deadline applicable to Commission publication is tied to SRO Web site posting, and the Commission has no means of ascertaining when Web site posting was made other than by receiving that information from the SRO itself, the Commission is imposing this requirement to capture necessary information to allow it to comply with Exchange Act Section 19(b), as amended by Section 916 of the Dodd-Frank Act.

Based on the Commission's experience receiving and reviewing proposed rule changes filed by SROs, the Commission estimated in the Proposing Release that SROs will fail to post proposed rule changes on their Web sites on the same day as the filing was made with the Commission in 1% of all cases, or 16 times each year. Further, the Commission estimated that each SRO will spend approximately one hour preparing and submitting notice to the Commission of the date on which it posted the proposed rule change on its Web site, resulting in a total annual burden of 16 hours.

Thus, the Commission estimated that the total annual reporting burden under Rule 19b–4 and Form 19b–4 will be 156,049 hours in the initial year and 155,334 hours thereafter.[221]

[217] *See id.*

[218] *See id.*

[219] *See id.*

[220] Previously, the Commission was able to ''abrogate'' an immediately effective proposed rule change filing filed under Section 19(b)(3)(a) of the Exchange Act, and require an SRO to re-file the proposal for consideration, notice, and public comment pursuant to Section 19(b)(2) of the Exchange Act. The Dodd-Frank Act eliminated the concept of ''abrogation.'' Instead, an immediately effective proposed rule change filing may be temporarily suspended, in which case the Commission would be required to institute proceedings to determine whether to disapprove the proposed rule change.

[221] In the initial year, the paperwork burden is calculated as follows: 120 hours (one-time paperwork burden to train newly-registered clearing

Continued

Additionally, the Commission estimated that the total annual reporting burden under new Rule 3Ca–1 will be 540 hours. The Commission did not receive any comments on these estimates in the Proposing Release and is using them for the rules as adopted.

5. New Rule 3Ca–1

Prior to issuing the Proposing Release, Commission staff contacted eight clearing agencies, including four that likely would clear security-based swaps, and would therefore be subject to a stay of the clearing requirement and related review under new Rule 3Ca–1. The Commission used these discussions to estimate the collection of information for this rule in the Proposing Release. Those estimates are discussed below; however, the clearing agencies emphasized that the estimated burdens would depend in large part on the number of stays requested annually and the scope of the information requested by the Commission in the course of the related review.

Pursuant to Exchange Act Section 3C(c)(1), the Commission on its own initiative or on the application of a counterparty may stay a clearing requirement made pursuant to Exchange Act Section 3C(a)(1) until it completes a review of the terms of the security-based swap and the clearing arrangement. The Commission is unable to estimate accurately the number of times it may stay a clearing requirement pursuant to Exchange Act Section 3C(c)(1) because it has not yet made any mandatory clearing determinations and it does not know what counterparties may object to a determination or when they would make an application for a stay. However, the Commission recognizes that there will likely be some applications for stays from clearing requirements made pursuant to a Commission determination and, for purposes of the Proposing Release, the Commission estimated there would be five applications for stays of a clearing requirement per clearing agency per year. This figure would represent one quarter of the estimated number of Security-Based Swap Submissions from each clearing agency per year, for a total of 30 applications for stays per year (5 stay applications × 6 respondent clearing agencies). The Commission did not receive any comments on this estimate in the Proposing Release and is using the same estimate for the rules as adopted.

Based on the Commission staff's discussions with the clearing agencies, the Commission estimated in the Proposing Release that a clearing agency would spend approximately 18 hours to retrieve, review, and submit the information associated with the stay of the clearing requirement. The Commission also estimated that each clearing agency would be required to provide information requested by the Commission in the course of its reviews of five requests for a stay of the clearing requirement, resulting in a total annual reporting burden of 540 hours (five stay applications × 18 hours to retrieve, review, and submit the information × six respondent clearing agencies). Further, the Commission also estimated that a clearing agency would require seven hours of outside legal work to retrieve, review, and submit the information associated with the stay of the clearing requirement. These figures were based on the Commission staff's discussions with the clearing agencies prior to issuing the Proposing Release. Assuming an hourly cost of $354 for an outside attorney,[222] the total estimated annual cost in the aggregate for the six respondent clearing agencies to meet these requirements was $74,340 (seven hours × $354 per hour for an outside attorney × five stay of clearing applications × six respondents). The Commission did not receive any comments on these estimates in the Proposing Release and is using them for the rules as adopted.

Finally, the Commission estimated in the Proposing Release that 100 hours would be required by a counterparty to a security-based swap to prepare and submit an application requesting a stay of the clearing requirement. The Commission drew a comparison between the amount of time it would take for a clearing agency to prepare a Security-Based Swap Submission and the amount of time it would take a counterparty to prepare an application of a stay of a clearing requirement, given that each filing would likely address similar issues related to the clearing of the particular security-based swap. This 100 hours estimated for the application is less than the 140 hours the Commission estimates it would take for a clearing agency to prepare a full Security-Based Swap Submission because an application for a stay would take less time to prepare than a new submission, due to the fact that some of the information addressed in the application for a stay will have already been provided with the Security-Based Swap Submission when it was published for notice and comment. As discussed above, the Commission estimated in the Proposing Release that counterparties to security-based swaps transactions would submit 30 applications requesting stays of the clearing requirement. Assuming an hourly cost of $354 for an outside attorney,[223] the total annual cost in the aggregate for the respondent counterparties to meet these requirements would be $1,062,000 (100 hours × $354 per hour for an outside attorney × 30 stay of clearing applications). The Commission did not receive any comments on these estimates in the Proposing Release and is using them for the rules as adopted.

E. Retention Period of Recordkeeping Requirements

Clearing agencies will be required to retain records of the collection of information (the manually signed signature page of the Form 19b–4, a file available to interested persons for public inspection and copying, of all Security-Based Swap Submissions, Advance Notices and proposed rule changes made pursuant to Rule 19b–4) and all correspondence and other

agency staff members to use EFFS) + 780 hours (one-time paperwork burden for each newly-registered clearing agency to draft and implement policies and procedures relating to using EFFS to submit proposed rule changes, Security-Based Swap Submissions and Advance Notices) + 120 hours (one-time paperwork burden for each pre-Dodd-Frank Act clearing agency to draft and implement policies and procedures relating to using EFFS to submit Security-Based Swap Submissions and/or Advance Notices) + 45 hours (one-time paperwork burden for each newly-registered clearing agency to create or update their existing Web sites in order to provide the capability to post proposed rule changes, Security-Based Swap Submissions and Advance Notices online) + 136,086 hours (the total annual reporting burden for all SROs to prepare, review and submit Security-Based Swap Submissions, proposed rule changes and Advance Notices with the Commission) + 18,882 hours (the total annual burden for all SROs to post Security-Based Swap Submissions, Advance Notices, notices of changes to rules, procedures or operations referred to in Advance Notices and proposed rule changes (including updates to the posted SRO rules) on their Web sites + 16 hours for SROs to notify the Commission of the date on which it posted a proposed rule change on its Web site = 156,049 hours. After the initial year, the paperwork burden is calculated as follows: 136,086 hours (the total annual reporting burden for all SROs to prepare, review and submit Security-Based Swap Submissions, proposed rule changes and Advance Notices with the Commission) + 18,882 hours (the total annual burden for all SROs to post Security-Based Swap Submissions, Advance Notices, notices of changes to rules, procedures or operations referred to in Advance Notices and proposed rule changes on their Web sites) + 350 hours (the total annual burden of training new staff members and updating the training of existing staff members to use EFFS) + 16 hours for SROs to notify the Commission of the date on which it posted a proposed rule change on its Web site = 155,334 hours.

[222] The hourly rate for an outside attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[223] *See id.*

communications reduced to writing (including comment letters) to and from such SROs concerning any Security-Based Swap Submissions, Advance Notices and proposed rule changes, for a period of not less than five years, the first two years in an easily accessible place, according to the current recordkeeping requirements set forth in Exchange Act Rule 17a–1.[224]

The Commission believes that maintaining the physical signature pages, Security-Based Swap Submissions, Advance Notices, proposed rule changes and all related correspondence and other communications would enable interested parties, including the Commission, to access a record of a particular Security-Based Swap Submission, Advance Notice or proposed rule change that was made. The Commission notes that the retention of the physical signature page is an existing maintenance requirement for SROs.[225]

F. Collection of Information is Mandatory

Any collection of information pursuant to Rule 19b–4 and Form 19b–4 to require electronic submission of Security-Based Swap Submissions, Advance Notices and proposed rule changes with the Commission is a mandatory collection of information. Any collection of information pursuant to Rule 19b–4 to require Web site posting by clearing agencies of their Security-Based Swap Submissions, Advance Notices and proposed rule changes also is a mandatory collection of information. Any collection of information pursuant to new Rule 3Ca–1 in connection with the application for the stay of the clearing requirement is a mandatory collection of information. Any collection of information pursuant to Rule 19b–4 to require an SRO to inform the Commission of the date on which it posted a proposed rule change on its Web site (if such date is not the same day that it filed the proposal with the Commission) also is a mandatory collection of information.

G. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information pursuant to Rule 19b–4, Form 19b–4 and new Rule 3Ca–1 will not be kept confidential.[226] The posting of Security-Based Swap Submissions, Advance Notices and proposed rule changes would be publicly available on the SRO's Web site.

IV. Economic Analysis

The rules that the Commission is adopting today are largely concerned with implementing certain processes for clearing agencies and security-based swap counterparties to submit filings to the Commission. These include Security-Based Swap Submissions, Advance Notices, and requests for a stay of an existing mandatory clearing requirement. The economic analysis set forth below focuses on the economic considerations related to those processes. The analysis does not seek to address the full range of considerations that may result from the Commission's future actions, such as determinations based on the information submitted in specific filings. The Commission believes instead that these considerations are more appropriately addressed at the time such future determinations are made as each filing may raise unique issues that are unrelated to the submission process. The Commission, however, recognizes that the process rules are being adopted in the larger context of substantive reforms to the financial system pertaining to the clearing of securities. The Commission is mindful of the potential economic consequences of this larger substantive effort in considering the more limited economic consequences of these final procedural rules. In particular, the Commission is cognizant of the potential impact future determinations made with respect to mandatory clearing could have on clearing practices, given that central clearing of security-based swaps is a relatively recent development and much of the current security-based swaps market is cleared on a bilateral basis.

In recognition of the larger context within which the final rules are being adopted, this analysis begins with a review of the Dodd-Frank Act's new clearing requirements, current clearing practices, and views on the new clearing requirements, including the broader economic considerations that those requirements, practices, and views may suggest. This discussion then proceeds with an analysis of each procedure established by the final rules—in particular, Security-Based Swap Submissions, stays related to the review of mandatory clearing determinations, and Advance Notices—and the specific economic considerations associated with each procedure.

A. Background

1. Dodd-Frank Act Requirements for Clearing Security-Based Swaps

As described above, the Dodd-Frank Act was enacted to, among other things, mitigate systemic risk and promote the financial stability of the U.S. by improving accountability and transparency in the financial system and by providing for enhanced regulation and oversight of institutions designated as systemically important.[227] Specifically, Title VII of the Dodd-Frank Act amended the Exchange Act to require that transactions in security-based swaps must be cleared through a clearing agency that is registered with the Commission (or exempt from registration) if they are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies.[228] As one means of accomplishing this objective, the Dodd-Frank Act seeks to ensure that, wherever possible and appropriate, derivatives contracts formerly traded exclusively in the OTC market be centrally cleared.[229] Central clearing mitigates counterparty credit risk among dealers and other institutions by shifting that risk from individual counterparties to CCPs, thereby helping protect counterparties from each other's potential failures. Central clearing also requires that mark-to-market pricing and margin requirements be applied in a consistent manner.[230] CCPs generally use liquid margin collateral to manage the risk of a CCP member's failure, and rely on the accuracy of their margin calculations and their access to that liquid collateral to protect against sudden movements in market prices. A CCP that stands between counterparties

[224] SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a–6 of the Act. 17 CFR 240.17a–6.

[225] Rule 19b–4(j) currently requires SROs to sign Form 19b–4 electronically in connection with filing a proposed rule change and to retain a copy of the signature page in accordance with Rule 17a–1. Under the adopted rules, Rule 19b–4(j) would be modified such that it would apply also to Security-Based Swap Submissions and Advance Notices.

[226] While there is a general requirement that information be made publicly available, SROs may request confidential treatment of certain information in accordance with the provisions of the Freedom of Information Act. 5 U.S.C. 552.

[227] *See supra* part I. *See also* Pub. L. 111–203, Preamble.

[228] *See* 15 U.S.C. 78c–3(a)(1) (as added by Section 763(a) of the Dodd-Frank Act).

[229] *See supra* note 5 and accompanying text.

[230] *See* Christopher Culp, *OTC-Cleared Derivative: Benefits, Costs, and Implications of the "Dodd-Frank Wall Street Reform and Consumer Protection Act,* (Journal of Applied Finance No. 2, 2010), available at: *http://www.rmcsinc.com/articles/OTCCleared.pdf.*

for OTC derivatives is generally perceived to decrease systemic risk.[231]

Exchange Act Section 3C(b), which was added pursuant to Title VII of the Dodd-Frank Act, requires the Commission to adopt rules for a clearing agency's submission of security-based swaps (or any group, category, type or class of security-based swaps) that a clearing agency plans to accept for clearing and to determine the manner of notice the clearing agency must provide to its members of such Security-Based Swap Submission.[232]

2. Current Clearing Practices in the Security-Based Swap Market

Prior to the enactment of the Dodd-Frank Act, there was no provision in the Exchange Act or any other laws in the U.S. for the mandatory clearing of OTC derivatives. Although initiatives related to central clearing had been considered before 2008, certain events of September 2008 brought a new focus on CDS as a source of systemic risk and contributed to a more general recognition that CCPs could play a role in helping to manage bilateral counterparty credit risk in OTC CDS.[233] The failure of large financial institutions highlighted the concern that bilateral swap agreements can be a source of systemic risk by, among other things, increasing the likelihood that financial distress in one dealer will contribute to the financial distress in others—a risk that can be mitigated when transactions are cleared by a creditworthy central counterparty that becomes the seller to every clearing member buyer and the buyer to every clearing member seller.[234]

In November 2008, the Commission, in consultation and coordination with the Board and the CFTC, took steps to help facilitate the prompt development of CCPs for OTC derivatives.[235] Specifically, the Commission authorized the clearing of OTC security-based swaps by permitting certain clearing agencies to clear CDS on a temporary conditional basis.[236] As the Commission and other regulatory agencies monitored the activities of those clearing agencies, a significant volume of interdealer OTC CDS transactions and a smaller volume of dealer to non-dealer OTC CDS transactions were centrally cleared on a voluntary basis.[237] As discussed in greater detail below, the level of voluntary clearing in swaps and security-based swaps has steadily increased since that time. Although the volume of interdealer CDS cleared to date is quite large,[238] many security-based swap transactions are still ineligible for central clearing, and many transactions in security-based swaps eligible for clearing at a CCP continue to settle bilaterally.

Voluntary clearing of security-based swaps in the U.S. is currently limited to CDS products. Central clearing of security-based swaps began in March 2009 for index CDS products, in December 2009 for single-name corporate CDS products, and in November 2011 for single-name sovereign CDS products. At present, there is no central clearing in the U.S. for security based swaps that are not CDS products, such as those based on equity securities. The level of clearing activity appears to have steadily increased as more products have become eligible to be cleared. One illustration of this apparent trend is Figure 1 below, which shows the gross notional volumes of cleared transactions reported by ICE Clear Credit for U.S. CDS index and U.S. single-name corporate CDS products[239] compared to the *total* gross notional volumes of (a) all transactions for reference entities or indexes, as applicable, that are accepted for clearing in the corresponding calendar year (cleared and uncleared), and (b) the total market, that is, all transactions in all reference underlyings of the same category (single name or index), whether accepted for clearing or not by ICE Clear Credit, in each case calculated based on price-forming, gold record transactions submitted to the Depository Trust and Clearing Corporation's Trade Information Warehouse (''DTCC–TIW'').[240]

[231] *See, e.g.,* Darrell Duffie and Haoxiang Zhu, *Does a Central Clearing Counterparty Reduce Counterparty Risk?,* (Stanford University, Working Paper, 2010), available at: *http://www.stanford.edu/~duffie/DuffieZhu.pdf;* Nout Wellink, *Mitigating system risk in OTC derivatives markets,* (Banque de France, Financial Stability Review, No. 14—Derivatives—Financial innovation and stability, July 2010), available at: *http://www.banque-france.fr/fileadmin/user_upload/banque_de_france/publications/Revue_de_la_stabilite_financiere/etude15_rsf_1007.pdf;* and Manmohan Singh, *Collateral, Netting and System Risk in the OTC Derivatives Market,''* (International Monetary Fund, Working Paper, 2009), available at: *http://www.imf.org/external/pubs/ft/wp/2010/wp1099.pdf.*

[232] *See* 15 U.S.C. 78c–3(b)(2)(A) and (5) (as added by Section 763(a) of the Dodd-Frank Act).

[233] *See, e.g.,* Testimony of Erik Sirri, Director of the Division of Trading and Markets, Securities and Exchange Commission, before the U.S. House of Representatives, Committee on Agriculture, (Nov. 20, 2008) (''In light of the problems involving AIG, Lehman, Fannie, Freddie, and others, attention has focused on the systemic risks posed by CDS * * * A [CCP] for CDS could be an important step in reducing the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts.''), available at: *http://www.sec.gov/news/testimony/2008/ts112008ers.htm.* The President's Working Group on Financial Markets made the central clearing of OTC derivatives a top policy objective in 2008. *See* Policy Objectives for the OTC Derivatives Market (Nov. 14, 2008), available at: *http://www.treasury.gov/resource-center/fin-mkts/Documents/policyobjectives.pdf; see also* Policy Statement on Financial Market Developments (Mar. 13, 2008), available at: *http://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolicystatemktturmoil_03122008.pdf;* and Progress Update (Oct. 2008), available at: *http://www.treasury.gov/resource-center/fin-mkts/Documents/q4progress%20update.pdf.*

[234] *See supra* notes 10–11 and accompanying text.

[235] On November 14, 2008, the Commission executed a Memorandum of Understanding with the Board and CFTC that established a framework for consultation and information sharing on issues related to central counterparties for the OTC derivatives market. *See http://www.sec.gov/news/press/2008/2008-269.htm.*

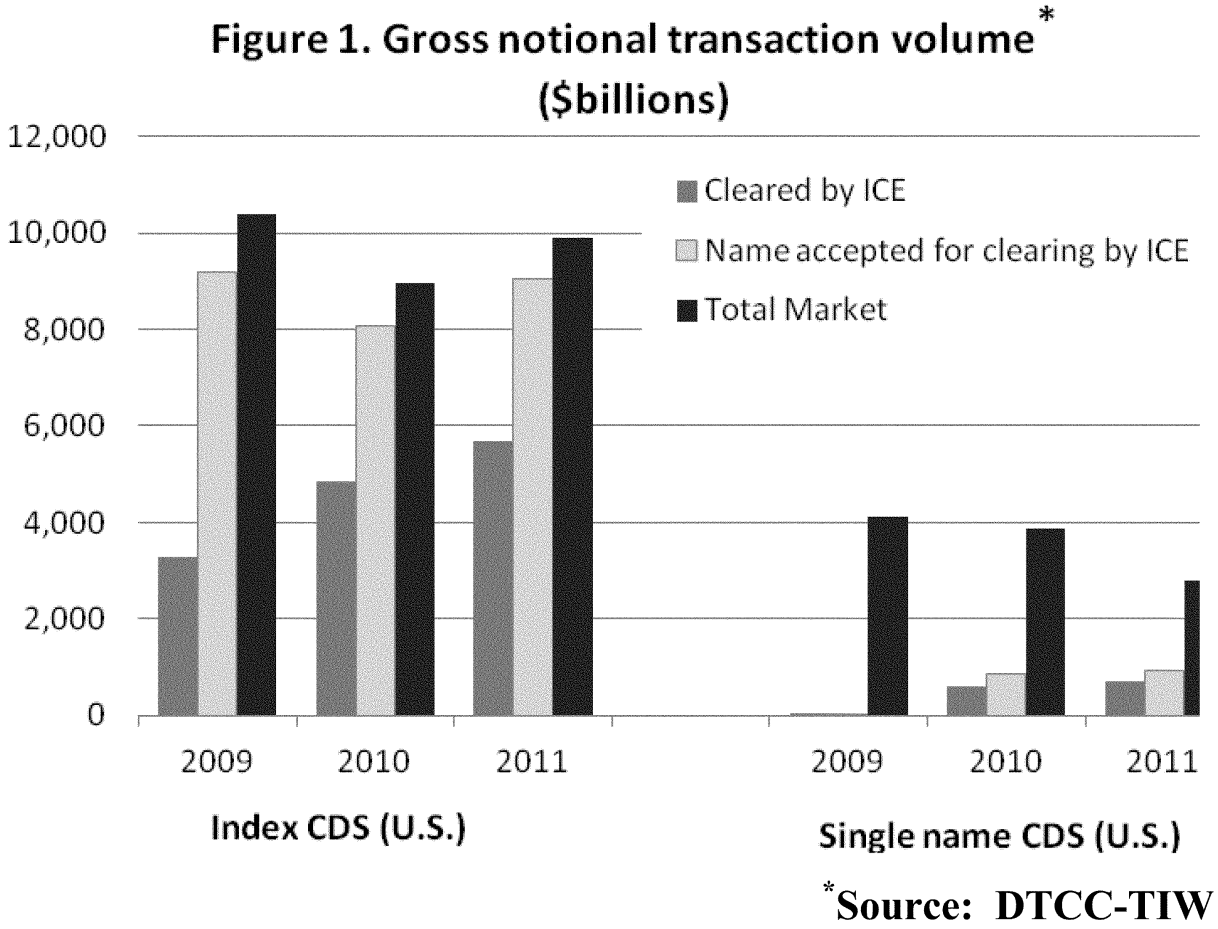
[236] The Commission authorized five entities to clear credit default swaps. *See supra* note 205.

[237] Voluntary CCP clearing grew out of a series of meetings beginning in September 2005 hosted by the Federal Reserve Bank of New York with major market participants and their domestic and international supervisors for the purpose of discussing problems in the processing of credit default swaps, and related risk management and control issues. *See http://www.ny.frb.org/newsevents/news/markets/2005/an050915.html.* In June 2008 the attendees agreed to an agenda for improvement in the derivatives market infrastructure that included ''developing a central counterparty for credit default swaps that, with a robust risk management regime, can help reduce systemic risk.'' *See http://www.ny.frb.org/newsevents/news/markets/2008/ma080609.html; see also https://www.theice.com/marketdata/reports/ReportCenter.shtml.*

[238] As of March 31, 2012, ICE Clear Credit had cleared approximately $15.4 trillion notional amount of CDS contracts based on indices of securities, approximately $1.4 trillion notional amount of CDS contracts based on individual reference entities or securities and $151 billion notional amount of CDS contracts based on sovereigns. As of March 31, 2012, ICE Clear Europe had cleared approximately €7.7 trillion notional amount of CDS contracts based on indices of securities and approximately €1.2 trillion notional amount of CDS contracts based on individual reference entities or securities.

[239] These amounts are based on information reported by ICE Clear Credit on its public Web site and are based on ''price forming transactions.'' *See infra* note 240. This includes the clearing of trades entered into on the same day as the trade was executed as well as the clearing of trades entered into in prior periods that were not previously cleared. These amounts do not include trades that result from the compression of trades previously submitted for clearing. *See https://www.theice.com/marketdata/reports/ReportCenter.shtml#report/26.* ICE Clear Credit describes portfolio compression as a process that ''reduces the overall notional size and number of outstanding contracts in credit derivative portfolios without changing the overall risk profile or present value of the portfolios. This is achieved by terminating existing trades and replacing them with a smaller number of new replacement trades that carry the same risk profile and cashflows as the initial portfolio, but require a smaller amount of regulatory capital to be held against the positions.'' *See https://www.theice.com/post_trade_processing.jhtml.* The CME Group also clears CDS index products and has reported clearing $144 billion in gross notional volumes of transactions since inception, with $21 billion in open interest as of the end of 2011. *See http://www.cmegroup.com/trading/cds/.* These volumes are small relative to total market activity and are not included in Figure 1.

[240] ''Price-forming transactions'' include all new trades and assignments, increases, and terminations of previously executed trades. Trades terminated or



*Source: DTCC-TIW

Figure 1 shows that U.S.-based index CDS products comprise a greater proportion of the CDS market than U.S. single-name corporate CDS products and account for the bulk of current clearing activity in U.S. CDS transactions. The proportion of transactions in names accepted for clearing that are ultimately cleared also appears to be higher in U.S.-based index CDS products than in U.S. corporate single-name CDS products. In calendar years 2010 and 2011, Figure 1 indicates that 90% of the total gross notional volume of transactions in index names was accepted for clearing as of the end of each calendar year and that cleared index transactions correspond to more than 50% of the total gross notional volume of index trades during the same period. By contrast, the figure suggests that the proportion of transactions in accepted names in U.S. single-name corporate CDS was only 33% during 2011, with cleared transactions during the same year totaling only 25% of the total trades during the same period.

Table 1, below, provides more detail of the data summarized in Figure 1. The Table reports the proportion of gross notional market activity in names accepted for clearing and the proportion of gross notional market activity that was cleared. Because a security-based swap may have been accepted for clearing only late in the calendar year, two measures of transactions that were ''accepted for clearing'' are provided, which differ by when the applicable reference underlying became accepted for clearing. The first measure, and the measure included in Figure 1, includes all transaction volume in names accepted for clearing at any time during the calendar year, whether or not a trade was accepted for clearing at the time of its execution.[241] This measure represents an upper bound for the potential level of clearing—*i.e.,* the level that could have been achieved if all trades in products accepted for clearing had in fact been submitted for clearing and there were no additional constraints on clearing eligibility such as those described above (*e.g.,* a counterparty is not a member of a CCP that accepts the product in question for clearing). The second measure includes only transaction volume in names accepted for clearing at the time of trade execution.[242] This measure accounts for the fact that although transactions executed in names prior to the name being accepted for clearing can be cleared later in the same calendar year through ''backloading,'' names accepted for clearing towards the end of the year allow less time for this to occur. Comparing these two measures within a year and across years measures (a) the

entered into in connection with a compression exercise and expiration of a contract at maturity are not considered price-forming and therefore excluded. Transactions reported to the DTCC–TIW used for this analysis considers all global activity, including transactions wholly between foreign counterparties.

[241] This calculation was performed by staff in the Division of Risk, Strategy, and Financial Innovation by totaling the sum of price forming transactions reported to DTCC in the calendar year for Index and single-name corporate CDS products that match the list of names accepted for clearing at ICE Clear Credit during the same period. *See https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Clearing_Eligible_Products.xls*

[242] This calculation was performed by staff in the Division of Risk, Strategy, and Financial Innovation by totaling the sum of price forming transactions reported to DTCC in the calendar year for Index and single-name corporate CDS products that match the list of names accepted for clearing at ICE Clear Credit, including only those transactions executed following the accepted for clearing date reported by ICE Clear Credit.

increase in percentage from 2009 to 2011 in the volume of new trades in names that have ''accepted for clearing'' status, and (b) the increase in percentage in the volume of new transactions that are actually being cleared.

TABLE 1—CLEARED TRADES AND ACCEPTED TRADES AS A PERCENTAGE OF GROSS NOTIONAL TRANSACTION VOLUME

	U.S. Index CDS			U.S. Single name CDS		
	2009	2010	2011	2009	2010	2011
Gross notional volume ($ billions)	10,400	8,900	9,900	4,100	3,900	2,800
Percent of gross notional in names accepted for clearing						
—at calendar year end	88%	90%	91%	1%	23%	33%
—at time of trade execution	55%	87%	91%	0%	16%	29%
Cleared transactions: % of gross notional	32%	54%	57%	0%	16%	25%

One important limitation of the calendar year snapshots is that the volumes of cleared transactions reported by ICE Clear Credit likely overstate the percentages of total market activity that are cleared in a particular calendar year because many of the trades submitted for clearing to ICE Clear Credit are bilateral transactions entered into in a prior calendar year before ICE Clear Credit began clearing the particular security-based swap. Such transactions were submitted for clearing retroactively—through a process referred to as ''backloading''—causing the termination of the original trade and the creation of two new trades with ICE Clear Credit, both of which are reported to DTCC–TIW by ICE Clear Credit as cleared transactions, but only one of which is reported for the purpose of calculating the clearing volume reported in Figure 1. Until April 2011, all newly cleared security-based swaps were submitted for clearing in this manner because same-day clearing was not available. Since April 2011, clearing members have been able to submit new trades in security-based swaps for clearing on the same day the counterparties enter into the trade. With same-day clearing, the trade is first submitted to the CCP for clearing, and the CCP then reports it to the DTCC–TIW as a single transaction. However, some backloading will likely continue to occur as long as CCPs continue to expand the roster of security-based swaps that they accept for clearing, making more past trades eligible for backloading.

Although the volume of cleared CDS transactions appears to have steadily increased over time, there is still a large proportion of transactions in security-based swaps that are accepted for clearing by a CCP but that are nevertheless not actually cleared, particularly with respect to U.S. Index CDS. Currently, only eligible trades where both parties request the CCP to clear the transaction will be cleared. Eligible trades include only those where both counterparties are members of the clearing agency and the trade has ''accepted for clearing'' status at that agency. Because clearing is currently done on a voluntary basis, if both parties do not request the CCP to clear the transactions, then the transaction is not cleared. There may be a number of reasons why one counterparty to a security-based swap transaction may choose not to clear that transaction. For example, some counterparties may so choose because they want to avoid any additional transaction costs or transparency associated with clearing at a CCP. Other counterparties may wish to clear a transaction in a name accepted for clearing by a CCP but may not be eligible for membership in the CCP or may not have a correspondent clearing arrangement in place with a member of the CCP. To these counterparties, clearing is not available for trades that are otherwise eligible to be cleared when executed by other counterparties. It is also possible for counterparties to transact in a currency other than U.S. dollars in a name that is accepted for clearing; use of a currency other than U.S. dollars makes the trade not eligible to be cleared. Finally, because prior to April 2011 clearing was performed exclusively on a backloading basis, some trades have not been cleared because they may have been subject to portfolio compression or otherwise terminated prior to the option to submit the trade for clearing becoming available.

3. Views on Clearing Requirements for Security-Based Swaps

Taken together, while the Commission is mindful of the limitations discussed above, these data suggest that clearing of security-based swaps has been increasing, but significant segments of the security-based swap market remain uncleared, even where a CCP is available to clear the product in question on a voluntary basis. Due in part to this data, the Commission recognizes that mandatory clearing determinations made pursuant to Exchange Act Section 3C(a)(1) could alter current clearing practices at the time such determinations are made. One potential consequence of determinations that require mandatory clearing for certain security-based swaps could be a higher level of clearing for such security-based swaps than would take place under a voluntary system. Where the amount of clearing taking place under a voluntary system is significantly different from the level of clearing that would take place if trading in a product were mandatory and where such difference marks a shift in existing market clearing practices, the mandatory clearing determination could potentially have a material economic impact.

New Rule 19b–4(o) and the corresponding amendments to Form 19b–4 focus largely on the process for how a clearing agency is required to make Security-Based Swap Submissions. Interested parties, including a number of academics, have expressed their views on the potential impact of the underlying clearing determinations that will be made by the Commission in response to Security-Based Swap Submissions or pursuant to the Commission's own initiative. While these parties generally agree that a well-managed CCP would help to mitigate counterparty credit risk in the security-based swaps markets, their views vary on how effective a clearing requirement would be in controlling risk to the financial system. For example, some believe that central clearing is a core feature of the Dodd-Frank Act and is intended to mitigate systemic risk. According to this view, there should be as much central clearing of security-based swaps as possible to fulfill the purpose of the Dodd-Frank Act.[243]

[243] *See, e.g.,* Swaps and Derivatives Market Association, ''Lessening Systemic Risk: Removing Final Hurdles to Clearing OTC Derivatives'', (available at: *http://media.ft.com/cms/fe51a538-78d7-11df-a312-00144feabdc0.pdf*) (''[m]andating the clearing of all standardized OTC derivatives

Others contend that concentrating the risk of numerous bilateral counterparties in a single CCP (or a small number of CCPs) could introduce risks and incentives that may not otherwise exist. For example, they believe that risk sharing through a central counterparty may encourage excessive risk taking if the costs of imprudent decisions by one clearing member are borne by other clearing members, and generally would not be more effective in mitigating systemic risk than bilateral clearing arrangements between individual firms.[244] Moreover, at least one party believes this moral hazard problem could be exacerbated to the extent that CCPs are viewed as too important to fail and subject to bailout remedies that benefit all CCP members.[245]

Some market participants, furthermore, are concerned that requiring central clearing of security based swaps may entail unnecessary costs. One commenter stated that an ''inappropriate imposition of mandatory clearing requirements could also adversely affect liquidity in the relevant security-based swap(s) and similarly deter use of otherwise optimal risk management products.''[246] In this commenter's view, ''[w]hile sound, centralized clearing affords clear benefits, it should be noted that centralized clearing also entails increased operational and collateral costs.''[247] According to this commenter, these additional costs underscore the importance of the Commission ''strik[ing] an appropriate balance in evaluating the relevant statutory standards applicable to a mandatory clearing determination, and weigh[ing] the relevant factors and market impacts with great care.''[248]

4. Overview of Statutory Requirements

Exchange Act Section 3C(b) requires the Commission to adopt rules for a clearing agency's submission of security-based swaps (or any group, category, type or class of security-based swaps) that a clearing agency plans to accept for clearing and to determine the manner of notice the clearing agency must provide to its members of such Security-Based Swap Submission.[249] In addition, Section 806(e)(1)(B) of the Clearing Supervision Act requires each Supervisory Agency to adopt rules, in consultation with the Board, that define and describe when a designated financial market utility is required to file an Advance Notice with its Supervisory Agency.[250] To satisfy these requirements, the Commission is today adopting new Rules 19b–4(n) and (o) and making corresponding amendments to Form 19b–4. In addition, Exchange Act Section 3C(c)(4) requires the Commission to adopt rules, pursuant to its authority to stay a mandatory clearing requirement, for reviewing a clearing agency's clearing of a security-based swap (or any group, category, type or class of security-based swaps) that the clearing agency has accepted for clearing.[251] Today the Commission is adopting new Rule 3Ca–1 to comply with this requirement. In addition, Exchange Act Section 3C(d)(1), which is the basis on which the Commission is adopting new Rule 3Ca–2, directs the Commission to prescribe rules (and interpretations of rules) the Commission determines to be necessary to prevent evasions of the clearing requirements.[252] Finally, Section 916 of the Dodd-Frank Act amended Exchange Act Section 19(b) the Dodd-Frank Act to provide for new deadlines by which the Commission must publish and act upon a proposed rule change submitted by an SRO.[253] Accordingly, the Commission is adopting amendments to Rule 19b–4 and Form 19b–4 to implement conform the rule and form to these new requirements.

B. Analysis of Final Procedural Rules

The Commission is sensitive to the economic effects of all of the rules it is adopting today, including the costs and benefits of those rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion the Commission exercises in implementing the mandates. The Commission requested comment on all aspects of the costs and benefits of the proposal, including any effect the proposed rules may have on efficiency, competition, and capital formation.

The first procedure the Commission is adopting implements the requirement of Exchange Act Section 3C(b) to promulgate rules for a clearing agency's Security-Based Swap Submissions and to determine the manner of notice the clearing agency must provide to its members of such Security-Based Swap Submission.[254] The Commission also is adopting two additional process-related rules related to the mandatory clearing of security-based swaps that are contemplated by the Dodd-Frank Act. Specifically, pursuant to Exchange Act Section 3C(c)(1), new Rule 3Ca–1 establishes a procedure for staying a mandatory clearing requirement and for the Commission's subsequent review of the terms of the security-based swap and the clearing arrangement. Separately, new Rule 3Ca–2, adopted pursuant to the anti-evasion authority granted to the Commission by Exchange Act Section 3C(d)(1), clarifies that the phrase ''submits such security-based swap for clearing to a clearing agency'' found in Exchange Act Section 3C(a)(1)—which establishes the mandatory clearing requirement for security-based swaps—means that the security-based swap subject to the clearing requirement must be submitted for central clearing to a clearing agency that functions as a CCP.

In adopting these rules, the Commission considered the procedural rules recently adopted by the CFTC pursuant to the mandatory clearing requirement in new Section 2(h) of the Commodity Exchange Act, as added by Section 723(a)(3) of the Dodd-Frank Act.[255] The procedural rules adopted by the CFTC included, among other things, a rule for the submission of swaps by a DCO to the CFTC for a mandatory

without exemptions would lead to broad adoption of CCPs, thus reducing systemic risk.'').

[244] *See, e.g.,* Craig Pirrong, *Mutualization of Default Risk, Fungibility, and Moral Hazard: The Economics of Default Risk Sharing in Cleared and Bilateral Markets,* available at: *http://business.nd.edu/uploadedFiles/Academic_Centers/Study_of_Financial_Regulation/pdf_and_documents/clearing_moral_hazard_1.pdf* (University of Houston, Working Paper, 2010) (''[c]learing of OTC derivatives has been touted as an essential component of reforms designed to prevent a repeat of the financial crisis. A back-to-basics analysis of the economics of clearing suggests that such claims are overstated, and that traditional OTC mechanisms may be more efficient for some instruments and some counterparties.''). *See also Derivatives Clearinghouses: Opportunities and Challenges: Hearing Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Securities, Insurance, and Investment,* 112th Cong. (2011) (statement of Chester Spatt) (''it is unclear whether the extent of use of clearinghouses will ultimately lead to a reduction in systemic risk in the event of a future crisis.'').

[245] *See* Pirrong, *supra* note 244.

[246] ISDA Letter at 2–3.

[247] *See id.* Although the comment was submitted in response to the proposed process rule, the substance of the comments focused on the statutory requirements of Exchange Act Section 3C, including the Commission's review of security-based swaps in order to determine whether the Commission should impose a mandatory clearing requirement (either pursuant to a Commission-initiated Review or a Security-Based Swap Submission).

[248] *See id.*

[249] *See* 15 U.S.C. 78c–3(b)(2)(A) and (5) (as added by Section 763(a) of the Dodd-Frank Act).

[250] *See* 12 U.S.C. 5465(e)(1)(B) (as added by Title VIII).

[251] *See* 15 U.S.C. 78c–3(c)(4) (as added by Section 763(a) of the Dodd-Frank Act).

[252] *See* 15 U.S.C. 78c–3(d)(1) (as added by Section 763(a) of the Dodd-Frank Act).

[253] *See* 15 U.S.C. 78s(b) (as amended by Section 916 of the Dodd-Frank Act).

[254] *See* 15 U.S.C. 78c–3(b)(2)(A) and (5) (as added by Section 763(a) of the Dodd-Frank Act).

[255] *See* Section 2(h) of the CEA, 7 U.S.C. 2(h) (as added by Section 723(a) of the Dodd-Frank Act).

clearing determination.[256] Given the similarity between the clearing requirements for swaps and security-based swaps under the CEA and the Exchange Act, respectively, the Commission carefully reviewed the rules adopted by the CFTC in formulating the rules the Commission is adopting today. Specifically, the Commission considered the information required by the CFTC for swap submissions filed by DCOs in new Regulation 39.5.[257] The Commission believes that these information requirements are substantially similar to the information the Commission is requiring in its rules, or that it may request in connection with a Security-Based Swap Submission. Similar to the rules the Commission is adopting today, Regulation 39.5(b) requires that a DCO submit information relating to the five factors the CFTC must consider in making a mandatory clearing determination.[258] Additionally, Regulation 39.5(b) requires that DCOs submit detailed information relating to the swap and the risk management practices of the DCO.[259] The Commission did not add such additional information requirements in the text of the rules being adopted today in order to retain the ability to evaluate the information needed on a case-by-case basis; however, the Commission specifically provided for the ability to request such additional information in connection with each Security-Based Swap Submission and, as previously indicated, the Commission may require production of such information to the extent it believes such information is relevant to the mandatory clearing determination.

The rules the Commission is adopting also implement certain process-related provisions of the Clearing Supervision Act. Among other things, Section 806(e) of the Clearing Supervision Act requires any financial market utility designated by the Council as systemically important to file 60 days advance notice of changes to its rules, procedures or operations that could materially affect the nature or level of risk presented by the financial market utility. Specifically, the Commission is adopting new Rule 19b–4(n) and corresponding amendments to Form 19b–4 to set forth the process by which a designated clearing agency (for which the Commission is the Supervisory Agency) must file Advance Notices with the Commission.

Finally, the Commission is adopting technical, conforming and clarifying amendments to Rule 19b–4 and Form 19b–4 to conform the rule and form with new deadlines and approval, disapproval and temporary suspension standards with respect to proposed rule changes filed under Exchange Act Section 19(b), as modified by Section 916 of the Dodd-Frank Act.

The principal benefit of the final rules is that they will facilitate the operation of certain substantive regulations contemplated by the Dodd-Frank Act. Specifically, as described above, the Dodd-Frank Act establishes a number of reforms related to the substantive regulation of securities clearing including, for example, with respect to the mandatory clearing of security-based swaps and enhanced oversight of systemically important financial market utilities. While the final rules do not themselves implement these substantive reforms, they do establish certain processes that clearing agencies and security-based swap counterparties must follow in order for the broader substantive regulations to proceed.

For example, Exchange Act Sections 3C(b)(2)(A) and (b)(5) require the Commission to adopt rules for a clearing agency's submission of security-based swaps (or any group, category, type or class of security-based swaps) that a clearing agency plans to accept for clearing and to determine the manner of notice the clearing agency must provide to its members of such Security-Based Swap Submission.[260] The Commission is then required to make a determination, pursuant to Exchange Act Section 3C(b)(2)(C)(ii), whether the security-based swap described in the submission is required to be cleared (*i.e.,* subject to mandatory clearing). New Rule 19b–4(o) and the corresponding amendments to Form 19b–4, while not addressing the underlying mandatory clearing determinations, will facilitate such determinations by providing registered clearing agencies with, among other things, information as to what must be included in a Security-Based Swap Submission and a mechanism for transmitting the submission to the Commission. The rules also specify how and when a clearing agency is required to provide notice of a Security-Based Swap Submission to its members and the public.

Similarly, Section 806(e) of the Clearing Supervision Act requires the Commission, in consultation with the Board, to adopt rules that define and describe when a designated clearing agency is required to file with the Commission notice of any change to its rules, procedures or operations that could materially affect the nature or level of risk presented by the clearing agency.[261] Upon receiving an Advance Notice, the Commission is required, subject to certain exceptions, to (i) consult with the Board before taking any action on, or completing its review of, the change referred to in the Advance Notice[262] and (ii) notify the designated clearing agency of any objection to a proposed change described in the notice within 60 days of receipt.[263] Although new Rule 19b–4(n) and the corresponding amendments to Form 19b–4 do not address how the Commission will ultimately determine whether to object to a particular change, the final rules will facilitate such determinations by helping designated clearing agencies determine when they must file Advance Notices and what information must be included therein. The final rules also provide a method of submission for Advance Notices that should already be familiar to clearing agencies and establish certain requirements related to how the clearing agency must make the Advance Notice available to the public.

Finally, Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[264] In addition, Section 23(a)(2) of the Exchange Act[265] requires the Commission, when adopting rules and regulations under the Exchange Act, to consider the impact such new rule would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Because these rules focus on the process by which clearing agencies

[256] *See* 76 FR 44464 (Jul. 26, 2011).

[257] *See* 17 CFR 39.5(b). Regulation 39.5(b) sets out the process for DCOs to follow when submitting a swap, or a group, category, type or class of swaps to the CFTC, including what information a DCO must include in the submission to assist the CFTC in its review.

[258] *See* 17 CFR 39.5(b)(3)(ii)(A)–(E).

[259] *See* 17 CFR 39.5(b)(3)(iii)–(ix).

[260] *See* 15 U.S.C. 78c–3(b)(2)(A) and (5) (as added by Section 763(a) of the Dodd-Frank Act).

[261] *See* 12 U.S.C. 5465(e)(1)(B) (as added by Title VIII).

[262] *See* 12 U.S.C. 5465(e)(4) (as added by Title VIII).

[263] *See* 12 U.S.C. 5465(e)(1)(E).

[264] 15 U.S.C. 78c(f).

[265] 15 U.S.C. 78w(a)(2).

make Security-Based Swap Submissions, the Commission believes that the rules being adopted today will have a minimal, if any, impact on efficiency, competition, and capital formation. Although in some cases process rules themselves can have a significant impact on efficiency, competition, and capital formation, in this context, the rules are intended to simply facilitate implementation of the larger statutory regime regarding mandatory clearing. The Commission believes the rules are being implemented in a cost-efficient way consistent with the statute (*e.g.,* leveraging existing infrastructure and procedures familiar to clearing agencies), but the rules themselves should have a minimal impact on efficiency, competition, and capital formation. The Commission nevertheless recognizes that its subsequent mandatory clearing determinations, which will be based on the particular facts and circumstances of each individual Security-Based Swap Submission, could potentially have an impact on efficiency, competition, and capital formation in the security-based swap market.

1. Analysis of Final Rules Related to Security-Based Swap Submissions

Exchange Act Section 3C requires each clearing agency that plans to accept a security-based swap for clearing to file a Security-Based Swap Submission with the Commission for a determination by the Commission of whether a security-based swap (or any group, category, type or class of security-based swaps) referenced in the submission is required to be cleared.[266] Accordingly, the Commission is adopting new Rule 19b–4(o) and corresponding amendments to Form 19b–4 for the purpose of ensuring that the Commission receives the information necessary to conduct its review of Security-Based Swap Submissions received from clearing agencies. In particular, the new rule requires clearing agencies to provide information about the factors the Commission is required to consider under Exchange Act Section 3C(b)(4)(B). These factors include consideration of the effect on competition as well as the size of the market, trading liquidity, and pricing data, as well as the availability of a rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the security-based swap (or group, category, type or class of security-based swaps) under consideration.[267] In addition, the factors in Exchange Act Section 3C(b)(4)(B) require the Commission to consider the effect of a mandatory clearing determination on the mitigation of systemic risk, taking into account the size of the market for the security-based swap and the resources of the clearing agency available to clear the security-based swap, as well as the effect on competition and the effect of an insolvency event on customer and security-based swap counterparty positions, funds, and property.[268] Furthermore, in taking into account the size of the market, competition, and the mitigation of systemic risk, the factors in Section 3C(b)(4)(B) require the Commission to consider the effect of a mandatory clearing determination on the market, whether market participants trading in the particular security-based swap could all meet a mandatory clearing requirement or if the costs of such a requirement would competitively disadvantage some participants, and whether the clearing agency has the operational and risk management systems in place to effectively mitigate systemic risk.

The Commission will conduct each review in accordance with Exchange Act Section 3C(b)(4),[269] with determinations made on a case-by-case basis in connection with the unique facts and circumstances of each submission. The Commission will consider the factors in Exchange Act Section 3C(b)(4)(B) at the time the Commission conducts a review, drawing on the information provided by the relevant clearing agency in accordance with new Rule 19b–4(o).

In the Proposing Release, the Commission identified potential costs and benefits resulting from Rule 19b–4(o) and the related amendments to Form 19b–4, as proposed, and requested comment on all aspects of the cost-benefit analysis, including the identification and assessment of any costs and benefits that were not discussed in the analysis. Although the Commission did not receive any comments on the specific cost-benefit analysis contained in the Proposing Release, some commenters raised concerns about the overall scope of some of the proposed rules. In particular, one commenter suggested that new Rule 19b–4(o)(3), which sets forth the information that a clearing agency will be required to include in a Security-Based Swap Submission, is broad and burdensome, not authorized by the Dodd-Frank Act, and would ultimately ''undermine the purposes of Dodd-Frank'' by ''eliminat[ing] the possibility of a simple, speedy decision on whether a swap transaction can be cleared by a clearing agency.'' [270]

The Commission does not agree with the assertion that the requirements of Rule 19b–4(o)(3) would delay the approval of a request by a clearing agency to list a new security-based swap for clearing. As previously noted, the rules related to Security-Based Swap Submissions apply solely to the process by which the Commission will make a determination, pursuant to Exchange Act Section 3C(b)(2)(C)(ii), whether the security-based swap described in the submission is required to be cleared (*i.e.,* subject to mandatory clearing). Nothing in the rules the Commission is adopting today related to Security-Based Swap Submissions would prevent a registered clearing agency from voluntarily clearing a security-based swap prior to such determination so long as it does so in accordance with its rules. Thus, the Commission does not believe that Rule 19b–4(o)(3), which simply sets forth the information required to be contained in a Security-Based Swap Submission, would affect the current state of affairs with respect to a clearing agency's ability to clear a security-based swap transaction, nor does the Commission believe that this rule would undermine the goals of the Dodd-Frank Act as they pertain to the voluntary clearing of security-based swaps.

At the same time, the Commission recognizes the concern expressed by commenters that Rule 19b–4(o)(3) could potentially require a clearing agency to submit a large amount of information in connection with a Security-Based Swap Submission. Accordingly, the Commission has sought to narrowly tailor the rule to the specific requirements of the Exchange Act. The list of information required pursuant to new Rule 19b–4(o)(3)(ii) incorporates the identical qualitative and quantitative factors that the Commission is required to consider pursuant to Exchange Act Section 3C(b)(4)(B) when determining whether a security-based swap (or group, category, type or class of security-based swaps) will be subject

[266] *See* 15 U.S.C. 78c–3(b)(2) (as added by Section 763(a) of the Dodd-Frank Act).

[267] 15 U.S.C. 78c–3(4)(B)(i) and (ii) (as added by Section 763(a) of the Dodd-Frank Act).

[268] 15 U.S.C. 78c–3(4)(B)(iii), (iv), and (v) (as added by Section 763(a) of the Dodd-Frank Act).

[269] *See* 15 U.S.C. 78c–3(b)(4) (as added by Section 763(a) of the Dodd-Frank Act).

[270] *See* CME Letter at 3. Similarly, The Options Clearing Corporation noted that Rule 19b–4(o)(3) identifies a ''a potentially very large amount of data'' to be provided in a Security-Based Swap Submission and urged Commission staff exercise judgment and flexibility in determining the scope of information required in connection with a submission. *See* OCC Letter at 3–4.

to the mandatory clearing requirement.[271] In addition, the information required pursuant to new Rule 19b–4(o)(3)(i) (discussing how the Security-Based Swap Submission is consistent with Section 17A of the Exchange Act) and new Rules 19b–4(o)(3)(iii)–(iv) (describing how the clearing agency's rules for open access are applicable to the security-based swap described in the Security-Based Swap Submission) also track statutory requirements contained in Exchange Act Section 3C.[272] The Commission therefore believes that it has crafted new Rule 19b–4(o)(3) to allow it to obtain the information necessary to complete its statutory obligation to make the required determination, without imposing undue additional information requirements on clearing agencies. As described in greater detail below, the Commission also believes that the available alternatives to the approach being adopted would have been less cost-efficient because of the concentration of relevant information in the clearing agencies and would not represent the best option for appropriately implementing the statutory mandate.

However, the Commission is mindful that the new procedure set forth by Rule 19b–4(o) will result in costs for clearing agencies, even if that procedure were to achieve optimal efficiency. As in the Proposing Release, this analysis looks first to the hourly burdens contained in the PRA analysis in Section IV (which hourly figures have been updated from the estimates provided in the Proposing Release) multiplied by the estimated hourly cost. With respect to the amendments to Rule 19b–4 and Form 19b–4 that require a clearing agency to file Security-Based Swap Submissions with the Commission using EFFS and existing Form 19b–4, the Commission believes that clearing agencies affected by the new rules will likely incur certain one-time and ongoing costs associated with making these filings, which are primarily related to preparing internal policies and procedures with respect to the new filing requirements and training personnel to prepare security-based swap submission and file them on EFFS. The hourly estimates are discussed in detail in the PRA analysis, although the Commission recognizes that certain of these costs may differ in amount depending on whether the clearing agency is already clearing security-based swaps or will be new to the market and regulatory structure. The Commission has used the hourly estimates in the PRA analysis to estimate the total recurring annual and ongoing costs for the six clearing agencies the Commission has determined may be required to meet the requirements in the rules relating to Security-Based Swap Submissions. The Commission estimates the annual costs will be $8,113,090 in the aggregate and that the one-time costs will be $319,080 in the aggregate.[273]

In addition, the Commission recognizes that registered clearing agencies may incur some additional costs associated with filing Security-Based Swap Submissions that are not readily quantifiable. For example, in cases where a clearing agency's rules already permit it to clear a security-based swap that is not listed for clearing, the clearing agency's subsequent decision to list such security-based swap for clearing would result in the requirement to make a Security-Based Swap Submission despite the fact that the clearing agency may have previously filed a proposed rule change with respect to the same security-based swap. As a result, clearing agencies put in this position could incur additional costs by being required to make a greater number of filings than they do currently under Exchange Act Section 19(b). In addition, the Commission notes that Security-Based Swap Submissions filed before December 10, 2012, will not be filed on Form 19b–4 in order to allow time for the Commission to make the necessary system upgrades to EFFS. Accordingly, a clearing agency that files a Security-Based Swap Submission prior to December 10, 2012, that is also an Advance Notice or proposed rule change (or both) will be required to submit two separate filings with the Commission. However, the Commission believes that the requirement to file the Security-Based Swap Submission by email, as well as the temporary nature of the requirement, will impose relatively little additional burden on clearing agencies, which can use their existing email systems to make such filings.

While the Commission recognizes the importance of considering these costs, and appreciates that some costs may be unavoidable in establishing a new procedure, the Commission believes that new Rule 19b–4(o) is cost-efficient and appropriately implements the provisions identified by Congress as requiring Commission rulemaking. Specifically, while implementing the submission and notice requirements in Exchange Act Section 3C, the Commission anticipates that the rule will minimize unnecessary costs to filers by utilizing a format that clearing agencies should be familiar with and, as they become registered clearing agencies, will be otherwise required to use for all of their proposed rule changes under existing Commission rules.

In addition, the Commission also believes that new Rule 19b–4(o) is cost-efficient and an implementation of the statutory mandate because, as previously noted, a clearing agency would ordinarily consider most, if not all, of the factors set forth in the Exchange Act Section 3C(b)(4) and new Rule 19b–4(o)(3) as part of its internal decision-making process, particularly at the time when it was determining whether to list the relevant security-based swaps for clearing (and knowing that such listing could result in the Commission determining that the security-based swap may be required to be cleared).[274] Accordingly, although the Commission recognizes that clearing agencies may incur costs associated with locating, processing and preparing information required to be included in a Security-Based Swap Submission, the Commission believes that clearing agencies are the most appropriate source for accurate and updated information regarding a security-based swap that it accepts (or plans to accept) for clearing. The Commission is aware of no other source for the scope and nature of the information contemplated by Exchange Act Section 3C.

In the alternative, as suggested by a commenter,[275] if the Commission were limited to compiling the necessary information using already available material as well as information obtained by the Commission in connection with its supervision of clearing agencies,

[271] *See* 15 U.S.C. 78c–3(b)(4)(B)(i)–(v) (as added by Section 763(a) of the Dodd-Frank Act) (emphasis added).

[272] *See* 15 U.S.C. 78c–3(b)(4)(A) (as added by Section 763(a) of the Dodd-Frank Act) (regarding compliance with Section 17A of the Exchange Act) and 15 U.S.C. 78c–3(a)(2) (as added by Section 763(a) of the Dodd-Frank Act) (setting forth the standards for evaluating whether the rules of a clearing agency provide for open access).

[273] These figures consist of the total hourly burdens identified in sections III.D.2.b and d, multiplied by the costs per hour attributed to different specialists. Specifically, $320 is attributed per hour for in-house compliance attorneys, $354 per hour for outside attorneys, $259 per hour for a senior systems analyst, and $225 per hour for a Webmaster. These hourly rates were based on the corresponding figures set forth in SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[274] *See supra* section II.A.1.b.

[275] *See supra* notes 59 to 61 and accompanying text.

there is risk that such material would be incomplete and/or inaccurate and therefore not well-suited to allowing the Commission to make a reasonably informed mandatory clearing determination. Under such circumstances, the Commission may also be required to make potentially costly and time-consuming *ad hoc* information requests to clearing agencies. Requiring a clearing agency to provide necessary information with its submission will help ensure that the information used by the Commission to evaluate the security-based swap for mandatory clearing is correct and complete in the first instance, reducing the likelihood that further information requests will be required and the associated costs for clearing agencies incurred.

Moreover, as described above, new Rule 19b–4(o) limits the information required to be provided to the Commission while, at the same time, allowing the Commission to meet its statutory requirements under specific categories established by the Dodd-Frank Act. The Commission, in seeking the most cost-efficient solution for the new procedure that also appropriately implements the statutory mandate, chose not to include additional information requests in the rule at this time because the Commission believes that the factors identified in the statute are capable of supporting a reasonable determination with respect to a Security-Based Swap Submission. Nevertheless, the Commission recognizes that a clearing agency may still require additional clarification or guidance with respect to what information must be included in a Security-Based Swap Submission. In that regard, Commission staff is in regular contact with each clearing agency and expects to be able to provide such clarification or guidance as necessary or appropriate based on the relevant facts and circumstances.

Finally, although the Commission is still in the process of determining how best to aggregate security-based swaps into groups, categories, types or classes, requiring that Security-Based Swap Submissions aggregate security-based swaps in this manner, to the extent reasonable and practicable to do so, as provided for in new Rule 19b–4(o)(4), could eventually lead to further cost efficiencies by reducing the number of filings required to be made with the Commission, and subsequently reducing the number of submissions that must be processed and reviewed by Commission staff.

Separately, with respect to notice, the Commission believes that new Rule 19b–4(5) appropriately implements the statutory mandate and creates a cost-efficient method of providing notice to members of the clearing agency, as well as other interested persons, such as counterparties to security-based swaps, of a Security-Based Swap Submission by requiring posting of the submission on the clearing agency's Web site within two business days of filing with the Commission. The Commission anticipates that this notice will provide the clearing agency members and other interested persons with the opportunity to comment on the submission with the potential for providing new information about the suitability of the security-based swap for mandatory clearing.

2. Analysis of Final Rules Related to the Process for Staying a Clearing Requirement While the Clearing of the Security-Based Swap Is Reviewed

Under Exchange Act Section 3C(c)(1), after making a determination that a security-based swap (or group, category, type or class of security-based swaps) is required to be cleared, the Commission, on application of a counterparty to a security-based swap or on the Commission's own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the security-based swap and the clearing arrangement.[276] In connection with a stay of the clearing requirement, the Commission is required to adopt rules for reviewing a clearing agency's clearing of a security-based swap (or any group, category, type or class of security-based swaps) that the clearing agency has accepted for clearing.

Pursuant to new Rule 3Ca–1, a counterparty to a security-based swap subject to the clearing requirement who applies for a stay of the clearing requirement will be required to submit a written statement to the Commission that includes: A request for a stay of the clearing requirement; the identity of the counterparties to the security-based swap and a contact at the counterparty requesting the stay; the identity of the clearing agency clearing the security-based swap; the terms of the security-based swap subject to the clearing requirement and a description of the clearing arrangement; and the reasons why a stay should be granted and why the security-based swap should not be subject to a clearing requirement, specifically addressing the same factors a clearing agency must address in its Security-Based-Swap Submission pursuant to Rule 19b–4(o).[277] In the Proposing Release, the Commission identified potential costs and benefits resulting from Rule 3Ca–1 as proposed and requested comment on all aspects of the cost-benefit analysis, including the identification and assessment of any costs and benefits that were not discussed in the analysis. The Commission did not receive any responses to this request.

The Commission is mindful of the costs associated with the final procedure for the application for a stay. As in the Proposing Release, this analysis looks first to the hourly burdens contained in the PRA analysis in Section IV (which hourly figures have been updated from the estimates provided in the Proposing Release) multiplied by the estimated hourly cost. As previously noted, the Commission is unable to estimate accurately the number of stay applications that it will receive pursuant to new Rule 3Ca–1 and Section 3C(c)(1) because the Commission has not yet made any mandatory clearing determinations, does not know which counterparties may object to a determination, and has no information as to when counterparties would make an application for a stay. Accordingly, the Commission has no reasonable basis for estimating the number of applications. In addition, the mere fact that a counterparty files an request for a stay does not automatically create an obligation on the relevant clearing agency to respond to the application. Rather, new Rule 3Ca–1(d) provides that any clearing agency that has accepted for clearing a security-based swap that is subject to the stay shall provide information requested by the Commission necessary to assess any of the factors it determines to be appropriate in the course of its review. The Commission therefore cannot estimate with precision the quantified costs associated with the new rule regarding procedures for a stay, and no additional information was made available during the pendency of this rule that would aid such an estimate.

Nonetheless, the Commission recognizes that there will likely be applications for stays and, for purposes of the Proposing Release, the Commission estimated, by way of illustrating the potential costs of such applications, that there would be 30 applications for stays of a clearing requirement from counterparties each year based on the estimates of section III.D.4. of the PRA analysis. Further, the Proposing Release relied on the

[276] *See* 15 U.S.C. 78c–3(c)(1) (as added by Section 763(a) of the Dodd-Frank Act).

[277] Rule 3Ca–1(b).

assumption that the Commission would request additional information from the relevant clearing agency after receiving a request for a stay from a counterparty.

Based on the figures and assumptions described above, the Commission estimates, as it did in the Proposing Release, that counterparties would incur $1,062,000 in total aggregate costs to prepare and submit applications requesting a stay of a clearing requirement and that clearing agencies will incur $247,140 in total aggregate costs to compile and provide any information requested by the Commission.[278]

While for the reasons described above, the Commission has no basis to believe that this estimate is an inapt illustration of the potential costs associated with stays, the Commission notes that another indicator of the potential burden may be the ''per stay'' cost implied by these aggregate figures—namely, approximately $35,400 per counterparty per stay and approximately $8,238 per clearing agency per stay. These estimates of course also assume that there is an application (when in fact there may be none in cases where the Commission exercises its authority under Exchange Act Section 3C(c)(1) to grant a stay on its own initiative) and that it requires a clearing agency to respond (when in fact it may not be required to respond in cases where the Commission does not require the production of additional information pursuant to new Rule 3Ca–1(d)).

After considering these illustrative costs, the Commission believes that new Rule 3Ca–1 appropriately implements the provisions identified by Congress as requiring Commission rulemaking and is cost-efficient for the parties that will most likely be affected by the rule. In particular, the Commission believes that the information required of the counterparty and, if applicable, the clearing agency, is information that is most likely to be in the possession of the relevant party, and that alternative mechanisms for obtaining that information would be comparatively more costly for the parties involved. For example, similar to the analysis conducted with respect to Security-Based Swap Submissions, one alternative would have been to require that the Commission rely on information within its possession to make a determination with respect to the application for a stay. However, with respect to the counterparty, the Commission is all but certain not to have the full information required to understand the application—the counterparty alone will likely have its reasons as to why the stay should be granted and why the security-based swap should not be subject to a clearing requirement. Similarly, a clearing agency will only be required to submit information in connection with this process in response to a request by the Commission in order to facilitate the Commission's review of the application for a stay and, if the stay is granted, the applicable clearing requirement. Under these circumstances, it is likely that such requests will include information that is unique to the clearing agency and not independently available to the Commission.

3. Analysis of Final Rule Related to Preventing Evasion of the Clearing Requirement

As described above, new Rule 3Ca–2 clarifies that the phrase ''submits such security-based swap for clearing to a clearing agency'' found in Exchange Act Section 3C(a)(1) and is intended to prevent potential evasions of the clearing requirement by requiring market participants to submit security-based swaps to a clearing agency for central clearing as opposed to other clearing functions or services. The Commission does not believe that the Rule 3Ca–2 would impose any additional costs or burdens on clearing agencies or counterparties to security-based swaps because the rule simply clarifies that security-based swaps must be cleared at a central counterparty, rather than at an entity that meets the technical definition of a clearing agency under the Exchange Act for another reason. This clarification is consistent with the purpose of Section 3C(a)(1), which is to require that security-based swaps are centrally cleared.

4. Analysis of Final Rules Related to Advance Notices

As previously noted, the Clearing Supervision Act, which was enacted into law pursuant to Title VIII of the Dodd-Frank Act, provides for enhanced regulation of financial market utilities, such as clearing agencies, that manage or operate a multilateral system for the purpose of transferring, clearing or settling payments, securities or other financial transactions among financial institutions or between financial institutions and the financial market utility. Among other things, Section 806(e) of the Clearing Supervision Act requires any financial market utility designated by the Council as systemically important to provide ''60 days in advance notice to its Supervisory Agency of any proposed change to its rules, procedures or operations that could, as defined in rules of each Supervisory Agency, materially affect the nature or level of risks presented by the designated financial market utility.''[279] In addition, Congress mandated that each Supervisory Agency, including the Commission, adopt rules, in consultation with the Board, that define and describe when a designated financial market utility is required to file an Advance Notice with its Supervisory Agency.[280] Accordingly, new Rule 19b–4(n) was intended to define and describe when Advance Notices are required to be filed by designated clearing agencies and to set forth the process for filing such notices with the Commission.

In the Proposing Release, the Commission identified potential costs and benefits resulting from Rule 19b–4(n) and the related amendments to Form 19b–4 as proposed, and requested comment on all aspects of the cost-benefit analysis, including the identification and assessment of any costs and benefits that were not discussed in the analysis. Although the Commission did not receive any comments on the specific cost-benefit analysis contained in the Proposing Release, some commenters suggested that proposed 19b–4(n)(2), which defines the phrase ''materially affect the nature or level of risks presented'' for purposes of determining when a designated clearing agency will be required to submit an Advance Notice with the Commission, was overly broad and burdensome.[281] Specifically, these commenters generally argued that the definition would result in a requirement to submit Advance Notices to the Commission regarding matters that were risk-reducing, impractical, and potentially of lesser importance to the designated clearing agency and its regulators, which could potentially place an unnecessary strain on the existing resources of the clearing agency.[282]

While the Commission recognizes that new Rule 19b–4(n)(2), which is being

[278] This figure consists of the total hourly burden identified in section III.D.4, multiplied by $320 for each hour attributed to in-house compliance attorneys and $354 per hour for outside attorneys. This hourly cost is based on SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[279] *See* 12 U.S.C. 5465(e)(1)(A) (as added by Title VIII).

[280] *See* 12 U.S.C. 5465(e)(1)(B) (as added by Title VIII).

[281] *See supra* notes 154 to 162 and accompanying text.

[282] *See id.*

adopted as proposed, will impose certain costs and burdens on designated clearing agencies (which costs and burdens are discussed in greater detail below), the Commission believes that the rule is cost-efficient method and represents an appropriate method for implementing the statutory mandate. Specifically, Section 806(e) requires all financial market utilities to file Advance Notices with their Supervisory Agencies whenever the change referred to in the notice materially affects the nature or level of risks presented by the designated financial market utility.[283] While the Commission recognizes that a more narrowly tailored definition of the phrase ''materially affect the nature or level of risks presented'' could potentially result in designated clearing agencies being required to file fewer Advance Notices, new Rule 19b–4(n)(2) was drafted to follow closely the statutory language set forth in Section 806(e)(1)(A). As such, the Commission believes that the definition set forth in the new rule strikes an appropriate balance between the objectives of the Dodd-Frank Act and the potential costs and burdens on financial market utilities in that it does not expand on the language included in the statute, either by including specific types of changes not contemplated in Section 806(e) or by excluding changes that were not expressly identified by Congress. Furthermore, the Commission has previously encouraged designated clearing agencies to discuss proposed changes with Commission staff to help determine whether an Advance Notice under Section 806(e) would need to be filed and continues to encourage clearing agencies to avail themselves of this approach.[284]

However, the Commission is mindful that the new procedure set forth for Advance Notices will result in costs for financial market utilities, even if that procedure were to achieve optimal efficiency. As in the Proposing Release, this analysis looks first to the hourly burdens contained in the PRA analysis in Section IV (which hourly figures have been updated from the estimates provided in the Proposing Release) multiplied by the estimated hourly cost. The Commission estimates the total annual cost related to filing and posting Advance Notices to be $15,890,000 in the aggregate for ten respondent clearing agencies.[285]

In addition, the Commission recognizes that registered clearing agencies may incur some additional costs associated with filing Advance Notices that are not readily quantifiable. For example, some proposed changes may be required to be filed only as Advance Notices under Section 806(e) and not as proposed rule changes under Exchange Act Section 19(b). In these circumstances, clearing agencies will likely incur additional costs by being required to make a greater number of filings than they do currently under Exchange Act Section 19(b), which would result from the application of different standards for triggering a filing under the two statutory provisions. In addition, the Commission notes that Advance Notices filed before December 10, 2012, will not be filed on Form 19b–4 in order to allow time for the Commission to make the necessary system upgrades to EFFS. Accordingly, a designated clearing agency that is required to file a change as both an Advance Notice and a proposed rule change will be required to submit two separate filings with the Commission. However, the Commission believes that the requirement to file the Advance Notice by email, as well as the temporary nature of the requirement, will impose relatively little additional burden on clearing agencies, which can use their existing email systems to make such filings.

While the Commission recognizes the importance of considering these costs, and appreciates that some costs may be unavoidable in establishing a new procedure, the Commission believes that new Rule 19b–4(n) implements the provisions identified by Congress as requiring Commission rulemaking and is cost-efficient for the parties that will most likely be affected by the rule. Specifically, by defining the term ''materially affect the nature or level of risks presented,'' new Rule 19b–4(n)(2) provides designated clearing agencies with an understanding, as required by Congress pursuant to Section 806(e)(1)(B), of when an Advance Notice is required. While the Commission could have taken a more prescriptive approach by specifying which types of groups of changes would or would not trigger the requirement, the Commission believes that interpretative issues would remain and questions whether such alternative would be consistent with the statutory language in Section 806(e)(1)(A).

In addition, because the requirement to file notices under Section 806(e) is similar to the filing requirement for proposed rule changes under Exchange Act Section 19(b), the Commission is requiring that Advance Notices be filed on Form 19b–4 and EFFS. In many cases, it is likely that a proposed change for purposes of Section 806(e) will also be a proposed rule change for purposes of Exchange Act Section 19(b). Although the Commission could have required that Advance Notices be filed on a separate form, the Commission believes that requiring submissions using existing Form 19b–4 and EFFS represents a particularly cost-efficient approach to implementing the statutory mandate to submit Security-Based Swap Submissions, particularly since designated clearing agencies will already be familiar with this method of submission. Further, in situations where a single clearing agency action would trigger more than one of these filing requirements, allowing for each filing to be made pursuant to a single Form 19b–4 submission would improve efficiency in the filing process including, for example, by allowing the clearing agency to refer to and cross-reference information in one part of the submission if the information is relevant to a separate filing that is part of the same submission (so long as the requirements of each applicable rule are individually satisfied and if the clearing agency clearly explains how the information in one filing is applicable to the specific information required to be provided in the other filing).

5. Analysis of Final Rules To Amend Rule 19b–4 To Conform to the Requirements of Section 916 of the Dodd-Frank Act

The Commission has made a number of modifications to Rule 19b–4 and Form 19b–4 to conform to the requirements specified in Exchange Act Section 19(b), as amended by Section 916 of the Dodd Frank Act. These amendments were designed to incorporate changes required by Section 916, which provided for new deadlines by which the Commission must publish and act upon a proposed rule change submitted by all SROs and new standards for the approval, disapproval, and temporary suspension of a proposed rule change. In the Proposing Release, the Commission identified potential costs and benefits resulting from these amendments, as proposed, and requested comment on all aspects of the

[283] *See* 12 U.S.C. 5465(e)(1)(A) (as added by Title VIII).

[284] *See supra* section II.C.1.

[285] This figure consists of the total hourly burdens identified in sections III.D.2.e and III.3, multiplied by the costs per hour attributed to different specialists. Specifically, $320 is attributed per hour for in-house compliance attorneys, $354 per hour for outside attorneys and $225 per hour for a Webmaster. These hourly rates were based on the corresponding figures set forth in SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

cost-benefit analysis, including the identification and assessment of any costs and benefits that were not discussed in the analysis. The Commission did not receive any responses to this request.

The Commission estimates that the requirement that an SRO inform the Commission of the date on which it posted a proposed rule change on its Web site (if the posting did not occur on the same day that the SRO filed the proposal with the Commission) will impose only a minimal burden, if any, on the SRO. As discussed in Section IV.B.4., the Commission believes that SROs currently post their proposed rule changes on their Web site on the same day on which they file them with the Commission. It would be unlikely that an SRO would fail to post its proposed rule change on the same day that it files with the Commission, since prompt Web site posting triggers the requirement on the Commission to publish notice of the proposed rule change.

The Commission also identified certain isolated or unusual circumstances that could result in unforeseen costs associated with the requirement that an SRO, if it does not post a proposed rule change on its Web site on the same day that it files the proposal with the Commission, inform the Commission of the date on which it posted such proposal on its Web site. In conducting an evaluation of the costs of this amendment, as in the Proposing Release, the Commission relies on the hourly burdens contained in the PRA analysis in Section IV (which hourly figures have been updated from the estimates provided in the Proposing Release) multiplied by the estimated hourly cost. In addition, the Commission estimates that SROs will fail to post proposed rule changes on their Web sites on the same day as the filing was made with the Commission in 1% of all cases, or 16 times each year, and that each SRO will spend approximately one hour preparing and submitting notice to the Commission of the date on which it posted the proposed rule change on its Web site, resulting in a total annual burden of 14 hours. Based on these assumptions, the Commission estimates that the total annual cost of this amendment will be $5,120 in the aggregate for all SROs.[286]

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act (''RFA'')[287] requires the Commission, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[288] of the Administrative Procedure Act,[289] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all rules it has proposed to determine the impact of such rulemaking on ''small entities.''[290] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[291]

A. Self-Regulatory Organizations

New Rule 19b–4(n) and the corresponding amendments to Form 19b–4 will apply to all designated clearing agencies. New Rule 19b–4(o) and the corresponding amendments to Form 19b–4 will apply to all security-based swap clearing agencies. New rules 3Ca–1 and 3Ca–2 also will apply to all security-based swap clearing agencies. All of the remaining amendments to Rule 19b–4 and Form 19b–4, including those made to Rule 19b–4(l) to reflect the revisions to Exchange Act Section 19(b) pursuant to Section 916 of the Dodd-Frank Act, will apply to all SROs. Three entities are currently registered to provide central clearing services for CDS, a class of security-based swaps. The Commission believes, based on its understanding of the market, that likely no more than six security-based swap clearing agencies could be subject to the requirements of new Rule 19b–4(o) and new Rules 3Ca–1 and 3Ca–2. In addition, the Commission believes that approximately ten registered clearing agencies could be designated by the Council as systemically important (and for which the Commission will be the Supervisory Agency) and subject to the requirements of new Rule 19b–4(n), which includes the four securities clearing agencies in existence prior to the enactment of the Dodd-Frank Act and the six estimated clearing agencies that may clear security-based swaps. Finally, there are currently 32 SROs registered with the Commission (including registered clearing agencies). When combined with the additional clearing agencies that could potentially register with the Commission in the future to clear security-based swaps, the Commission believes that approximately 35 SROs will be subject to all of the other technical amendments to Rule 19b–4, including the amendments to Rule 19–4(l).

For the purposes of Commission rulemaking in connection with the RFA, a small entity includes, when used with reference to a clearing agency, a clearing agency that: (i) Compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year; (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter); and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[292] With respect to SROs that are not clearing agencies, the RFA analysis would apply to national securities exchanges, national securities associations and the Municipal Securities Rulemaking Board. Exchange Act Rule 0–10(d) provides that a small entity includes, when used in reference to an exchange, any exchange that: (i) Has been exempted from the reporting requirements of Rule 601 of Regulation NMS[293] and (ii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[294] Under the standards adopted by the Small Business Administration, small entities in the finance industry include the following: (i) For entities engaged in investment banking, securities dealing and securities brokerage activities, entities with $6.5 million or less in annual receipts; (ii) for entities engaged in trust, fiduciary and custody activities, entities with $6.5 million or less in annual receipts; and (iii) funds, trusts and other financial vehicles with $6.5 million or less in annual receipts.[295]

Based on the Commission's existing information about SROs, the Commission believes that such entities will not be small entities, but rather part of large business entities that exceed the thresholds defining ''small entities'' set out above. Additionally, while other clearing agencies may become eligible to operate as central counterparties for

[286] This figure consists of the total hourly burdens identified in section III.D.4, multiplied by $320 per hour for in-house compliance attorneys. This hourly cost is based on SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[287] 5 U.S.C. 601 *et seq.*

[288] 5 U.S.C. 603(a).

[289] 5 U.S.C. 551 *et seq.*

[290] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10.

[291] *See* 5 U.S.C. 605(b).

[292] 17 CFR 240.0–10(d).

[293] 17 CFR 242.601.

[294] 17 CFR 240.0–10(e).

[295] 13 CFR 121.201, Sector 52.

security-based swaps, the Commission does not believe that any such entities will be ''small entities'' as defined in Exchange Act Rule 0–10.[296] Furthermore, the Commission believes it is unlikely that clearing agencies acting as central counterparties for security-based swaps would have annual receipts of less than $6.5 million. Accordingly, the Commission believes that any clearing agencies clearing security-based swaps by acting as central counterparties for such transactions will exceed the thresholds for ''small entities'' set forth in Exchange Act Rule 0–10.

B. Security-Based Swap Counterparties

New Rule 3Ca–1 will apply to any counterparty to a security-based swap subject to the clearing requirement that applies for a stay of a mandatory clearing requirement. For the purposes of Commission rulemaking and as applicable to new Rule 3Ca–1, a small entity includes: (i) When used with reference to a clearing agency, a clearing agency that (a) compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year, (b) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter) and (c) is not affiliated with any person (other than a natural person) that is not a small business or small organization;[297] (ii) when used as reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or a ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less;[298] or (iii) when used as reference to broker-dealer, a broker-dealer (a) with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act, or, if not required to file such statements, a broker-dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in that time that it has been in business, if shorter) and (b) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[299] Under the standards adopted by the Small Business Administration, small entities in the finance industry include the following: (i) For entities engaged in investment banking, securities dealing and securities brokerage activities, entities with $6.5 million or less in annual receipts; (ii) for entities engaged in trust, fiduciary and custody activities, entities with $6.5 million or less in annual receipts; and (iii) funds, trusts and other financial vehicles with $6.5 million or less in annual receipts.[300]

While the Commission is unable to anticipate whether any counterparties to security-based swap transactions that apply for a stay of a mandatory clearing requirement would meet the definition of a ''small entity'' under Exchange Act Rule 0–10, the Commission believes that it is unlikely that the stay application process of new Rule 3Ca–1 will have a significant economic impact upon such an entity. Given that the new stay application process entails the submission of a written statement to the Commission setting forth information about the security-based swap transaction for which the stay is sought, the Commission believes the impact of the application process on a counterparty would be minimal.[301] Furthermore, even if the stay application process were to have a significant economic impact upon such non-clearing agency counterparty, the Commission believes that the number of entities so impacted will be no more than 30.[302] Accordingly, in respect of non-clearing agency counterparties to security-based swap transactions, the Commission believes that new Rule 3Ca–1 will not have a significant economic impact on a substantial number of small entities.

C. Certification

For the reasons stated above, the Commission certifies that the amendments to Rule 19b–4, including new Rules 19b–4(n) and (o) and all corresponding amendments to Form 19b–4, and new Rules 3Ca–1 and 3Ca–2 will not have a significant economic impact on a substantial number of small entities for the purposes of the RFA.

VI. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 3C, 17A and 19(b) thereof, 15 U.S.C. 78c–3, 78q–1 and 78s(b) and Section 806(e) of the Clearing Supervision Act, 12 U.S.C 5465(e), the Commission is amending Rule 19b–4 and Form 19b–4 and adding Rules 3Ca–1 and 3Ca–2, as set forth below.

List of Subjects in 17 CFR Parts 240 and 249

Brokers, Reporting and recordkeeping requirements, Securities.

Text of the Final Rule

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

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

■ 1. The general authority citation for part 240 is revised and a sub-authority is added in section number order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3), and Pub. L. 111–203, § 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

Section 240.19b–4 is also issued under 12 U.S.C. 5465(e).

* * * * *

■ 2. Add an undesignated center heading and §§ 240.3Ca–1 and 240.3Ca–2 following § 240.3b–19 to read as follows:

Clearing of Security-Based Swaps

240.3Ca–1 Stay of clearing requirement and review by the Commission.

240.3Ca–2 Submission of security-based swaps for clearing.

* * * * *

[296] *See* 17 CFR 240.0–10(d).

[297] 17 CFR 240.0–10(d).

[298] 17 CFR 240.0–10(a).

[299] 17 CFR 240.0–10(c).

[300] 13 CFR 121.201, Sector 52.

[301] In the economic analysis, the Commission estimated that the 30 counterparties would incur $1,062,000 in total aggregate costs to prepare and submit applications requesting a stay of a clearing requirement, which breaks down to $35,400 per stay. *See supra* note 278 and accompanying text.

[302] As previously noted, the Commission is unable to estimate accurately the number of times it will receive an application for a stay pursuant to Section 3C(c)(1) because it has not yet made any mandatory clearing determinations and it does not know what counterparties may object to a determination or when they would make an application for a stay. However, the Commission recognizes that there will likely be applications for stays and, for purposes of conducting the PRA analysis, the Commission estimated there would be five applications for stays of a clearing requirement per clearing agency per year. This figure represents one quarter of the estimated number of Security-Based Swap Submissions from each clearing agency per year, for a total of 30 applications for stays per year. While the Commission recognizes that a counterparty may submit multiple stay applications, in order to use the most conservative estimate possible, the Commission is assuming that each of the 30 estimated applications will be submitted by different counterparties. *See supra* section III.D.4.

§ 240.3Ca–1 Stay of clearing requirement and review by the Commission.

(a) After making a determination pursuant to a clearing agency's security-based swap submission that a security-based swap, or any group, category, type or class of security-based swaps, is required to be cleared, the Commission, on application of a counterparty to a security-based swap or on the Commission's own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the security-based swap (or group, category, type, or class of security-based swaps) and the clearing of the security-based swap (or group, category, type, or class of security-based swaps) by the clearing agency that has accepted it for clearing.

(b) A counterparty to a security-based swap applying for a stay of the clearing requirement for a security-based swap (or group, category, type, or class of security-based swaps) shall submit a written statement to the Commission that includes:

(1) A request for a stay of the clearing requirement;

(2) The identity of the counterparties to the security-based swap and a contact at the counterparty requesting the stay;

(3) The identity of the clearing agency clearing the security-based swap;

(4) The terms of the security-based swap subject to the clearing requirement and a description of the clearing arrangement; and

(5) Reasons why such stay should be granted and why the security-based swap should not be subject to a clearing requirement, specifically addressing the same factors a clearing agency must address in its security-based-swap submission pursuant to § 240.19b–4(o)(3).

(c) A stay of the clearing requirement may be granted with respect to a security-based swap, or the group, category, type, or class of security-based swaps, as determined by the Commission.

(d) The Commission's review shall include a quantitative and qualitative assessment of the factors specified in § 240.19b–4(o)(3). Any clearing agency that has accepted for clearing a security-based swap, or any group, category, type or class of security-based swaps, that is subject to the stay of the clearing requirement shall provide information requested by the Commission as necessary to assess any of the factors it determines to be appropriate in the course of its review.

(e) Upon completion of its review, the Commission may:

(1) Determine, subject to any terms and conditions that the Commission determines to be appropriate in the public interest, that the security-based swap, or group, category, type, or class of security-based swaps must be cleared; or

(2) Determine that the clearing requirement will not apply to the security-based swap, or group, category, type, or class of security-based swaps, but clearing may continue on a non-mandatory basis.

§ 240.3Ca–2 Submission of security-based swaps for clearing.

Pursuant to section 3C(a)(1) of the Act (15 U.S.C. 78c–3(a)(1)), it shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this Act or a clearing agency that is exempt from registration under the Act if the security-based swap is required to be cleared. The phrase *submits such security-based swap for clearing to a clearing agency* in the clearing requirement of Section 3C(a)(1) of the Act shall mean that the security-based swap will be submitted for central clearing to a clearing agency that functions as a central counterparty.

■ 3. § 240.19b–4 is amended by:

■ a. Removing the phrase ''Preliminary Note:'' in the introductory text;

■ b. Removing paragraph (b);

■ c. Redesignating paragraph (a) as paragraph (b);

■ d. Adding new paragraph (a);

■ e. In paragraph (i), adding the phrase '', notices and submissions'' after ''of all filings'';

■ f. In paragraph (i), adding the words ''notice or submission,'' after the phrase ''any such filing,'';

■ g. In paragraph (i), removing the phrase ''the filing of the proposed rule change.'' and adding in its place ''the filing, notice or submission of the proposed rule change, advance notice or security-based swap submission, as applicable.'';

■ h. In paragraph (j), first sentence, removing the words ''with respect to proposed rule changes'';

■ i. Revising paragraph (l), introductory text;

■ j. Adding paragraph (n); and

■ k. Adding paragraph (o).

The additions and revisions read as follows:

§ 240.19b–4 Filings, notices or submissions with respect to proposed rule changes, advance notices or security-based swap submissions by self-regulatory organizations.

* * * * *

(a) *Definitions.* As used in this section:

(1) The term *advance notice* means a notice required to be made by a designated clearing agency pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act (12 U.S.C. 5465(e));

(2) The term *designated clearing agency* means a clearing agency that is registered with the Commission, and for which the Commission is the Supervisory Agency (as determined in accordance with section 803(8) of the Payment, Clearing and Settlement Supervision Act (12 U.S.C. 5462(8)), that has been designated by the Financial Stability Oversight Council pursuant to section 804 of the Payment, Clearing and Settlement Supervision Act (12 U.S.C. 5463) as systemically important or likely to become systemically important;

(3) The term *Payment, Clearing and Settlement Supervision Act* means Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1802, 1803, 1807, 1809, 1811, 1814, 1816, 1818, 1820, 1821; 12 U.S.C. 5461 *et seq.*);

(4) The term *proposed rule change* has the meaning set forth in Section 19(b)(1) of the Act (15 U.S.C. 78s(b)(1));

(5) The term *security-based swap submission* means a submission of identifying information required to be made by a clearing agency pursuant to section 3C(b)(2) of the Act (15 U.S.C. 78c–3(b)(2)) for each security-based swap, or any group, category, type or class of security-based swaps, that such clearing agency plans to accept for clearing;

(6) The term *stated policy, practice, or interpretation* means:

(i) Any material aspect of the operation of the facilities of the self-regulatory organization; or

(ii) Any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization (''specified persons''), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to:

(A) The rights, obligations, or privileges of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons; or

(B) The meaning, administration, or enforcement of an existing rule.

* * * * *

(l) The self-regulatory organization shall post each proposed rule change,

and any amendments thereto, on its Web site within two business days after the filing of the proposed rule change, and any amendments thereto, with the Commission. If a self-regulatory organization does not post a proposed rule change on its Web site on the same day that it filed the proposal with the Commission, then the self-regulatory organization shall inform the Commission of the date on which it posted such proposal on its Web site. Such proposed rule change and amendments shall be maintained on the self-regulatory organization's Web site until:

* * * * *

(n)(1)(i) A designated clearing agency shall provide an advance notice to the Commission of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by such designated clearing agency. Except as provided in paragraph (n)(1)(ii) of this section, such advance notice shall be submitted to the Commission electronically on Form 19b–4 (referenced in 17 CFR 249.819). The Commission shall, upon the filing of any advance notice, provide for prompt publication thereof.

(ii) Any designated clearing agency that files an advance notice with the Commission prior to December 10, 2012, shall file such advance notice in electronic format to a dedicated email address to be established by the Commission. The contents of an advance notice filed pursuant to this paragraph (n)(1)(ii) shall contain the information required to be included for advance notices in the General Instructions for Form 19b–4 (referenced in 17 CFR 249.819).

(2)(i) For purposes of this paragraph (n), the phrase *materially affect the nature or level of risks presented,* when used to qualify determinations on a change to rules, procedures, or operations at the designated clearing agency, means matters as to which there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the designated clearing agency.

(ii) Changes to rules, procedures, or operations that could materially affect the nature or level of risks presented by a designated clearing agency may include, but are not limited to, changes that materially affect participant and product eligibility, risk management, daily or intraday settlement procedures, default procedures, system safeguards, governance or financial resources of the designated clearing agency.

(iii) Changes to rules, procedures, or operations that may not materially affect the nature or level of risks presented by a designated clearing agency include, but are not limited to:

(A) Changes to an existing procedure, control, or service that do not modify the rights or obligations of the designated clearing agency or persons using its payment, clearing, or settlement services and that do not adversely affect the safeguarding of securities, collateral, or funds in the custody or control of the designated clearing agency or for which it is responsible; or

(B) Changes concerned solely with the administration of the designated clearing agency or related to the routine, daily administration, direction, and control of employees;

(3) The designated clearing agency shall post the advance notice, and any amendments thereto, on its Web site within two business days after the filing of the advance notice, and any amendments thereto, with the Commission. Such advance notice and amendments shall be maintained on the designated clearing agency's Web site until the earlier of:

(i) The date the designated clearing agency withdraws the advance notice or is notified that the advance notice is not properly filed; or

(ii) The date the designated clearing agency posts a notice of effectiveness as required by paragraph (n)(4)(ii) of this section.

(4)(i) The designated clearing agency shall post a notice on its Web site within two business days of the date that any change to its rules, procedures, or operations referred to in an advance notice has been permitted to take effect as such date is determined in accordance with Section 806(e) of the Payment, Clearing and Settlement Supervision Act (12 U.S.C. 5465).

(ii) The designated clearing agency shall post a notice on its Web site within two business days of the effectiveness of any change to its rules, procedures, or operations referred to in an advance notice.

(5) A designated clearing agency shall provide copies of all materials submitted to the Commission relating to an advance notice with the Board of Governors of the Federal Reserve System contemporaneously with such submission to the Commission.

(6) The publication and Web site posting requirements contained in paragraphs (n)(1), (n)(3), and (n)(4) of this section do not apply to any information contained in an advance notice for which a designated clearing agency has requested confidential treatment following the procedures set forth in § 240.24b–2.

(o)(1) Every clearing agency that is registered with the Commission that plans to accept a security-based swap, or any group, category, type, or class of security-based swaps for clearing shall submit to the Commission a security-based swap submission and provide notice to its members of such security-based swap submission.

(2)(i) Except as provided in paragraph (o)(2)(ii) of this section, a clearing agency shall submit each security-based swap submission to the Commission electronically on Form 19b–4 (referenced in 17 CFR 249.819) with the information required to be submitted for a security-based swap submission, as provided in § 240.19b–4 and Form 19b–4. Any information submitted to the Commission electronically on Form 19b–4 that is not complete or otherwise in compliance with this section and Form 19b–4 shall not be considered a security-based swap submission and the Commission shall so inform the clearing agency within twenty-one business days of the submission on Form 19b–4 (referenced in 17 CFR 249.819).

(ii) Any clearing agency that files a security-based swap submission with the Commission prior to December 10, 2012, shall file such security-based swap submission in electronic format to a dedicated email address to be established by the Commission. The contents of a security-based swap submission filed pursuant to this paragraph (o)(2)(ii) shall contain the information required to be included for security-based swap submissions in the General Instructions for Form 19b–4.

(3) A security-based swap submission submitted by a clearing agency to the Commission shall include a statement that includes, but is not limited to:

(i) How the security-based swap submission is consistent with Section 17A of the Act (15 U.S.C. 78q–1);

(ii) Information that will assist the Commission in the quantitative and qualitative assessment of the factors specified in Section 3C of the Act (15 U.S.C. 78c–3), including, but not limited to:

(A) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data;

(B) The availability of a rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded;

(C) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract;

(D) The effect on competition, including appropriate fees and charges applied to clearing; and

(E) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or one or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property;

(iii) A description of how the rules of the clearing agency prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency, as applicable to the security-based swaps described in the security-based swap submission; and

(iv) A description of how the rules of the clearing agency provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility, as applicable to the security-based swaps described in the security-based swap submission.

(4) A clearing agency shall submit security-based swaps to the Commission for review by group, category, type or class of security-based swaps, to the extent reasonable and practicable to do so.

(5) A clearing agency shall post each security-based swap submission, and any amendments thereto, on its Web site within two business days after the submission of the security-based swap submission, and any amendments thereto, with the Commission. Such security-based swap submission and amendments shall be maintained on the clearing agency's Web site until the Commission makes a determination regarding the security-based swap submission or the clearing agency withdraws the security-based swap submission, or is notified that the security-based swap submission is not properly filed.

(6) In connection with any security-based swap submission that is submitted by a clearing agency to the Commission, the clearing agency shall provide any additional information requested by the Commission as necessary to assess any of the factors it determines to be appropriate in order to make the determination of whether the clearing requirement applies.

(7) Notices of orders issued pursuant to Section 3C of the Act (15 U.S.C. 78c–3), regarding security-based swap submissions will be given by prompt publication thereof, together with a statement of written reasons therefor.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The general authority citation for part 249 is revised and a sub-authority is added in section number order to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Section 249.819 is also issued under 12 U.S.C. 5465(e).

* * * * *

■ 5. Revise § 249.819 to read as follows:

§ 249.819 Form 19b–4, for electronic filings with respect to proposed rule changes, advance notices and security-based swap submissions by all self-regulatory organizations.

This form shall be used by all self-regulatory organizations, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), to file electronically proposed rule changes with the Commission pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)) and § 240.19b–4 of this chapter, advance notices with the Commission pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act (12 U.S.C. 5465(e)) and § 240.19b–4 of this chapter and security-based swap submissions with the Commission pursuant to Section 3C(b)(2) of the Act (15 U.S.C. 78c–3(b)(2)) and § 240.19b–4 of this chapter.

■ 6. Form 19b–4 (referenced in § 249.819) is revised to read as follows:

Note: The text of Form 19b–4 does not and the amendments will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

OMB APPROVAL OMB	
Number:	3235-0045
Expires:	[ ]
Estimated average burden hours per response	[ ]

Page 1 of [ ]

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - [ ] - [ ]

Amendment No. [ ]

Filing by [Select SRO]

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☐ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☐ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires [ ]

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing and Settlement Act of 2010

Section 806(e)(1) ☐ Section 806(e)(2) ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters).

[ ]

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name [ ] Last Name [ ]
Title [ ]
E-mail [ ]
Telephone [ ] Fax [ ]

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date [ ]
By [ ]
(Name)

[ ]
(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally Sign and Lock Form

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).
Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

BILLING CODE 8011–01–C

General Instructions for Form 19b–4

A. Use of the Form

All self-regulatory organization proposed rule changes (except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) [1]

[1] Because Section 19(b)(7)(C) of the Act states that filings abrogated pursuant to this Section should be re-filed pursuant to paragraph (b)(1) of Section 19

of the Securities Exchange Act of 1934 (''Act'')), security-based swap submissions, and advance notices shall be filed in an electronic format through the Electronic Form 19b–4 Filing System (''EFFS''), a secure Web site operated by the Commission. This form shall be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b) of the Act, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) of the Act. National securities exchanges, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board are self-regulatory organizations for purposes of this form. This form shall be used for all security-based swap submissions and advance notices filed by registered clearing agencies. A proposed change that is required to be filed with the Commission under more than one of these three processes (a proposed rule change, security-based swap submission, or advance notice) shall be submitted on the same Form 19b–4.

B. Need for Careful Preparation of the Completed Form, Including Exhibits

This form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change, security-based swap submission, or advance notice and for the Commission to determine whether the proposed rule change, security-based swap submission, or advance notice is consistent with the requirements of the Act and the rules and regulations thereunder or the Payment, Clearing and Settlement Supervision Act and the rules and regulations thereunder, in each case as applicable to the self-regulatory organization and in accordance with the requirements for each type of filing. The self-regulatory organization must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner.

The proposed rule change, security-based swap submission, or advance notice shall be considered filed on the date on which the Commission receives the proposed rule change, security-based swap submission, or advance notice if the filing complies with all requirements of this form. Any filing that does not comply with the requirements of this form may be returned to the self-regulatory organization. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. See also Rule 0–3 under the Act (17 CFR 240.0–3).

C. Documents Comprising the Completed Form

The completed form filed with the Commission shall consist of the Form 19b–4 Page 1, numbers and captions for all items, responses to all items, and exhibits required in Item 11. In responding to an item, the completed form may omit the text of the item as contained herein if the response is prepared to indicate to the reader the coverage of the item without the reader having to refer to the text of the item or its instructions. Each filing shall be marked on the Form 19b–4 with the initials of the self-regulatory organization, the four-digit year, and the number of the filing for the year (*e.g.,* SRO–YYYY–XX). If the SRO is filing Exhibits 2 or 3 via paper, the exhibits must be filed within 5 calendar days of the electronic submission of all other required documents.

D. Amendments

If information on this form is or becomes inaccurate before the Commission takes action on the proposed rule change or the security-based swap submission, or prior to the expiration of the statutory review period with respect to advance notices (as determined in accordance with Section 806(e) of the Payment, Clearing and Settlement Supervision Act), the self-regulatory organization shall correct any such inaccuracy. Amendments shall be filed as specified in Instruction F.

Amendments to a filing shall include the Form 19b–4 Page 1 marked to number consecutively the amendments, numbers and captions for each amended item, amended response to the item, and required exhibits. The amended response to Item 3 shall explain the purpose of the amendment and, if the amendment changes the purpose of or basis for the proposed rule change, security-based swap submission, or advance notice, the amended response shall also provide a revised purpose and basis statement. Exhibit 1 or Exhibit 1A, as applicable, shall be re-filed if there is a material change from the immediately preceding filing in the language of the proposed rule change or in the information provided relating to the proposed rule change, security-based swap submission, or advance notice.

If the amendment alters the text of an existing rule, the amendment shall include the text of the existing rule, marked in the manner described in Item 1(a) using brackets to indicate words to be deleted from the existing rule and underscoring to indicate words to be added. The purpose of this marking requirement is to maintain a current copy of how the text of the existing rule is being changed.

If the amendment alters the text of the proposed rule change as it appeared in the immediately preceding filing (even if the proposed rule change does not alter the text of an existing rule), the amendment shall include, as Exhibit 4, the entire text of the rule as altered. This full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (*i.e.,* partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

If, after the Form 19b–4 is filed but before the Commission takes final action on it, the self-regulatory organization receives or prepares any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, security-based swap submission, or advance notice, the communications shall be filed as Exhibit 2. If information in the communication makes the filing inaccurate, the filing shall be amended to correct the inaccuracy. If such communications cannot be filed electronically in accordance with Instruction F, the communications shall be filed in accordance with Instruction G.

E. Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change

The Commission will not approve a proposed rule change or make a determination regarding a security-based swap submission or raise no objection to an advance notice before the self-regulatory organization has completed all action required to be taken under its constitution, articles of incorporation, bylaws, rules, or instruments corresponding thereto (excluding action specified in any such

of the Act, SROs are required to file electronically such proposed rule changes in accordance with this form.

instrument with respect to (i) compliance with the procedures of the Act or (ii) the formal filing of amendments pursuant to state law).

F. Signature and Filing of the Completed Form

All proposed rule changes, security-based swap submissions, advance notices, amendments, extensions, and withdrawals of proposed rule changes, security-based swap submissions, and advance notices shall be filed through the EFFS. In order to file Form 19b–4 through EFFS, self-regulatory organizations must request access to the SEC's External Application Server by completing a request for an external account user ID and password. Initial requests will be received by contacting the Trading and Markets Administrator located on our Web site (*http://www.sec.gov*). An email will be sent to the requestor that will provide a link to a secure Web site where basic profile information will be requested.

A duly authorized officer of the self-regulatory organization shall electronically sign the completed Form 19b–4 as indicated on Page 1 of the Form. In addition, a duly authorized officer of the self-regulatory organization shall manually sign one copy of the completed Form 19b–4, and the manually signed signature page shall be maintained pursuant to Section 17 of the Act. A registered clearing agency for which the Commission is not the appropriate regulatory agency also shall file with its appropriate regulatory agency three copies of the form, one of which shall be manually signed, including exhibits. A clearing agency that also is a designated clearing agency shall file with the Board of Governors of the Federal Reserve System (''Federal Reserve'') three copies of any form containing an advance notice, one of which shall be manually signed, including exhibits; provided, however, that this requirement may be satisfied instead by providing the copies to the Federal Reserve in an electronic format as permitted by the Federal Reserve. The Municipal Securities Rulemaking Board also shall file copies of the form, including exhibits, with the Federal Reserve, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

G. Procedures for Submission of Paper Documents for Exhibits 2 and 3

To the extent that Exhibits 2 and 3 cannot be filed electronically in accordance with Instruction F, four copies of Exhibits 2 and 3 shall be filed with the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. Page 1 of the electronic Form 19b–4 shall accompany paper submissions of Exhibits 2 and 3. If the SRO is filing Exhibits 2 and 3 via paper, they must be filed within five calendar days of the electronic filing of all other required documents.

H. Withdrawals of Proposed Rule Changes, Security-Based Swap Submissions or Advance Notices

If a self-regulatory organization determines to withdraw a proposed rule change, security-based swap submission, or advance notice, it must complete Page 1 of the Form 19b–4 and indicate by selecting the appropriate check box to withdraw the filing.

I. Procedures for Granting an Extension of Time for Commission Final Action

After the Commission publishes notice of a proposed rule change or security-based swap submission, if a self-regulatory organization wishes to grant the Commission an extension of the time to take final action as specified in Section 19(b)(2) or Section 3C, the self-regulatory organization shall indicate on the Form 19b–4 Page 1 the granting of said extension as well as the date the extension expires.

Information To Be Included in the Completed Form (''Form 19b–4 Information'')

1. Text of the Proposed Rule Change

(a) Include the text of the proposed rule change, security-based swap submission, or advance notice. Text of the proposed rule change should be included either in Exhibit 5 or Exhibit 1 (or Exhibit 1A in the filing of a clearing agency). Changes in, additions to, or deletions from, any existing rule shall be set forth with brackets used to indicate words to be deleted and underscoring used to indicate words to be added.

If any form, report, or questionnaire is:

(i) proposed to be used in connection with the implementation or operation of the proposed rule change, security-based swap submission, or advance notice, or

(ii) prescribed or referred to in the proposed rule change, security-based swap submission, or advance notice, then the form, report, or questionnaire must be attached to and shall be considered as part of the proposed rule change, security-based swap submission, or advance notice. If completion of the form, report, or questionnaire is voluntary or is required pursuant to an existing rule of the self-regulatory organization, then the form, report, or questionnaire, together with a statement identifying any existing rule that requires completion of the form, report, or questionnaire, shall be attached as Exhibit 3. If the form, report, or questionnaire cannot be filed electronically in accordance with Instruction F, the documents shall be filed in accordance with Instruction G.

(b) If the self-regulatory organization reasonably expects that the proposed rule change, security-based swap submission, or advance notice will have any direct effect, or significant indirect effect, on the application of any other rule of the self-regulatory organization, set forth the designation or title of any such rule and describe the anticipated effect of the proposed rule change, security-based swap submission, or advance notice on the application of such other rule.

(c) Include the file numbers for prior filings with respect to any existing rule specified in response to Item 1(b).

2. Procedures of the Self-Regulatory Organization

Describe action on the proposed rule change, security-based swap submission, or advance notice taken by the members or board of directors or other governing body of the self-regulatory organization. See Instruction E.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Provide a statement of the purpose of the proposed rule change and its basis under the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act, except for proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(7)(D) of the Act that the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public

interest or the protection of investors. At a minimum, the statement should:

(a) Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will operate to resolve those problems, the manner in which the proposed rule change will affect various persons (*e.g.,* brokers, dealers, issuers, and investors), and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change; and

(b) Explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. With respect to a proposed rule change filed pursuant to Section 19(b)(1) of the Act that has been abrogated pursuant to Section 19(b)(7)(C) of the Act, explain why the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest and the protection of investors, in accordance with Section 19(b)(7)(D) of the Act. A mere assertion that the proposed rule change satisfies these requirements is not sufficient. In the case of a registered clearing agency, also explain how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.

Failure to describe and justify the proposed rule change in the manner described above may result in the Commission not having sufficient information to make an affirmative finding that the proposed rule change is consistent with the Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

Note 1. *National Securities Exchanges and Registered Securities Associations.* Under Sections 6 and 15A of the Act, rules of a national securities exchange or registered securities association may not permit unfair discrimination between customers, issuers, brokers, or dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the self-regulatory organization. Rules of a registered securities association may not fix minimum profits or impose any schedule of or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.

Under Section 11A(c)(5) of the Act, a national securities exchange or registered securities association may not limit or condition the participation of any member in any registered clearing agency.

Note 2. *Registered Clearing Agencies.* Under Section 17A of the Act, rules of a registered clearing agency may not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of Section 17A of the Act or the administration of the clearing agency, and may not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

Note 3. *Municipal Securities Rulemaking Board.* Under Section 15B of the Act, rules of the Municipal Securities Rulemaking Board may not permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, may not fix minimum profits, or impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act with respect to municipal securities or the administration of the Municipal Securities Rulemaking Board.

4. Self-Regulatory Organization's Statement on Burden on Competition

State whether the proposed rule change will have an impact on competition and, if so, (i) state whether the proposed rule change will impose any burden on competition or whether it will relieve any burden on, or otherwise promote, competition and (ii) specify the particular categories of persons and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them. If the proposed rule change amends an existing rule, state whether that existing rule, as amended by the proposed rule change, will impose any burden on competition. If any impact on competition is not believed to be a significant burden on competition, explain why. Explain why any burden on competition is necessary or appropriate in furtherance of the purposes of the Act. In providing those explanations, set forth and respond in detail to written comments as to any significant impact or burden on competition perceived by any person who has made comments on the proposed rule change to the self-regulatory organization. A mere assertion that the proposed rule change satisfies these requirements is not sufficient. The statement concerning burdens on competition should be sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any unnecessary or inappropriate burden on competition. Failure to describe and justify the proposed rule change in the manner described above may result in the Commission not having sufficient information to make an affirmative finding that the proposed rule change is consistent with the Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

If written comments were received (whether or not comments were solicited) from members of or participants in the self-regulatory organization or others, summarize the substance of all such comments received and respond in detail to any significant issues that those comments raised about the proposed rule change. If an issue is summarized and responded to in detail under Item 3 or Item 4, that response need not be duplicated if appropriate cross-reference is made to the place where the response can be found. If comments were not or are not to be solicited, so state.

6. Extension of Time Period for Commission Action

If the proposed rule change is subject to Commission approval, state whether the self-regulatory organization consents to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act and the duration of the extension, if any, to which the self-regulatory organization consents.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) If the proposed rule change is to take, or to be put into, effect, pursuant to Section 19(b)(3), state whether the filing is made pursuant to paragraph (A) or (B) thereof.

(b) In the case of paragraph (A) of Section 19(b)(3), designate that the proposed rule change:

(i) Is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule,

(ii) Establishes or changes a due, fee, or other charge,

(iii) Is concerned solely with the administration of the self-regulatory organization,

(iv) Effects a change in an existing service of a registered clearing agency

that either (A)(1) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (2) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service or (B)(1) primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and (2) does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service, and set forth the basis on which such designation is made,

(v) Effects a change in an existing order-entry or trading system of a self-regulatory organization that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system, or

(vi) Effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its 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. If it is requested that the proposed rule change become operative in less than 30 days, provide a statement explaining why the Commission should shorten this time period.

(c) In the case of paragraph (B) of Section 19(b)(3), set forth the basis upon which the Commission should, in the view of the self-regulatory organization, determine that the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds requires that the proposed rule change should be put into effect summarily by the Commission.

Note. The Commission has the power under Section 19(b)(3)(C) of the Act to summarily temporarily suspend within sixty days of its filing any proposed rule change which has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act or was put into effect summarily by the Commission pursuant to Section 19(b)(3)(B) of the Act. In exercising its summary power under Section 19(b)(3)(B), the Commission is required to make one of the findings described above but may not have a full opportunity to make a determination that the proposed rule change otherwise is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission will generally exercise its summary power under Section 19(b)(3)(B) on condition that the proposed rule change to be declared effective summarily shall also be subject to the procedures of Section 19(b)(2) of the Act. Accordingly, in most cases, a summary order under Section 19(b)(3)(B) shall be effective only until such time as the Commission shall enter an order, pursuant to Section 19(b)(2)(A) of the Act, to approve such proposed rule change or, depending on the circumstances, until such time as the Commission shall institute proceedings to determine whether to disapprove such proposed rule change or, alternatively, such time as the Commission shall, at the conclusion of such proceedings, enter an order, pursuant to Section 19(b)(2)(B), approving or disapproving such proposed rule change.

(d) If accelerated effectiveness pursuant to Section 19(b)(2) or Section 19(b)(7)(D) of the Act is requested, provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

State whether the proposed rule change is based on a rule either of another self-regulatory organization or of the Commission, and, if so, identify the rule and explain any differences between the proposed rule change and that rule, as the filing self-regulatory organization understands it. In explaining any such differences, give particular attention to differences between the conduct required to comply with the proposed rule change and that required to comply with the other rule.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

(a) A clearing agency shall submit to the Commission on this Form 19b–4, a security-based swap submission for any security-based swap, or any group, category, type or class of security-based swaps that the clearing agency plans to accept for clearing.

(b) The clearing agency shall include in the security-based swap submission a statement that includes, but is not limited to:

(i) How the security-based swap submission is consistent with Section 17A of the Act (15 U.S.C. 78q–1);

(ii) Information that will assist the Commission in the quantitative and qualitative assessment of the factors specified in Section 3C of the Act (15 U.S.C. 78c–3), including, but not limited to:

(A) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data;

(B) The availability of a rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded;

(C) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract;

(D) The effect on competition, including appropriate fees and charges applied to clearing; and

(E) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or one or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property;

(iii) A description of how the rules of the clearing agency prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency, as applicable to the security-based swaps described in the security-based swap submission; and

(iv) A description of how the rules of the clearing agency provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility, as applicable to the security-based swaps described in the security-based swap submission.

Note. In connection with the factor specified in Item 9(b)(ii)(A) above, the statement describing the existence of outstanding notional exposures, trading liquidity and adequate pricing data could address pricing sources, models and procedures demonstrating an ability to obtain price data to measure credit exposures in a timely and accurate manner, as well as measures of historical market liquidity and trading activity, and expected market liquidity and trading activity if the security-based swap is required to be cleared (including information on the sources of such measures). With respect to the factor specified in Item 9(b)(ii)(B) above, the statement describing the availability of a rule framework could include a discussion of the rules, policies or procedures applicable to the clearing of the relevant security-based swap. Additionally, the discussion of credit support

infrastructure specified in Item 9(b)(ii)(B) above could include the methods to address and communicate requests for, and posting of, collateral. With respect to the factor specified in Item 9(b)(ii)(C) above, the discussion of systemic risk could include a statement on the clearing agency's risk management procedures including, among other things, the measurement and monitoring of credit exposures, initial and variation margin methodology, methodologies for stress testing and back testing, settlement procedures and default management procedures. With respect to the factor specified in Item 9(b)(ii)(D) above, the discussion of fees and charges could address any volume incentive programs that may apply or impact the fees and charges. With respect to the factor specified in Item 9(b)(ii)(E) above, the discussion of legal certainty in the event of an insolvency could address segregation of accounts and all other customer protection measures under insolvency.

In describing the security-based swap (or group, category, type or class of security-based swaps) referenced in the security-based swap submission, the clearing agency could discuss the relevant product specifications, including copies of any standardized legal documentation, generally accepted contract terms, standard practices for managing and communicating any life cycle events associated with the security-based swap and related adjustments, and the manner in which the information contained in the confirmation of the security-based swap trade is transmitted. The clearing agency also could discuss its financial and operational capacity to provide clearing services to all customers potentially subject to the clearing requirements as applicable to the particular security-based swap. Finally, the clearing agency could include an analysis of the effect of a clearing requirement on the market for the group, category, type, or class of security-based swaps, both domestically and globally, including the potential effect on market liquidity, trading activity, use of security-based swaps by direct and indirect market participants and any potential market disruption or benefits. This analysis could include whether the members of the clearing agency are operationally and financially capable of absorbing clearing business (including indirect access market participants) that may result from a determination that the security-based swap (or group, category, type or class of security-based swaps) is required to be cleared.

(c) A clearing agency shall submit security-based swaps to the Commission for review by group, category, type or class of security-based swaps, to the extent reasonable and practicable to do so.

(d) A clearing agency shall file as an amendment to this Form 19b–4 any additional information necessary to assess any of the factors the Commission determines to be appropriate in order to make a determination regarding the clearing requirement.

(e) A security-based swap submission pursuant to Section 3C that also is required to be filed as a proposed rule change under Section 19(b) or an advance notice under Section 806(e) of the Payment, Clearing and Settlement Supervision Act shall not take effect until determinations are obtained under each of the other applicable statutory provisions.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

(a) A designated clearing agency shall provide notice on this Form 19b–4 sixty (60) days in advance of any proposed change to its rules, procedures, or operations that could, as defined in Rule 19b–4, materially affect the nature or level of risks presented by the designated clearing agency.

(b) A designated clearing agency shall include in the advance notice a description of:

(i) The nature of the change and expected effects on risks to the designated clearing agency, its participants, or the market; and

(ii) how the designated clearing agency plans to manage any identified risks.

(c) A designated clearing agency shall file as amendment to this Form 19b–4 any additional information that is required to be filed by the Commission as necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated clearing agency's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(d) A designated clearing agency that implements a proposed change on an emergency basis must file notice with the Commission on Form 19b–4 within 24 hours of implementing the change. In addition to the information required for advance notices, the notice of an emergency change shall include a description of the nature of the emergency and the reason the change was necessary for the designated clearing agency to continue to operate in a safe and sound manner. Any change implemented by a designated clearing agency on an emergency basis also must comply with Section 19(b) and Section 3C of the Act to the extent those sections are applicable.

(e) A proposed change filed pursuant to Section 806(e) that is also required to be filed as a proposed rule change under Section 19(b) or a security-based swap submission under Section 3C shall not take effect until determinations are obtained under each of the other applicable statutory provisions.

11. *Exhibits*

List of exhibits to be filed, as specified in Instructions C and D:

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the **Federal Register**. Amendments to Exhibit 1 should be filed in accordance with Instructions D and F.

Exhibit 1A. Completed Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice filed by Clearing Agencies for publication in the **Federal Register**. Amendments to Exhibit 1A should be filed in accordance with Instructions D and F.

Exhibit 2 (a) Copies of notices issued by the self-regulatory organization soliciting comment on the proposed rule change, security-based swap submission, or advance notice and copies of all written comments on the proposed rule change, security-based swap submission, or advance notice received by the self-regulatory organization (whether or not comments were solicited), presented in alphabetical order, together with an alphabetical listing of such comments. If such notices and comments cannot be filed electronically in accordance with Instruction F, the notices and comments shall be filed in accordance with Instruction G.

(b) Copies of any transcript of comments on the proposed rule change, security-based swap submission, or advance notice made at any public meeting or, if a transcript is not available, a copy of the summary of comments on the proposed rule change, security-based swap submission, or advance notice made at such meeting. If such transcript of comments or summary of comments cannot be filed electronically in accordance with Instruction F, the transcript of comments or summary of comments shall be filed in accordance with Instruction G.

(c) If after the proposed rule change, security-based swap submission, or advance notice is filed but before the Commission takes final action on it, the self-regulatory organization prepares or receives any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, security-based swap submission, or advance notice, the communications shall be filed in accordance with Instruction F. If such communications cannot be filed electronically in accordance with Instruction F, the communications shall be filed in accordance with Instruction G.

Exhibit 3. Copies of any form, report, or questionnaire covered by Item 1(a). If such form, report, or questionnaire cannot be filed electronically in accordance with Instruction F, the form, report, or questionnaire shall be filed in accordance with Instruction G.

Exhibit 4. For amendments to a filing, marked copies, if required by Instruction D, of the text of the proposed rule change as amended.

Exhibit 5. The SRO may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b–4. Exhibit 5 shall be considered part of the proposed rule change.

SPECIFIC INSTRUCTIONS FOR EXHIBIT 1—NOTICE OF PROPOSED RULE CHANGE

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34– ; File No. SR] [Date]

Self-Regulatory Organizations; [Name of Self-Regulatory Organization]; Notice of Filing [and Immediate Effectiveness] of a Proposed Rule Change Relating to [brief description of subject matter of proposed rule change]

General Instructions

A. Format Requirements

The notice must comply with the guidelines for publication in the **Federal Register**, as well as any requirements for electronic filing as published by the Commission (if applicable). For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, **Federal Register** cite, **Federal Register** date, and corresponding file number (e.g., SR–[SRO]–XX–XX). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0–3 under the Act (17 CFR 240.0–3). Leave a 1-inch margin at the top, bottom, and right hand side, and a 1½ inch margin at the left hand side. Number all pages consecutively, consistent with Rule 0–3 under the Act (17 CFR 240.0–3). Double space all primary text and single space lists of items, quoted material when set apart from primary text, footnotes, and notes to tables.

B. Need for Careful Preparation of the Notice

The self-regulatory organization must provide all information required in the notice and present it in a clear and comprehensible manner. It is the responsibility of the self-regulatory organization to prepare Items I, II and III of the notice. The Commission cautions self-regulatory organizations to pay particular attention to assure that the notice accurately reflects the information provided in the Form 19b–4 it accompanies. Any filing that does not comply with the requirements of Form 19b–4, including the requirements applicable to the notice, may be returned to the self-regulatory organization. Any document so returned shall for all purposes be deemed not to have been filed with the Commission. See Instruction B to Form 19b–4.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on (date) *, the (name of self-regulatory organization) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Information to Be Included in the Completed Notice

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(Supply a brief statement of the terms of substance of the proposed rule change. If the proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate changes in the rule by brackets for words to be deleted and underlined for words to be added.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. (Reproduce the headings, and summarize briefly the most significant aspects of the responses, to Items 3, 4, and 5 of Form 19b–4, redesignating them as A, B, and C, respectively.)

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(2) of the Act, the following paragraph should be used.)

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

(If the proposed rule change is to take, or to be put into, effect pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, the following paragraph should be used.)

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(If the proposed rule change is to take, or to be put into, effect pursuant to Section 19(b)(3)(A) of the Act and subparagraphs (1)–(5) of paragraph (f) of Rule 19b–4 thereunder, the following paragraph should be used.)

* To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change if the filing complies with all requirements of this form. See Instruction B to Form 19b–4.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(7)(D) of the Act, the following paragraph should be used.)

Within 35 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 such proposed rule change, or

(B) after consultation with the Commodity Futures Trading Commission, 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 XX on the subject line.*

Paper Comments

- Send paper comments in triplicate to [Name of Secretary], Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number **XX**. 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 [self-regulatory organization]. 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 **XX** and should be submitted on or before [insert date 21 days from publication in the **Federal Register**].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[1]

Secretary

SPECIFIC INSTRUCTIONS FOR EXHIBIT 1A—NOTICE OF PROPOSED RULE CHANGE, SECURITY-BASED SWAP SUBMISSION, OR ADVANCE NOTICE FILED BY CLEARING AGENCIES

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR] [Date]

Self-Regulatory Organizations; [Name of Clearing Agency]; Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to [brief description of subject matter of proposed rule change, security-based swap submission, or advance notice]

General Instructions

A. Format Requirements

The notice must comply with the guidelines for publication in the **Federal Register**, as well as any requirements for electronic filing as published by the Commission (if applicable). For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, **Federal Register** cite, **Federal Register** date, and corresponding file number (e.g., SR–[SRO]–XX–XX). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0–3 under the Act (17 CFR 240.0–3). Leave a 1-inch margin at the top, bottom, and right hand side, and a 1½ inch margin at the left hand side. Number all pages consecutively, consistent with Rule 0–3 under the Act (17 CFR 240.0–3). Double space all primary text and single space lists of items, quoted material when set apart from primary text, footnotes, and notes to tables.

B. Need for Careful Preparation of the Notice

The clearing agency must provide all information required in the notice and present it in a clear and comprehensible manner. It is the responsibility of the clearing agency to prepare Items I, II and III of the notice. The Commission cautions clearing agencies to pay particular attention to assure that the notice accurately reflects the information provided in the Form 19b–4 it accompanies. Any filing that does not comply with the requirements of Form 19b–4, including the requirements applicable to the notice, may be returned to the clearing agency. Any document so returned shall for all purposes be deemed not to have been filed with the Commission. See Instruction B to Form 19b–4

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) and Rule 19b–4, 17 CFR 240.19b–4, notice is hereby given that on (date)*, the (name of clearing agency) filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

[1] 17 CFR 200.30–3(a)(12).

* To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change, security-based swap submission, or advance notice filing if the filing complies with all requirements of this form. See Instruction B to Form 19b–4.

Information to Be Included in the Completed Notice

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(Supply a brief statement of the terms of substance of the proposed rule change, security-based swap submission, or advance notice. If the proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate changes in the rule by brackets for words to be deleted and underlined for words to be added.)

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. (Reproduce the headings, and summarize briefly the most significant aspects of the responses, to Items 3, 4, 5, 9 or 10 of Form 19b–4, as applicable, redesignating them as A, B, C, D or E, as applicable, respectively.)

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, and Advance Notice and Timing for Commission Action

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(2) of the Act, the following paragraph should be used.)

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

(If the proposed rule change is to take, or to be put into, effect pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4 thereunder, the following paragraph should be used.)

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(If the proposed rule change is to take, or to be put into, effect pursuant to Section 19(b)(3)(A) of the Act and subparagraphs (1)–(5) of paragraph (f) of Rule 19b–4 thereunder, the following paragraph should be used.)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(7)(D) of the Act, the following paragraph should be used.)

Within 35 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 such proposed rule change, or

(B) after consultation with the Commodity Futures Trading Commission institute proceedings to determine whether the proposed rule change should be disapproved.

(If the proposed change is filed as a security-based swap submission pursuant to Section 3C of the Act, the following paragraph should be used.)

Within 90 days after receiving a security-based swap submission, unless the submitting clearing agency agrees to an extension of time limitation, the Commission shall by order make its determination whether the security-based swap, or group, category, type or class of security-based swaps, described in the security-based swap submission is required to be cleared. In making its determination that the clearing requirement shall apply, the Commission may include such terms and conditions to the requirement as the Commission determines to be appropriate in the public interest.

The clearing agency shall post notice on its Web site of any clearing requirement that is implemented.

(If the proposed change is filed as an advance notice pursuant to the Payment, Clearing and Settlement Supervision Act, the following paragraph should be used.)

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission or the Board of Governors of the Federal Reserve System providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

(If the proposed change is filed following the implementation of a change on an emergency basis pursuant to the Payment, Clearing and

Settlement Supervision Act, the following paragraph should be used.)

The clearing agency implemented a proposed change that otherwise would be required to be filed as an advance notice because the clearing agency determined that (i) an emergency existed and (ii) immediate implementation was necessary for the clearing agency to continue to provide its services in a safe and sound manner. The Commission may require modification or recision of the proposed change if it finds it is not consistent with the purposes of the Payment, Clearing and Settlement Supervision Act or any applicable rules, orders, or standards prescribed under Section 805(a).

(If the proposal is submitted pursuant to more than one filing requirement, the clearing agency shall add the following language in addition to the language above.)

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice 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* **XX** *on the subject line.*

Paper Comments

- Send paper comments in triplicate to [Name of Secretary], Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number **XX**. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice 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 [clearing agency]. 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 **XX** and should be submitted on or before [insert date 21 days from publication in the **Federal Register**].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[1]

Secretary

By the Commission.

Dated: June 28, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16233 Filed 7–12–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 200.30–3(a)(12).

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