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# Rules and Regulations

Federal Register

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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.

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1631

### Availability of Records; Correction

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Direct final rule; correcting amendment.

**SUMMARY:** The Federal Retirement Thrift Investment Board (Agency) published a direct final rule in the February 27, 2012, **Federal Register**, pursuant to the Privacy Act of 1974, as amended, to permit Freedom of Information Act (FOIA) requests via electronic mail and facsimile. The direct final rule was published with an incorrect facsimile number. This facsimile number publication was a technical error, and is hereby corrected.

**DATES:** Effective October 9, 2012 and is applicable beginning February 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Erin F. Graham, (202)–942–1605.

**SUPPLEMENTARY INFORMATION:** This document contains corrections to FRTIB regulations stemming from the direct final rule published in the February 27, 2012, **Federal Register** (77 FR 11384) and provides the correct facsimile number for FOIA requests.

**List of Subjects in 5 CFR Part 1631**

Courts, Freedom of information, Government employees.

Accordingly, 5 CFR part 1631 is amended by making the following correcting amendment:

## PART 1631—AVAILABILITY OF RECORDS

■ 1. The authority citation for part 1631 continues to read as follows:

**Authority:** 5 U.S.C. 552.

**§ 1631.6 [Amended]**

■ 2. In § 1631.6, in paragraph (a)(3), revise ''202–942–1776'' to read ''202–942–1676''.

Dated: October 1, 2012.

**James B. Petrick,**

*General Counsel.*

[FR Doc. 2012–24773 Filed 10–5–12; 8:45 am]

BILLING CODE 6760–01–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 9

**[Docket No. OCC–2011–0023]**

**RIN 1557–AD37**

### Short-Term Investment Funds

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the requirements imposed on national banks pursuant to the OCC's short-term investment fund (STIF) rule (STIF Rule). Regulations governing Federal savings associations (FSAs) require compliance with the national bank STIF Rule. The final rule adds safeguards designed to address the risk of loss to a STIF's principal, including measures governing the nature of a STIF's investments, ongoing monitoring of its mark-to-market value and forecasting of potential changes in its mark-to-market value under adverse market conditions, greater transparency and regulatory reporting about a STIF's holdings, and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event that the STIF loses the ability to maintain a stable net asset value (NAV).

**DATES:** The final rule is effective on July 1, 2013. Comments are solicited only on the Paperwork Reduction Act aspects of this final rule and must be submitted by November 8, 2012.

**ADDRESSES:** Comments on the Paperwork Reduction Act aspects of this final rule should be directed to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–NEW, 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.*

**FOR FURTHER INFORMATION CONTACT:** Joel Miller, Group Leader, Asset Management (202) 874–4493, David Barfield, National Bank Examiner, Market Risk (202) 874–1829, Patrick T. Tierney, Counsel, Legislative and Regulatory Activities Division (202) 874–5090, Suzette H. Greco, Assistant Director, or Adam Trost, Senior Attorney, Securities and Corporate Practices Division (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Short-Term Investment Funds*

A collective investment fund (CIF) is a bank-managed fund that holds pooled fiduciary assets that meet specific criteria established by the OCC fiduciary activities regulation at 12 CFR 9.18. Each CIF is established under a ''Plan'' that details the terms under which the bank manages and administers the fund's assets. The bank acts as a fiduciary for the CIF and holds legal title to the fund's assets. Participants in a CIF are the beneficial owners of the fund's assets. Each participant owns an undivided interest in the aggregate assets of a CIF; a participant does not directly own any specific asset held by a CIF.[1]

A fiduciary account's investment in a CIF is called a ''participating interest.'' Participating interests in a CIF are not insured by the Federal Deposit Insurance Corporation and are not subject to potential claims by a bank's creditors. In addition, a participating interest in a CIF cannot be pledged or otherwise encumbered in favor of a third party.

The general rule for valuation of a CIF's assets specifies that a CIF admitting a fiduciary account (that is, allowing the fiduciary account, in effect, to purchase its proportionate interest in the assets of the CIF) or withdrawing the fiduciary account (that is, allowing the fiduciary account, in effect, to redeem the value of its proportionate interest in the CIF) may only do so on the basis of a valuation of the CIF's assets, as of the admission or withdrawal date, based on the mark-to-market value of the CIF's

[1] 12 CFR 9.18.

assets.[2] This general valuation rule is designed to protect all fiduciary accounts participating in the CIF from the risk that other accounts will be admitted or withdrawn at valuations that dilute the value of existing participating interests in the CIF.

A STIF is a type of CIF that permits a bank to value the STIF's assets on an amortized cost basis, rather than at mark-to-market value, for purposes of admissions and withdrawals. This is an exception to the general rule of market valuation. In order to qualify for this exception under the OCC's current Part 9 fiduciary activities regulation, a STIF's Plan must require the bank to: (1) Maintain a dollar-weighted average portfolio maturity of 90 days or less; (2) accrue on a straight-line or amortized basis the difference between the cost and anticipated principal receipt on maturity; and (3) hold the fund's assets until maturity under usual circumstances.[3] Because a STIF's investments are limited to shorter-term assets and those assets generally are required to be held to maturity, differences between the amortized cost and mark-to-market value of the assets will be rare, absent atypical market conditions or an impaired asset.

The OCC's STIF Rule governs STIFs managed by national banks. In addition, regulations adopted by the Office of Thrift Supervision, now recodified as OCC rules pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[4] have long required FSAs to comply with the requirements of the OCC's STIF Rule.[5] Thus, the proposed revisions to the national bank STIFs Rule would apply to a FSA that establishes and administers a STIF. As of June 30, 2012, there was approximately $118 billion invested in STIFs administered by national banks and there were no STIFs administered by FSAs reported.[6]

This final rule enhances protections provided to STIF participants and reduces risks to banks that administer STIFs. The final rule does not affect the obligation that STIFs meet the CIF requirements described in 12 CFR Part 9, which allows national banks to maintain and invest fiduciary assets, consistent with applicable law.[7] Also, national banks managing CIFs are required to adopt and follow written policies and procedures that are adequate to maintain their fiduciary activities in compliance with applicable law.[8] Additionally, 12 CFR Part 9 will continue to require a STIF's bank manager, at least once during each calendar year, to conduct a review of all assets of each fiduciary account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.[9] These examples of CIF requirements applicable to STIFs are not exclusive. Other requirements apply, and a bank must comply with all applicable requirements of 12 CFR Part 9 when acting as a fiduciary for a CIF.

In light of the issuance of this final rule, a bank administering a STIF must revise the written Plan required by 12 CFR 9.18(b)(1).

*B. Comparison to Other Products That Seek To Maintain a Stable NAV*

There are other types of funds that seek to maintain a stable NAV. The most significant of these from a financial market presence standpoint are ''money market mutual funds'' (MMMFs). These funds are organized as open-ended management investment companies and are regulated by the U.S. Securities and Exchange Commission (''SEC'') pursuant to the Investment Company Act of 1940, particularly pursuant to the provisions of SEC Rule 2a–7 thereunder (''Rule 2a–7'').[10] MMMFs seek to maintain a stable share price, typically $1.00 a share. In this regard, they are similar to STIFs.

There are a number of important differences between MMMFs and STIFs; most significantly, MMMFs are open to retail investors, whereas, STIFs only are available to authorized fiduciary accounts. MMMFs may be offered to the investing public and have become a popular product with retail investors, corporate money managers, and institutional investors seeking returns equivalent to current short-term interest rates in exchange for high liquidity and the prospect of protection against the loss of principal. In contrast to the approximately $118 billion currently held in STIFs administered by national banks, MMMFs, as of July 2012, held approximately $2.5 trillion dollars of investor assets.[11]

During the recent period of financial market stress, beginning in 2007 and stretching into 2009, certain types of short-term debt securities frequently held by MMMFs experienced unusually high volatility. Concerns by investors that their MMMFs could not maintain a stable NAV eventually led to investor redemptions out of those funds, and some funds needed to liquidate sizeable portions of their securities to meet investor redemption requests. The volume of redemption requests depressed market prices for short-term debt instruments, exacerbating the problem for all types of stable NAV funds.

The President's Working Group on Financial Markets (''PWG''),[12] after reviewing the market turmoil during the period 2007 through 2009, recommended that the SEC strengthen the regulation and monitoring of MMMFs and also recommended that bank regulators consider strengthening the regulation and monitoring of other types of products that seek to maintain a stable NAV.[13]

[2] 12 CFR 9.18(b)(5)(i). If the bank cannot readily ascertain market value as of the valuation date, the bank generally must use a fair value for the asset, determined in good faith. 12 CFR 9.18(b)(4)(ii)(A).

[3] 12 CFR 9.18(b)(4)(ii)(B).

[4] 76 FR 48950 (2011).

[5] 12 CFR 150.260.

[6] Fifteen national banks collectively reported STIF investments that they administer. Other types of institutions managing certain types of CIFs may also follow the requirements of the OCC's STIF Rule. For example, New York state law provides that all investments in short-term investment common trust funds may be valued at cost, if the plan of operation requires that: (i) The type or category of investments of the fund shall comply with the rules and regulations of the Comptroller of the Currency pertaining to short-term investment funds and (ii) in computing income, the difference between cost of investment and anticipated receipt on maturity of investment shall be accrued on a straight-line basis. *See* N.Y. Comp. Codes R. & Regs. Tit. 3, § 22.23 (2010). Additionally, in order to retain their tax-exempt status, common trust funds must operate in compliance with § 9.18 as well as the federal tax laws. *See* 26 U.S.C. 584. The OCC does not have access to comprehensive data quantifying investments held by STIFs administered by other types of institutions pursuant to legal requirements incorporating the OCC's STIF Rule. Although the direct scope of the STIF Rule provisions in § 9.18 of the OCC's regulations is national banks and Federal branches and agencies of foreign banks acting in a fiduciary capacity (12 CFR 9.1(c)), the nomenclature of the STIF Rule refers simply to ''banks.'' For the sake of convenience, the OCC continues this approach and also applies the same convention to the discussion of the STIF final rule.

[7] 12 CFR 9.2(b).

[8] 12 CFR 9.5.

[9] 12 CFR 9.6(c).

[10] 15 U.S.C. 80a; 17 CFR 270.2a–7. Because STIFs are a form of CIF, they are generally exempt from the SEC's rules under the Investment Company Act. STIFs used exclusively for (1) the collective investment of money by a bank in its fiduciary capacity as trustee, executor, administrator, or guardian and (2) the collective investment of assets of certain employee benefit plans are exempt from the Investment Company Act under 15 U.S.C. 80a–3(c)(3) and (c)(11), respectively. MMMFs are not subject to comparable restrictions as to the type of participant who may invest in the fund or the purpose of such investment.

[11] *See http://www.ici.org/research/stats/mmf.*

[12] The PWG is comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission.

[13] Report of the President's Working Group on Financial Markets, Money Market Fund Reform Options, p. 35 (Oct. 2010), *see http://www.treasury.gov/press-center/press-releases/Documents/*

The SEC subsequently adopted amendments to Rule 2a–7 to strengthen the resilience of MMMFs.[14] The OCC's changes to the STIF Rule issued today are informed by the SEC's revisions to Rule 2a–7.[15] In light of the differences between the MMMF as an investment product and the STIF—*e.g.,* a bank's fiduciary responsibility to a STIF and requirements limiting STIF participation to eligible accounts under the OCC's fiduciary account regulation at 12 CFR part 9—the OCC's rules differ from the SEC's in certain respects.

## II. Overview of the Proposed Rule

On April 9, 2012, the OCC published proposed amendments to its Part 9 STIF Rule[16] to add safeguards designed to address participating interests' risk of loss to a STIF's principal, including measures governing the nature of a STIF's investments; ongoing monitoring of the STIF's mark-to-market value and assessment of potential changes in its mark-to-market value under adverse market conditions; greater transparency and regulatory reporting about the STIF's holdings; and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event that the STIF loses the ability to maintain a stable NAV. The proposal is described in detail in the Section-by-Section Analysis section of this **SUPPLEMENTARY INFORMATION**.

## III. Comments on the Proposed Rule

The comment period for the proposed rule ended on June 8, 2012. The OCC received a total of nine comments: Three from individuals, three from trade associations, two from non-bank financial services firms, and one from a national bank.

In general, commenters supported the proposed rule; however, two commenters asserted that the proposal should more closely follow the SEC's 2a–7 MMMF rule. The OCC's proposal, and the final rule issued today, differs from the SEC's 2a–7 MMMF rule, which reflects the differences between MMMFs and STIFs—MMMFs are a retail investment offering, while STIF participation is limited to eligible accounts under the OCC's fiduciary account regulation at 12 CFR Part 9 and the exemptions from the Investment Company Act of 1940 relied upon by banks organizing STIFs.[17]

One commenter noted that a significant portion of STIF assets are managed by state chartered banks that are not required to comply with the OCC's STIF Rules and that implementation of the OCC's proposed changes may thus place national bank STIF administrators at a competitive disadvantage to state-regulated STIFs and their bank administrators. The OCC acknowledges this concern, but notes that some states' laws may require state banks administering certain comparable funds to comply with the standards the OCC applies to STIFs. In any case, the OCC has concluded that, on balance, the benefits of the final rule issued today that enhance protections provided to STIF participants and reduce risks to banks that administer STIFs outweigh the competitive issue raised by the commenter.

Additional comments are addressed in the Section-by-Section Analysis section of this **SUPPLEMENTARY INFORMATION**.

## IV. Section-by-Section Analysis

### *Effective Date*

Some commenters requested that the final rule have a compliance date in the range of 12 to 16 months after the date of issuance. The final rule's effective date, which will be same date upon which the OCC will expect compliance with the rule, is July 1, 2013. This effective date will provide affected banks with sufficient time to make the systems, process, and investment changes necessary to implement the rule. The OCC believes that the implementation period is adequate given that most affected institutions already are complying with many aspects of the final rule.

### *Section 9.18(b)(4)(iii)(A)*

STIFs typically maintain stable NAVs in order to meet the expectations of the fund's bank managers and participating fiduciary accounts.[18] To the extent a bank fiduciary offers a STIF with a fund objective of maintaining a stable NAV, participating accounts and the OCC expect those STIFs to maintain a stable NAV using amortized cost. The proposal would require a Plan to have as a primary objective that the STIF operate with a stable NAV of $1.00 per participating interest.[19] The OCC received no comment on the proposed stable $1.00 NAV Plan requirement and adopts it as proposed.

### *Section 9.18(b)(4)(iii)(B)*

The current STIF Rule requires the bank managing a STIF[20] to maintain a dollar-weighted average portfolio maturity of 90 days or less. The current STIF Rule restricts the weighted average maturity of the STIF's portfolio in order to limit the exposure of participating fiduciary accounts to certain risks, including interest rate risk. The proposed rule would change the maturity limits to further reduce such risks. First, the proposal would reduce the maximum weighted average portfolio maturity permitted by the rule from 90 days or less to 60 days or less. Second, it would establish a new maturity test that would limit the portion of a STIF's portfolio that could be held in longer term variable- or floating-rate securities.

#### 1. Dollar-Weighted Average Portfolio Maturity

The final rule amends the ''dollar-weighted average portfolio maturity''[21] requirement of the STIF Rule to 60 days or less. Currently, banks managing STIFs must maintain a dollar-weighted average portfolio maturity of 90 days or less.[22] Securities that have shorter periods remaining until maturity generally exhibit a lower level of price volatility in response to interest rate and credit spread fluctuations and, thus, provide a greater assurance that the STIF will continue to maintain a stable value.

Having a portfolio weighted towards securities with longer maturities poses greater risks to participating accounts in a STIF. For example, a longer dollar-weighted average maturity period increases a STIF's exposure to interest rate risk. Additionally, longer maturity periods amplify the effect of widening

*10.21%20PWG%20Report%20Final.pdf. See also* Financial Stability Oversight Council 2012 Annual Report, pp. 11–12 (July 2012) *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[14] *See* Money Market Fund Reform, 75 FR 10060 (Mar. 4, 2010).

[15] The OCC will continue to evaluate the requirements of 12 CFR Part 9 in light of future policy assessments and initiatives concerning stable NAV funds, and will take such additional actions as are appropriate.

[16] 77 FR 21057 (Apr. 9, 2012).

[17] *See* footnote 10, *supra,* and accompanying text.

[18] For example, many STIF plan participants (*e.g.,* pensions) have policies, procedures, and operational systems that presume a stable NAV.

[19] The OCC expects banks to normalize and treat stable NAVs operating at a multiple of a $1.00 (*e.g.,* $10 NAV) or fraction of $1.00 (*e.g.,* $0.5) as operating with a NAV of $1.00 per participating interest.

[20] The current STIF Rule incorporates this and other measures through requirements that a bank operate a STIF in accordance with a written plan that, at a minimum, imposes a series of required provisions with respect to the STIF. The STIF revisions incorporate additional measures that require a STIF plan to adopt specific additional restrictions and procedures.

[21] Generally, ''dollar-weighted average portfolio maturity'' means the average time it takes for securities in a portfolio to mature, weighted in proportion to the dollar amount that is invested in the portfolio. Dollar-weighted average portfolio maturity measures the price sensitivity of fixed-income portfolios to interest rate changes.

[22] 12 CFR 9.18(b)(4)(ii)(B)(*1*).

credit spreads on a STIF. Finally, a STIF holding securities with longer maturity periods generally is exposed to greater liquidity risk because: (1) Fewer securities mature and return principal on a daily or weekly basis to be available for possible fiduciary account withdrawals, and (2) the fund may experience greater difficulty in liquidating these securities in a short period of time at a reasonable price.

STIFs with a shorter portfolio maturity period would be better able to withstand increases in interest rates and credit spreads without material deviation from amortized cost. Furthermore, in the event distress in the short-term instrument market triggers increasing rates of withdrawals from STIFs, the STIFs would be better positioned to withstand such withdrawals as a greater portion of their portfolios mature and return principal on a daily or weekly basis and would have greater ability to liquidate a portion of their portfolio at a reasonable price.

The OCC received one comment addressing the proposed change to the dollar-weighted average portfolio maturity from 90 to 60 days. The commenter asserted that a 60-day dollar-weighted average portfolio maturity would affect STIFs' ability to manage portfolios in a declining interest rate environment and increase demand for securities with shorter interest rate durations. The commenter also stated that this aspect of the proposal would limit a bank's ability to match the expected interest rate horizon of assets to the interest rate and duration of liabilities.

The OCC recognizes the concerns expressed by the commenter; however, as previously discussed, STIFs with a 60-day dollar-weighted average portfolio maturity (1) will better withstand increases in interest rates and credit spreads without material deviation from amortized cost and (2) be better positioned to withstand withdrawals during distress in the short-term instrument market. For these reasons, the 60-day dollar-weighted average portfolio maturity is adopted as proposed without change.

2. Dollar-Weighted Average Portfolio Life Maturity

The final rule, consistent with the proposal, adds a new maturity requirement for STIFs, which limits the dollar-weighted average portfolio life maturity to 120 days or less. The dollar-weighted average portfolio life maturity is measured without regard to a security's interest rate reset dates and, thus, limits the extent to which a STIF can invest in longer-term securities that may expose it to increased liquidity and credit risk.

The dollar-weighted average portfolio maturity measurement in the current STIF Rule does not do as much as its name might suggest to restrict the introduction of certain types of longer-term instruments into a STIF portfolio. For example, floating rate instruments are generally treated according to their next reset date, while they may still be instruments of a longer contractual term that expose the STIF to higher liquidity and credit risks than an instrument of shorter maturity. For this reason, the final rule imposes a new dollar-weighted average portfolio life maturity limitation on the structure of a STIF, to capture certain credit and liquidity risks not encompassed by the dollar-weighted average portfolio maturity restriction. The rule requires that STIFs maintain a dollar-weighted average portfolio life maturity of 120 days or less, which provides a reasonable balance between strengthening the resilience of STIFs to credit and liquidity events while not unduly restricting a bank's ability to invest the STIF's fiduciary assets in a diversified portfolio of short-term, high quality debt securities.

One commenter argued that the proposed 120-day dollar-weighted average portfolio life maturity standard would restrict the ability of STIFs to acquire high credit quality debt securities with legal final maturities longer than one year and would restrict STIFs' ability to diversify fund holdings among multiple types of high quality securities and issuers. To remedy these issues, the commenter suggested that a 180-day dollar-weighted average portfolio life maturity standard would be more appropriate.

The OCC believes that the short-term securities markets are sufficiently diverse in terms of high quality securities and issuers that implementation of a 120-day dollar-weighted average portfolio life maturity standard will not be materially detrimental to national banks and their sponsored STIFs. Furthermore, the OCC believes that a 120-day dollar-weighted average portfolio life maturity standard strengthens the resilience of STIFs to credit and liquidity risks, particularly in volatile markets, which is a systemic benefit that outweighs the particular concerns raised by the commenter. For these reasons, the OCC adopts the 120-day dollar-weighted average portfolio life maturity standard as proposed without change.

3. Determination of Maturity Limits

a. Calculation Method

In determining the dollar-weighted average portfolio maturity of STIFs under the current rule, national banks generally apply the same methodology as required by the SEC for MMMFs pursuant to Rule 2a–7. Dollar-weighted average maturity under Rule 2a–7 is calculated, generally, by treating each security's maturity as the period remaining until the date on which, in accordance with the terms of the security, the principal amount must be unconditionally paid or, in the case of a security called for redemption, the date on which the redemption payment must be made. Rule 2a–7 also provides eight exceptions to this general rule. For example, for certain types of variable-rate securities, the date of maturity may be the earlier of the date of the next interest rate reset or the period remaining until the principal can be recovered through demand. For repurchase agreements, the maturity is the date on which the repurchase is scheduled to occur, unless the repurchase agreement is subject to demand for repurchase, in which case the maturity is the notice period applicable to demand.[23] Consistent with the proposal, the final rule text specifies that banks are to apply the same methodology as the SEC requires under Rule 2a–7 for determining dollar-weighted average portfolio maturity and dollar-weighted average portfolio life maturity.[24]

b. No Assets Grandfathered When Determining Maturity Limits

Two commenters requested that the OCC not include, or ''grandfather'', assets held by STIFs prior to the publication or effective date of the final rule for purposes of calculating the proposed 60-day dollar-weighted average portfolio maturity and 120-day dollar-weighted average portfolio life maturity standards. These commenters suggested that, if the rule did not

[23] *See* 17 CFR 270.2a–7(d)(1)–(8).

[24] The SEC's Rule 2a–7 adopting release describes the new weighted average life maturity calculation as being based on the same methodology as the weighted average maturity determination, but made without reference to the set of maturity exceptions the rule permits for certain interest rate readjustments for specified types of assets under the rule. 17 CFR 270.2a–7(c)(2)(iii). The OCC is adopting the same maturity calculation, referring to it as the dollar-weighted average portfolio life maturity. The calculation bases a security's maturity on its stated final maturity date or, when relevant, the date of the next demand feature when the fund may receive payment of principal and interest (such as a put feature). *See* 75 FR 10072 (Mar. 4, 2010) at footnote 154 and accompanying text.

provide for the grandfathering of STIF assets, national bank STIF administrators would be required to sell certain STIF portfolio assets in order to comply with the proposed standards. These commenters asserted that such a forced sale of STIF assets may not be in the best interest of STIFs or their account participants.

The final rule does not include grandfathering provisions. OCC believes that it is possible that a limited number of STIFs may be required to sell certain portfolio holdings in order to comply with the revised standards, which could, potentially, decrease the book value of a STIF. However, allowing these assets to remain in a limited number of STIFs would continue to expose participants in those STIFs to the heightened liquidity and credit risks of these assets—risks to which investors in other STIFs will not be exposed. In addition, the final rule does not become effective until July 1, 2013, affording affected banks an extended period during which they can determine the most appropriate strategy for disposition of these assets.

*Section 9.18(b)(4)(iii)(E)*

To ensure that banks managing STIFs observe standards designed to limit the amount of credit and liquidity risk to which participating accounts in STIFs are exposed, the OCC proposed to require the Plan to include a provision for the adoption of portfolio and issuer qualitative standards and concentration restrictions. No comment was received on this proposed Plan provision and, thus, it is adopted as proposed without change. The OCC expects bank fiduciaries to identify, monitor, and manage issuer concentrations and lower quality investment concentrations, and to implement procedures to perform appropriate due diligence on all concentration exposures, as part of the bank's risk management policies and procedures for each STIF. In addition to standards imposed by applicable law, the portfolio and issuer qualitative standards and concentration restrictions should take into consideration market events and any deterioration in an issuer's financial condition.

*Section 9.18(b)(4)(iii)(F)*

Many banks process STIF withdrawal requests within a short time frame, often on the same day that the withdrawal request is received, which necessitates sufficient liquidity to meet such requests. By holding illiquid securities, a STIF exposes itself to the risk that it will be unable to satisfy withdrawal requests promptly without selling illiquid securities at a loss that, in turn, could impair its ability to maintain a stable NAV. Moreover, illiquid securities are generally subject to greater price volatility, exposing the STIF to greater risk that its mark-to-market value will deviate from its amortized cost value. To address this concern, the final rule, consistent with the proposal, requires adoption of liquidity standards that include provisions to address contingency funding needs.

One commenter requested that the OCC clarify that the phrase ''contingency funding needs'' in the provision refers to contingency funding of the assets of a STIF, rather than a requirement that the STIF obtain a line of credit or similar redemption funding arrangement with a lending institution. It is the OCC's view that the contingency funding aspect of this requirement does not require a STIF to obtain a letter of credit or similar arrangement with another party. However, liquidity standards should include provisions to address contingency funding needs, delineating policies to manage a range of stress environments, establishing clear lines of responsibility, and articulating clear implementation and escalation procedures. An objective of robust liquidity standards should be to ensure that the STIF's sources of liquidity are sufficient to fund expected operating requirements under a reasonable range of contingent events and scenarios. A STIF Plan's liquidity standards should identify alternative contingent liquidity resources that can be employed under adverse liquidity circumstances. The liquidity standards should be commensurate with a STIF's complexity, risk profile, and scope of operations. The liquidity funding needs standards should be regularly tested and updated to ensure they are operationally sound and, as macroeconomic and institution-specific conditions change, the liquidity standards of a STIF's Plan should be revised to reflect these changes.

Another commenter suggested that the final rule should adopt the SEC's Rule 2a–7 prescriptive liquidity standards applicable to MMMFs. Those standards (1) require a MMMF to hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions and any commitments the MMMF has made to shareholders; (2) prohibit the acquisition of an illiquid security if the MMMF would have invested more than 5% of its total assets in illiquid securities; (3) require the MMMF to maintain a minimum daily liquidity of 10% or more of total assets; and (4) require the MMMF to maintain a weekly minimum liquidity of 30% or more of total assets.[25] As discussed previously, this final rule, including the requirement that a STIF's Plan adopt liquidity standards that include provisions to address contingency funding needs, are informed by the SEC's revisions to Rule 2a–7, but differ in light of the differences between the MMMF as a publicly-offered investment product and a STIF, *e.g.,* a bank's fiduciary responsibility to a STIF and requirements limiting STIF participation to eligible accounts under the OCC's fiduciary account regulation at 12 CFR part 9.

For these reasons, the final rule adopts the STIF Plan liquidity standards provision as proposed without change.

*Section 9.18(b)(4)(iii)(G)*

Consistent with the proposal, the final rule requires a bank managing a STIF to adopt shadow pricing procedures.[26] These procedures require the bank to calculate the extent of the difference, if any, between the mark-to-market NAV per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost value per participating interest. In the event the difference exceeds $0.005 per participating interest,[27] the bank must take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF, such as ceasing fiduciary account withdrawals. The shadow pricing procedures must occur at least on a calendar week basis and more frequently as determined by the bank when market conditions warrant.

One commenter requested that the OCC confirm that a bank administering a STIF is permitted to decide the most appropriate actions to protect participating accounts from dilution or other unfair results if the difference between mark-to-market and amortized cost per participating interest exceeds $0.005. The OCC notes that the shadow pricing requirement does not impose any limits or requirements on actions a bank administering a STIF must take to reduce dilutions of participating interests or other unfair results to participating accounts. However, any such actions taken must not impair the safety and soundness of the bank.

[25] *See* 17 CFR 270.2a–7(c)(5).

[26] Shadow pricing is the process of maintaining two sets of valuation records—one that reflects the value of a fund's assets at amortized cost and the other that reflects the market value of the fund's assets.

[27] The final rule requires a STIF to operate with a stable NAV of $1.00 per participating interest as a primary fund objective. If a STIF has a stable NAV that is different than $1.00 it must adjust the reference value accordingly.

Another commenter advocated that a difference of $0.005 between mark-to-market and amortized cost per participating interest is significant in a low interest rate environment and, therefore, a lower threshold of difference should apply. The OCC notes that, by the same logic, a higher threshold of deviation from $1.00 might be appropriate for higher interest rate environments. However, the OCC believes that the $0.005 trigger is widely recognized as a threshold of significance in this arena, and will function effectively as a risk management benchmark, the meaning of which will be understood by banks and STIF participants alike.

For these reasons, the proposed STIF shadow pricing procedures are adopted as final without change.

*Section 9.18(b)(4)(iii)(H)*

Consistent with the proposal, the final rule requires a bank managing a STIF to adopt procedures for stress testing the fund's ability to maintain a stable NAV for participating interests. The final rule requires the stress tests be conducted at such intervals as an independent risk manager or a committee responsible for the STIF's oversight determines to be appropriate and reasonable in light of current market conditions, but in no case shall the interval be longer than a calendar month-end basis. The independent risk manager or committee members must be independent from the STIF's investment management. The stress testing is to be based upon scenarios (specified by the bank) that include, but are not limited to, a change in short-term interest rates; an increase in participating account withdrawals; a downgrade of or default on portfolio securities; and the widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and commercial paper and other types of securities held by the fund.

The stress testing requirement provides a bank with flexibility to specify the scenarios or assumptions on which the stress tests are based, as appropriate to the risk exposures of each STIF. Banks managing STIFs should, for example, consider procedures that require the fund to test for the concurrence of multiple hypothetical events, *e.g.,* where there is a simultaneous increase in interest rates and substantial withdrawals.[28]

The final rule also requires a stress test report be provided to the independent risk manager or the committee responsible for the STIF's oversight. The report must include: (1) The date(s) on which the testing was performed; (2) the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market NAV calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its NAV per participating interest calculated using amortized cost to exceed $0.005; and (3) an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year.

In addition, the final rule requires that adverse stress testing results be reported to the bank's senior risk management that is independent from the STIF's investment management.

Two commenters asserted that the stress testing methodology should be left to the discretion of a bank. The requirement that the Plan adopt procedures for stress testing a STIF's ability to maintain a stable NAV per participating interest does not specify any stress testing methodology. However, as proposed, the stress testing provision requires that the stress testing be based upon hypothetical events that include, but are not limited to, a change in short-term interest rates, an increase in participant account withdrawals, a downgrade of or default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the STIF has selected for overnight interest rates and commercial paper and other types of securities held by the STIF.

These two commenters also suggested that the frequency of stress testing should be left to the discretion of a bank. The rule requires stress testing at least on a calendar month-end basis and at such frequencies as an independent risk manager or a committee responsible for a STIF's oversight that consists of members independent from the STIF's investment management determines appropriate and reasonable in light of current market conditions. Thus, the monthly stress testing requirement is a floor; independent risk managers or an oversight committee, consisting of independent members as described in the proposal, have the discretion to perform more frequent stress testing. The OCC believes that monthly stress testing is an appropriate, minimum requirement to enhance a bank's sound management of a STIF.

Finally, one commenter requested that the OCC confirm that the term ''independent risk manager'' used in this provision may include a person, group, or function designated as an independent risk manager, but does not need to be a third party service provider. An ''independent risk manager'' is not required to be a third party service provider. However, as discussed previously, an independent risk manager (*e.g.,* a person) or a committee (*e.g.,* a group) responsible for the STIF's oversight must be independent from the STIF's investment management.

These stress testing procedures will provide banks with a better understanding of the risks to which STIFs are exposed and will give banks additional information that can be used for managing those risks. For these reasons, the proposed stress testing requirement is adopted as final without change.

*Section 9.18(b)(4)(iii)(I)*

Consistent with the proposal, the final rule requires banks managing STIFs to disclose information about fund level portfolio holdings to STIF participants and to the OCC within five business days after each calendar month-end. Specifically, the bank is required to disclose the STIF's total assets under management (securities and other assets including cash, minus liabilities); the fund's mark-to-market and amortized cost NAVs, both with and without capital support agreements; the dollar-weighted average portfolio maturity; and dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month. The current STIF Rule does not contain a similar disclosure requirement.

Also, for each security held by the STIF, as of the last business day of the prior calendar month, the bank is required to disclose to STIF participants and to the OCC within five business days after each calendar month-end at a security level: (1) The name of the issuer; (2) the category of investment; (3) the Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier; (4) the principal amount; (5) the maturity date for purposes of calculating dollar-weighted average portfolio maturity; (6) the final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity; (7) the coupon or yield; and (8) the amortized cost value.

[28] Where stress testing models are relied upon, a bank should validate the models consistent with the Supervisory Guidance on Model Risk Management issued by the OCC and the Board of Governors of the Federal Reserve System. *See* OCC Bulletin 2011–12 (Apr. 4, 2011).

Two commenters addressed the proposal's requirement that banks managing STIFs disclose fund and security level information to STIF participants and to the OCC within five business days after each calendar month-end. One commenter suggested that banks make the disclosures 30 days after each calendar month-end; the other commenter suggested 60 days after a calendar month-end. A reason one commenter cited for the 60-day disclosure delay is to be consistent with the SEC's MMMF rule disclosures, which were adopted in order to address concerns about investor confusion and alarm that could result in redemption requests that could increase deviations in a MMMF's price. While this concern may be applicable to MMMFs, which are open to retail investors, STIFs are only available to authorized fiduciary accounts. Fiduciary account participants are less likely than retail investors to become confused and alarmed by fund and security level disclosures five days after each month-end.

One commenter raised concerns related to compiling and filing accurate fund and security level disclosures within five days after calendar month-end. However, the OCC believes the information required to be disclosed is factual, simple, and brief, and, furthermore, is easily susceptible to electronic tracking and report generation so that a five-day disclosure requirement will not introduce unreasonable burden or foster an environment prone to error.

Two commenters suggested that the fund and security level disclosures should be made electronically to STIF participants and the OCC. The proposed regulation did not specify the form, *e.g.,* written or electronic, of disclosure that must be made to STIF participants or the OCC. Thus, the form of banks' disclosures, including electronic disclosures, to STIF participants is subject to banks' discretion, provided that such disclosure is reasonably accessible to STIF participants, *e.g.,* no less accessible than written paper disclosures delivered to STIF participants. In order to clarify that banks may make disclosures and notifications to the OCC's Asset Management Group, Credit and Market Division, under the final rule in an electronic format, the final rule removes the OCC's street mailing address from proposed § 9.18(b)(4)(iii)(I). The OCC will provide guidance to banks describing the process for making electronic disclosures to the agency at least 90 days prior to the effective date of the final rule.

Finally, one commenter requested that the final rule use alternative descriptive language, rather than the term ''STIF participant'' in this provision. The OCC believes that the term ''STIF participant'' is a widely understood term of art that banks use in the administration of STIFs. Furthermore, the OCC received no other requests from commenters seeking clarification of the term. Thus, the proposed use of the term ''STIF participant'' in § 9.18(b)(4)(iii)(I) is adopted in the final rule without change.

For the reasons discussed, the OCC adopts the fund and security level disclosures with one change. As noted, in order to preserve the flexibility for banks to make electronic disclosures to the OCC, the final rule removes the OCC's street mailing address from § 9.18(b)(4)(iii)(I).

*Section 9.18(b)(4)(iii)(J)*

Consistent with the proposal, the final rule requires a bank that manages a STIF to notify the OCC prior to or within one business day after certain events. Those events are: (1) Any difference exceeding $0.0025 between the NAV and the mark-to-market value of a STIF participating interest based on current market factors; (2) when a STIF has re-priced its NAV below $0.995 per participating interest; (3) any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants; (4) any delays or suspensions in honoring STIF participating interest withdrawal requests; (5) any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; and (6) when a national bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a purchase of a defaulted or illiquid asset, or any other form of financial support in order to maintain a stable NAV per participating interest.[29] This requirement to notify the OCC prior to or within one business day after these limited specific events will permit the OCC to more effectively supervise STIFs that are experiencing liquidity or valuation stress.

To comply with this requirement, a bank will have to calculate the mark-to-market value of a STIF participating interest on a daily basis.

One commenter suggested that the rule permit at least five business days, rather than one business day, to notify the OCC of liquidity or valuation stress, in order to provide banks with sufficient time to gather facts, determine a course of action, and prepare a complete and clear notification. As previously discussed, banks' proposed notification prior to or within one business day after limited specific events will permit the OCC to more effectively supervise STIFs that are experiencing liquidity or valuation stress. As has been observed from the recent period of financial market turmoil, liquidity stress events occur within very short time frames thereby making a five business day or more lag for banks to provide the OCC with notification contrary to the agency's obligation to supervise the safety and soundness of banks that administer STIFs.

One commenter also requested clarification that the notification required by § 9.18(b)(4)(iii)(J) may be made to the OCC electronically. Consistent with the prior discussion of § 9.18(b)(4)(iii)(I), the final rule removes the OCC's street mailing address from proposed § 9.18(b)(4)(iii)(J) and the OCC will provide guidance to banks describing the process for making electronic notifications to the agency at least 90 days prior to the effective date of the final rule.

As discussed previously, the OCC included as part of the reportable events under the proposed rule any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants. One commenter asserted that in-kind distributions are not necessarily an indication that a STIF is experiencing liquidity or valuation stress. The commenter suggested revising § 9.18(b)(4)(iii)(J)(*3*) to read ''[a]ny withdrawal distribution in-kind of the STIF's participating interests or segregation of portfolio participants, where such action results from the bank's efforts to reduce dilution of participating interests or other unfair results to participating accounts in the event the difference calculated pursuant to paragraph (b)(4)(iii)(G)(1) exceeds $0.005 per participating interest.'' However, the OCC has decided to adopt the reporting requirement as originally proposed. While an in-kind distribution is not necessarily an indicator of stress to a STIF, it, nonetheless, is an atypical distribution that warrants regulator attention.

For the reasons discussed, the requirement that a bank administering a STIF notify the OCC prior to or within one business day after certain specified events is adopted with one minor

[29] *See* Interagency Policy on Banks/Thrifts Providing Financial Support to Funds Advised by the Banking Organization or its Affiliates, OCC Bulletin 2004–2 Attachment (Jan. 5, 2004) (instructing banks that to avoid engaging in unsafe and unsound banking practices, banks should adopt appropriate policies and procedures governing routine or emergency transactions with bank advised investment funds).

change from the proposal. To make clear that banks may make electronic notifications to the OCC, the final rule removes the OCC's street mailing address from § 9.18(b)(4)(iii)(J).

*Section 9.18(b)(4)(iii)(K)*

The OCC is amending the current rule to require banks managing a STIF to adopt procedures that, in the event a STIF has re-priced its NAV below $0.995 per participating interest, the bank managing the STIF shall calculate, admit, and withdraw the STIF's participating interests at a price based on the mark-to-market NAV. Currently, the rule creates an incentive for withdrawal of participating interests if the mark-to-market NAV falls below the stable NAV because the earlier withdrawals are more likely to receive the full stable NAV payment. The OCC proposed this requirement in order to remove this incentive, as once the NAV is priced below $0.995, all withdrawals of participating interests will receive the mark-to-market NAV instead of the stable NAV.

One commenter highlighted language in the OCC proposal requiring banks to ''calculate, redeem, and sell'' STIF participating interests at mark-to-market NAV once participating interests in the STIF have been re-priced below $0.995. This commenter requested clarification whether the OCC intends to require the bank to begin liquidation of the STIF once it has re-priced its NAV below $0.995 per participating interest. The OCC did not intend this language to require a bank to begin liquidation of a STIF. To provide clarification, § 9.18(b)(4)(iii)(K) has been revised in the final rule to require banks managing a STIF to adopt procedures that, in the event a STIF has re-priced its NAV below $0.995 per participating interest, the bank managing the STIF shall calculate, *admit, and withdraw* the STIF's participating interests at a price based on the mark-to-market NAV. Use of the ''calculate, admit, and withdraw'' language in this provision, rather than ''calculate, redeem, and sell'', is more consistent with STIFs' operations and § 9.18 and clarifies that liquidation is not a required action when a STIF has re-priced its NAV below $0.995 per participating interest. Other than this change, the proposed provision is adopted as final.

*Section 9.18(b)(4)(iii)(L)*

The final rule, consistent with the proposal, requires a bank managing a STIF to adopt procedures for suspending redemptions and initiating liquidation of a STIF as a result of redemptions. The OCC's intent in proposing this requirement was to reduce the vulnerability of participating accounts to the harmful effects of extraordinary levels of withdrawals, which can be accomplished to some degree by suspending withdrawals. These suspensions only will be permitted in limited circumstances when, as a result of redemption, the bank has: (1) Determined that the extent of the difference between the STIF's amortized cost per participating interest and its current mark-to-market NAV per participating interest may result in material dilution of participating interests or other unfair results to participating accounts; (2) formally approved the liquidation of the STIF; and (3) facilitated the fair and orderly liquidation of the STIF to the benefit of all STIF participants.

The OCC understands that suspending withdrawals may impose hardships on fiduciary accounts for which the ability to redeem participations is an important consideration. Accordingly, the requirement is limited to permitting suspension in extraordinary circumstances when there is significant risk of extraordinary withdrawal activity to the detriment of other participating accounts.

Similar to the discussion in § 9.18(b)(4)(iii)(I), one commenter requested that § 9.18(b)(4)(iii)(L) use the phrase ''accounts invested in a STIF'' rather than the term ''STIF participant''. As discussed previously, the OCC believes that the term ''STIF participant'' is a widely understood term of art that banks use in the administration of STIFs. Additionally, the OCC received no other requests from commenters seeking clarification of the term. Thus, proposed § 9.18(b)(4)(iii)(L) is adopted as final rule without change.

## V. Regulatory Analysis

### *A. Paperwork Reduction Act Analysis*

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. In conjunction with the notice of proposed rulemaking, the OCC submitted the information collection requirements contained therein to OMB for review. In accordance with 5 CFR 1320, OMB filed a comment on the PRA submission instructing the OCC ''* * * to examine public comment in response to the NPRM and include in the supporting statement of the next information collection request—to be submitted to OMB at the final rule stage—a description of how the OCC has responded to any public comments on the PRA submission, including comments on maximizing the practical utility of the collection and minimizing the burden.'' The OCC received no comments on the PRA submission and is resubmitting it with the issuance of this final rule, as instructed by OMB. The OCC has resubmitted the information collection requirements in the final rule to OMB for review and approval under 44 U.S.C. 3506 and 5 CFR part 1320. The information collection requirements are found in §§ 9.18(b)(iii)(E)–(L) of the final rule.

No comments concerning PRA were received in response to the notice of proposed rulemaking. Therefore, the hourly burden estimates for respondents noted in the proposed rule have not changed. The OCC has an ongoing interest in your comments.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, 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 information 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.

Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–NEW, 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, please send a copy of your comments by mail to: OCC Desk Officer, 1557–NEW, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

*B. Regulatory Flexibility Act Analysis*

The Regulatory Flexibility Act (RFA) generally requires an agency that is issuing a final rule to prepare and make available a final regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 604. However, the RFA provides that an agency is not required to prepare and make available a final regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its final rule. 5 U.S.C. 605(b). For purposes of the RFA and OCC-regulated entities, a ''small entity'' includes banks, FSAs, and Federal branches and agencies with assets less than or equal to $175 million and trust companies with assets less than or equal to $7 million. 13 CFR 121.201.

This final rule will not have a significant economic impact on any small national banks or Federal branches and agencies or trust companies, as defined by the RFA. Two small national banks, which are not a substantial number of the 585 small national banks, and no FSAs or Federal branches and agencies reported management of STIFs on their required regulatory reports as of June 30, 2012. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

*C. OCC Unfunded Mandates Reform Act of 1995 Determination*

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate 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 in any one year (adjusted annually for inflation). The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement.

**List of Subjects in 12 CFR Part 9**

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

## PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 12 U.S.C. 24 (Seventh), 92a, and 93a; 12 U.S.C. 78q, 78q–1, and 78w.

■ 2. Section 9.18 is amended by revising paragraph (b)(4)(ii) and by adding paragraph (b)(4)(iii) to read as follows:

**§ 9.18 Collective investment funds.**

* * * * *

(b) * * *

(4) * * *

(ii) *General method of valuation.* Except as provided in paragraph (b)(4)(iii) of this section, a bank shall value each fund asset at mark-to-market value as of the date set for valuation, unless the bank cannot readily ascertain mark-to-market value, in which case the bank shall use a fair value determined in good faith.

(iii) *Short-term investment funds (STIFs) method of valuation.* A bank may value a STIF's assets on a cost basis, rather than mark-to-market value as provided in paragraph (b)(4)(ii) of this section, for purposes of admissions and withdrawals, if the Plan includes appropriate provisions, consistent with this part, requiring the STIF to:

(A) Operate with a stable net asset value of $1.00 per participating interest as a primary fund objective;

(B) Maintain a dollar-weighted average portfolio maturity of 60 days or less and a dollar-weighted average portfolio life maturity of 120 days or less as determined in the same manner as is required by the Securities and Exchange Commission pursuant to Rule 2a–7 for money market mutual funds (17 CFR 270.2a–7);

(C) Accrue on a straight-line or amortized basis the difference between the cost and anticipated principal receipt on maturity;

(D) Hold the STIF's assets until maturity under usual circumstances;

(E) Adopt portfolio and issuer qualitative standards and concentration restrictions;

(F) Adopt liquidity standards that include provisions to address contingency funding needs;

(G) Adopt shadow pricing procedures that:

(*1*) Require the bank to calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost price per participating interest, at least on a calendar week basis and more frequently as determined by the bank when market conditions warrant; and

(*2*) Require the bank, in the event the difference calculated pursuant to this subparagraph exceeds $0.005 per participating interest, to take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF;

(H) Adopt procedures for stress testing the STIF's ability to maintain a stable net asset value per participating interest that shall provide for:

(*1*) The periodic stress testing, at least on a calendar month basis and at such intervals as an independent risk manager or a committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management determines appropriate and reasonable in light of current market conditions;

(*2*) Stress testing based upon hypothetical events that include, but are not limited to, a change in short-term interest rates, an increase in participant account withdrawals, a downgrade of or default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the STIF has selected for overnight interest rates and commercial paper and other types of securities held by the STIF;

(*3*) A stress testing report on the results of such testing to be provided to the independent risk manager or the committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management that shall include: the date(s) on which the testing was performed; the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market net asset value calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its net asset value per participating interest calculated using amortized cost to exceed $0.005; and an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year; and

(*4*) Reporting adverse stress testing results to the bank's senior risk

management that is independent from the STIF's investment management.

(I) Adopt procedures that require a bank to disclose to STIF participants and to the OCC's Asset Management Group, Credit & Market Risk Division, within five business days after each calendar month-end, the fund's total assets under management (securities and other assets including cash, minus liabilities); the fund's mark-to-market and amortized cost net asset values both with and without capital support agreements; the dollar-weighted average portfolio maturity; the dollar-weighted average portfolio life maturity of the STIF as of the last business day of the prior calendar month; and for each security held by the STIF as of the last business day of the prior calendar month:

(*1*) The name of the issuer;

(*2*) The category of investment;

(*3*) The Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier;

(*4*) The principal amount;

(*5*) The maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(*6*) The final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(*7*) The coupon or yield; and

(*8*) The amortized cost value;

(J) Adopt procedures that require a bank that administers a STIF to notify the OCC's Asset Management Group, Credit & Market Risk Division, prior to or within one business day thereafter of the following:

(*1*) Any difference exceeding $0.0025 between the net asset value and the mark-to-market value of a STIF participating interest as calculated using the method set forth in paragraph (b)(4)(iii)(G)(1) of this section;

(*2*) When a STIF has re-priced its net asset value below $0.995 per participating interest;

(*3*) Any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants;

(*4*) Any delays or suspensions in honoring STIF participating interest withdrawal requests;

(*5*) Any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; or

(*6*) In those situations when a bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a purchase of a defaulted or illiquid asset, or any other form of financial support in order to maintain a stable net asset value per participating interest;

(K) Adopt procedures that in the event a STIF has re-priced its net asset value below $0.995 per participating interest, the bank administering the STIF shall calculate, admit, and withdraw the STIF's participating interests at a price based on the mark-to-market net asset value; and

(L) Adopt procedures that, in the event a bank suspends or limits withdrawals and initiates liquidation of the STIF as a result of redemptions, require the bank to:

(*1*) Determine that the extent of the difference between the STIF's amortized cost per participating interest and its mark-to-market net asset value per participating interest may result in material dilution of participating interests or other unfair results to participating accounts;

(*2*) Formally approve the liquidation of the STIF; and

(*3*) Facilitate the fair and orderly liquidation of the STIF to the benefit of all STIF participants.

* * * * *

Dated: September 26, 2012.

**Thomas J. Curry,**

*Comptroller of the Currency.*

[FR Doc. 2012–24375 Filed 10–5–12; 8:45 am]

**BILLING CODE 4810–33–P**

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## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Part 46

**[Docket ID OCC–2011–0029]**

**RIN 1557–AD58**

## Annual Stress Test

**AGENCY:** Office of the Comptroller of the Currency (''OCC''), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') which requires certain companies to conduct annual stress tests pursuant to regulations prescribed by their respective primary financial regulatory agencies. Specifically, this final rule requires national banks and Federal savings associations with total consolidated assets over $10 billion (defined as ''covered institutions'') to conduct an annual stress test as prescribed by this rule.

Under the final rule covered institutions are divided into two categories: covered institutions with total consolidated assets between $10 and $50 billion, and covered institutions with total consolidated assets over $50 billion. Based on these categories, covered institutions are subject to different stress test requirements and deadlines for reporting and disclosures. A key difference between these categories is that a national bank or Federal savings association that qualifies as an over $50 billion covered institution as of October 9, 2012 must conduct the annual stress test under this final rule beginning this year; other covered institutions that qualify as $10 to $50 billion covered institutions are not subject to the stress test requirements under this final rule until 2013.

**DATES:** This rule is effective on October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Darrin Benhart, Deputy Comptroller, Credit and Market Risk, (202) 874–1711; Robert Scavotto, Lead International Expert, International Analysis and Banking Condition, (202) 874–4943; William Russell, National Bank Examiner, (202) 874–5224; Akhtarur Siddique, Deputy Director, Enterprise Risk Analysis Division, (202) 874–4665; Ron Shimabukuro, Senior Counsel, or Alexandra Arney, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 165(i) of the Dodd-Frank Act [1] requires two types of stress testing: (1) Stress tests conducted by the company and (2) stress tests conducted by the Board of Governors of the Federal Reserve System (''Board''). Section 165(i)(2) requires certain financial companies, including national banks and Federal savings associations, to conduct stress tests and requires the Federal primary financial regulatory agency [2] of those financial companies to issue regulations implementing the stress test requirements. A national bank or Federal savings association must conduct a stress test if its total consolidated assets are more than $10 billion. Under section 165(i)(2), a financial company is required to submit to the Board and to its primary financial regulatory agency a report at such time,

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 5301(12).

in such form, and containing such information as the primary financial regulatory agency may require.[3] The primary financial regulatory agency is required to define ''stress test,'' establish methodologies for the conduct of the company-conducted stress test that must include at least three different sets of conditions (baseline, adverse, and severely adverse), establish the form and content of the institution's report, and compel the institution to publish a summary of the results of the Dodd-Frank Act institutional stress tests.[4]

In addition to the company-run stress tests required under section 165(i)(2), section 165(i)(1) requires the Board to conduct annual analyses of nonbank financial companies supervised by the Board and bank holding companies with total consolidated assets equal to or greater than $50 billion to determine whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.[5] The Board published a proposed rule implementing this supervisory stress testing on January 5, 2012.[6]

## II. Discussion of Comments on Proposed Rule

The OCC published a notice of proposed rulemaking in the **Federal Register** on January 24, setting forth definitions and rules for scope of application, scenarios, data collection, reporting, and disclosure.[7] The OCC received 19 comment letters on the proposal. Commenters included banks, industry groups, nonprofit organizations, and individuals. Commenters generally expressed support for the proposed rule and stress testing in general, but several recommended changes to certain provisions of the proposed rule. Many commenters also strongly urged the OCC to coordinate with the Board and Federal Deposit Insurance Corporation (''FDIC'') (collectively, the ''agencies'') to make the agencies' rules on annual stress tests consistent. After careful consideration of these comments, the OCC has modified the proposed rule in certain respects in response to the comments.

### *A. Coordination With Other Agencies*

As noted, section 165(i)(2) of the Dodd-Frank Act requires the primary financial regulators to issue regulations that include requirements defining ''stress test,'' establishing methodologies for the conduct of company-run stress tests under at least three different sets of conditions, establishing the form and content of the institution's report, and compelling the institution to publish a summary of the results. One commenter raised concerns that the OCC would impose unnecessary, multiple stress testing requirements and subject institutions to uncoordinated testing parameters, data requests, and disclosure formats. Other commenters urged consistency and comparability across the agencies' rules and reconciliation of inconsistencies among the rules of the agencies.

The OCC has worked to minimize any potential duplication related to the annual stress test requirements. In particular, the OCC worked closely with the other agencies to make consistent and comparable the rules' standards in the areas of scope of application, scenarios, data collection and reporting forms. Each of these areas is discussed in further detail below.

### *B. Scope of Application and Effective Date of the Rule*

In the proposed rule, the OCC defined a ''covered institution'' as a national bank or Federal savings association with average consolidated assets that exceed $10 billion, with implementation of the stress testing requirements to begin in late 2012. Several commenters suggested that the OCC delay implementation of the rule, particularly for institutions that have not been previously subject to other stress testing requirements such as the Board's Comprehensive Capital Analysis and Review (''CCAR'') stress tests. One commenter suggested that the OCC introduce stress test requirements on a rolling basis according to asset size and begin with the largest institutions. Only one commenter indicated that an immediate effective date would provide sufficient time for an institution to conduct its first stress test.

The OCC recognizes that institutions are at different stages in developing their stress testing frameworks and that the agencies only recently issued stress testing guidance.[8] Therefore, although this rule will apply to all covered institutions, this final rule establishes two categories of covered institutions. The first category consists of national banks and Federal savings associations with average total consolidated assets greater than $10 billion but less than $50 billion, hereinafter referred to as ''$10 to $50 billion covered institutions.'' The second category consists of national banks and Federal savings associations with average total consolidated assets of $50 billion or more, hereinafter referred to as ''over $50 billion covered institutions.'' The OCC is providing a one year delay for $10 to $50 billion covered institutions. This delay will allow these covered institutions to continue to develop and implement a robust stress testing framework.

Most national banks with consolidated assets of $50 billion or more have been subject to previous stress testing, including the 2009 Supervisory Capital Assessment Program (''SCAP'') and the Board's CCAR stress tests, and consequently, have in place a framework necessary to conduct the stress tests required by this rule. Furthermore, given the size and importance of these covered institutions to the safety and soundness of the United States banking system, the OCC believes it is appropriate for these covered institutions to begin conducting company-run stress tests as soon as possible. Consequently, most national banks and Federal savings associations with consolidated total assets equal to or exceeding $50 billion will be required to conduct their first annual stress tests under this final rule in the fall of 2012.

The OCC notes, however, that some national banks and Federal savings associations with assets of $50 billion or more may not be able or ready to conduct the annual stress test this year in a manner that would yield meaningful results. For example, covered institutions that were not subject to SCAP and CCAR may need more time to develop and implement a robust stress testing framework. Therefore the OCC is reserving authority in the rule to permit these national banks and Federal savings associations to delay the application of the requirements under this final rule on a case-by-case basis, subject to such conditions as the OCC may deem appropriate.

One commenter recommended expanding the scope of the rule to include national banks and Federal savings associations with consolidated assets of less than $10 billion. The OCC believes that stress testing is a good risk management tool that national banks and Federal savings associations of all sizes should consider using in their risk management practices. Moreover, there may be certain situations where, as a supervisory matter, the OCC believes it

[3] 12 U.S.C. 5365(i)(2)(B).

[4] 12 U.S.C. 5365(i)(2)(C).

[5] 12 U.S.C. 5365(i)(1)(A).

[6] Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 FR 594 (January 5, 2012).

[7] *See* 77 FR 3408 (January 24, 2012).

[8] Final joint guidance on Stress Testing for Banking Organizations with More Than $10 Billion in Total Consolidated Assets. *See* 77 FR 29458 (May 17, 2012).

is important for an institution with assets less than $10 billion to conduct a stress test. Therefore, under its general rulemaking authority in 12 U.S.C. 93a and 1463(a)(2), the OCC is reserving authority in the rule to designate a national bank or Federal savings association as a covered institution even if it is not otherwise subject to this final rule.

In addition, the OCC reserves the right to exempt an otherwise covered institution from certain stress test requirements under this final rule to the degree consistent with the requirements of the Dodd-Frank Act.

*C. Scenario Development*

Several commenters urged the agencies to coordinate regarding the scenarios required to be used by bank holding companies, savings and loan holding companies, banks, and savings associations in conducting the stress tests. The OCC, the Board and the FDIC expect to consult closely to provide common scenarios for use at both the depository institution and holding company levels. As part of the annual scenario development process, the OCC expects to update, make additions to, or otherwise modify the scenarios as appropriate. This process will culminate with the distribution of the scenarios to all covered institutions no later than November 15 of each year. The OCC originally proposed an October 15 date for distribution of the scenarios but believes that a November 15 date will better align the development and issuance of the scenarios with the other agencies.

Several of the commenters also suggested a review process relating to scenario development. The OCC believes that a lengthy annual review process for scenarios is impractical if scenarios are to be finalized and issued without becoming outdated due to economic and financial developments. However, the OCC believes that it is important to have a consistent and transparent framework to support scenario design. Consequently, the OCC expects to consult with the Board and the FDIC as well as public and private sector experts to obtain views on salient risks and to obtain suggestions for the behavior of key economic variables under the stress conditions reflected in the scenarios. The OCC expects to publish for one-time notice and comment a guidance document setting out the annual procedures to be used by the OCC in development of the scenarios.

A question posed in the notice of proposed rulemaking regarding whether to permit covered institutions to develop their own scenarios generated comments on each side of the issue. After reviewing the comments, the OCC believes that the most compelling argument is that all covered institutions should use the same set of scenarios so that the OCC can better compare results. Therefore, the OCC intends to provide one set of scenarios for use by all covered institutions.

However, the OCC believes there may be circumstances that would warrant the use of different or additional scenarios. For this reason, the OCC reserves the authority to require a covered institution to use different or additional scenarios as the OCC may deem appropriate. For example, a covered institution may conduct business activities or have risk exposures for which different or additional scenarios might better meet the objectives of this rule. Alternatively, at a more systemic level, although the agencies expect to consult closely on scenario development, the agencies may have different views of the risks that should be reflected in the stress scenarios that covered institutions use for the annual stress test. While recognizing this possibility, the OCC anticipates making every effort to avoid differences in the scenarios required by each agency and to distribute the same scenarios to all covered institutions.

*D. Definition of Stress Test and Use of Stress Test Results*

One commenter noted that the OCC's proposed rule defined ''stress test'' as a process to assess the impact of scenarios on capital, whereas the Board and FDIC definitions also referred to impact on consolidated earnings and losses. The OCC has modified its definition in the final rule to include impact on consolidated earnings and losses to be consistent with the other agencies' definitions. In addition, the OCC proposal defined a ''stress test'' to require taking into account several factors including ''material'' risks, whereas the Board and FDIC proposals did not expressly require the risk to be ''material.'' The OCC has deleted the term ''material'' from its definition. Thus, under the final rule, a covered institution must be able to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered institution over the planning horizon, taking into account the covered institution's current condition, risks, exposures, strategies, and activities.

The final rule states that covered institutions must consider the results of stress tests conducted under the rule in the normal course of business, including, but not limited to, the covered institution's capital planning, assessment of capital adequacy, and risk management practices. The OCC believes, as discussed in interagency guidance on stress testing published in May 2012, that stress tests are an important tool for a variety of decisions made by covered institutions.[9] Such decisions include those related to capital planning and capital adequacy processes, as well as risk management more generally. However, as that guidance notes, such decisions should not be based solely on the results of any single set of stress tests. Rather, covered institutions should consider a range of relevant information when determining appropriate actions. With regard to stress testing, the interagency guidance notes that an effective stress testing framework is part of broader risk management and governance processes and should encompass a broader set of activities and exercises rather than relying on any single test or type of test.

*E. Reporting*

One commenter urged the agencies to develop common reporting requirements. The OCC recognizes that many covered institutions with consolidated total assets of $50 billion or more have been subject to stress testing requirements under the Board's CCAR. The OCC also recognizes that these institutions' stress tests will be applied to more complex portfolios and therefore warrant a broader set of reports to capture adequately the results of the company-run stress tests. These reports will necessarily require more detail than would be appropriate for smaller, less complex institutions. Therefore, in response to comments, the OCC has decided to specify separate reporting templates for covered institutions with total consolidated assets between $10 and $50 billion and for covered institutions with total consolidated assets of $50 billion or more. The OCC published for notice and comment specific annual stress test reporting requirements for over $50 billion covered institutions in a separate final information collection under the Paperwork Reduction Act (44 U.S.C. 3501–3521).[10] The OCC, in consultation

[9] Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets, 77 FR 29458 (May 17, 2012).

[10] Agency Information Collection Activities: Proposed Information Collection; Comment Request, ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act,'' 77 FR 49485 (August 16, 2012).

with the other agencies, is working to develop a more streamlined reporting template to be used by $10 to $50 billion covered institutions subject to the annual stress test rule. The OCC does not expect the reporting requirements for covered institutions to differ materially across agencies.

The OCC notes, however, as discussed in the Paperwork Reduction Act notice for the reporting templates for the over $50 billion covered institutions, that the OCC will require covered institutions to submit supporting documentation that: (i) clearly describes the methodology used to produce the stress test projections; (ii) explains how the macroeconomic factors were translated into a covered institution's projections; and (iii) explains the technical details of any underlying statistical methods used. Where company-specific assumptions are made that differ from the broad macroeconomic assumptions incorporated in stress scenarios provided by the OCC, the documentation must also describe such assumptions and how those assumptions relate to reported projections.[11]

One commenter suggested a planning horizon of two years with financial projections for each year rather than each quarter. However, the OCC believes that quarterly projections provide important supervisory information for the evaluation of the covered institutions' stress testing models and underlying assumptions over the course of the scenario. Some commenters suggested that the period of time between the distribution of scenarios by the OCC and the required reporting date was too short. The OCC plans to provide the annual stress test scenarios to covered institutions approximately seven weeks prior to the date by which an over $50 billion covered institution must report the results of its annual stress test. The OCC believes, based on its supervisory experience with over $50 billion covered institutions, that this should provide adequate time for these institutions to carry out the required stress tests. For the $10 to $50 billion covered institutions, the final rule extends the reporting date to March 31. The OCC believes this later reporting date should provide adequate time for the $10 to $50 billion covered institutions to conduct stress tests and report the results.

[11] *Id.* at 49487 (Description of Supporting Documentation).

*F. Disclosure*

Several commenters expressed concern with disclosing baseline forecasts because these forecasts may be interpreted as earnings guidance. The OCC agrees with this concern and has revised the final rule to require the disclosure of losses only for the severely adverse scenario.

Several commenters noted that an immediate effective date for all institutions with consolidated assets over $10 billion could impose a significant burden on institutions that had not been subject to disclosure requirements such as those in CCAR. In light of these concerns, the OCC is implementing a one-year delay for application of the annual stress test requirement to covered institutions with consolidated assets between $10 billion and $50 billion, and a two-year delay of the disclosure requirement for those covered institutions. Therefore, these institutions would conduct the stress tests required under this rule for the first time in late 2013; the first disclosure of a summary of stress test results would occur in 2015, based on the results of the 2014 stress tests. National banks and Federal savings associations with consolidated assets of $50 billion or more that are subject to this final rule as of the effective date of this final rule must conduct their first stress test this year, with disclosure required in 2013. However, the OCC retains discretion to delay or otherwise modify the application of the disclosure requirements where the covered institution lacks the ability to conduct stress tests that provide meaningful and useful results.

## III. Overview of the Final Rule

This final rule implements the company-conducted stress test requirements for national banks and Federal savings associations as required by section 165(i)(2). Under this final rule, a national bank or a Federal savings association with total consolidated assets of more than $10 billion, defined as a ''covered institution,'' would be required to conduct an annual stress test as prescribed by this final rule. The OCC is delaying the application of the annual stress test requirements to national banks and Federal savings associations with total consolidated assets between $10 billion and $50 billion for one year.

The OCC developed this rule in coordination with the Board and the Federal Insurance Office, as required by section 165(i)(2)(C). The Board and FDIC will issue separate final rules with respect to their supervised entities. For purposes of this rule, ''stress test'' is defined as a process to assess the potential impact of hypothetical economic conditions (''scenarios'') on the consolidated earnings, losses, and capital of a covered institution over a set period (the ''planning horizon''), taking into account the current condition of the covered institution including its risks, exposures, strategies, and activities.

*A. The Purpose of Stress Tests*

The OCC views the stress tests conducted by covered institutions under the final rule as providing forward-looking information to supervisors to assist in their overall assessments of a covered institution's capital adequacy and to aid in identifying downside risks and the potential impact of adverse outcomes on the covered institution's capital adequacy. In addition, the OCC may use stress tests to determine whether additional analytical techniques and exercises are appropriate for a covered institution to employ in identifying, measuring, and monitoring risks to the financial soundness of the covered institution, and may require a covered institution to implement such techniques and exercises in conducting its stress tests. Further, these stress tests are expected to support ongoing improvement in a covered institution's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The OCC expects that the annual stress tests required under the final rule will be only one component of the broader stress testing activities conducted by covered institutions. In this regard, the OCC notes that the agencies have recently issued final joint guidance on ''Stress Testing for Banking Organizations with More Than $10 Billion in Total Consolidated Assets.''[12] These broader stress testing activities should address the impact of a range of potentially adverse outcomes across a set of risk types affecting aspects of the covered institution's financial condition including, but not limited to, capital adequacy. In addition, a full assessment of a covered institution's capital adequacy should take into account a range of factors, including evaluation of its capital planning processes, the governance over those processes, regulatory capital measures, results of supervisory stress tests where applicable, and market assessments.

[12] *See* 77 FR 29458 (May 17, 2012).

*B. Covered Institutions*

1. National Banks and Federal Savings Associations

Under this final rule, a covered institution includes a national bank or Federal savings association for which total consolidated assets exceed $10 billion. Covered institutions are required to conduct annual stress tests as prescribed by this final rule. However, under this final rule covered institutions are divided into two categories: $10 to $50 billion covered institutions and over $50 billion covered institutions. Under this final rule, covered institutions in these different categories may be subject to differing stress test requirements and deadlines for reporting and disclosures.

The OCC recognizes that some of the under $50 billion covered institutions may be affiliated with larger institutions also subject to requirements for stress testing, reporting and disclosure. In such cases, it may be less burdensome and more appropriate for the covered institution to follow the requirements applicable to over $50 billion covered institutions. The final rule permits a $10 to $50 billion covered institution to choose to conduct its stress test under this part using the requirements applicable to an over $50 billion covered institution under those circumstances.

The determination as to whether a national bank or Federal savings association is a covered institution is based upon the institution's total consolidated assets averaged over the four most recent consecutive quarters, as reported on the institution's Call Reports for those quarters.[13] The exact date on which the institution becomes a covered institution is the as-of date of the fourth consecutive Call Report. Unless the OCC determines otherwise, a covered institution will remain subject to the annual stress test requirements under this final rule until its total consolidated assets for each of the four most recent consecutive quarters, as reported on the institution's Call Reports for those quarters, are $10 billion or less.

The date by which a national bank or Federal savings association must conduct its first annual stress test under this final rule depends on its size category and whether it becomes a covered institution before or after October 9, 2012, the effective date of this final rule. A national bank or Federal savings association that is subject to this final rule as of October 9, 2012 must conduct the annual stress test under this final rule beginning this year if it is an over $50 billion covered institution; a $10 to $50 billion covered institution would conduct its first annual stress test in 2013.

A national bank or Federal savings association that becomes a covered institution after October 9, 2012 would be required to conduct its first annual stress test in the calendar year following the year in which it becomes a covered institution. For example, a bank for which the four-quarter average of total consolidated assets exceeded $10 billion on its June 2013 Call Report (based on the average from its September 2012, December 2012, March 2013, and June 2013 Call Reports) would become a covered institution on June 30, 2013. Assuming that the bank's total consolidated assets were less than $50 billion, this bank would be required to fully implement the stress testing requirements of the rule and conduct its first stress test in the testing cycle beginning in the following calendar year, 2014. The actual time between the date on which a national bank or Federal savings association becomes a covered institution and the as-of date for the institution's first stress test would range from 9 to 18 months, depending on the specific quarter in which the bank triggered the $10 billion threshold.

In order to maintain necessary supervisory flexibility, the final rule reserves the authority to permit the OCC to designate a national bank or Federal savings association, not otherwise subject to this rule, as a covered institution. Conversely, the OCC also may exempt an otherwise covered institution from, or delay application of, certain of the annual stress test requirements, consistent with the requirements of the Dodd-Frank Act, based on the covered institution's level of complexity, risk profile, or scope of operations. Additionally, the OCC may accelerate or extend any specified deadline for stress testing, reporting or publication of the stress test results, or require additional stress tests, if the OCC determines that such modification of a deadline or additional testing is appropriate in light of the covered institution's activities, operations, risk profile, or regulatory capital. The OCC will apply notice and response procedures consistent with the procedures under 12 CFR 3.12 with respect to the exercise of reservation of authority in this final rule.

2. Federal Branches or Agencies of a Foreign Bank Not Covered

While the requirement to conduct annual stress tests applies to all national banks and Federal savings associations with total consolidated assets of more than $10 billion, the OCC will not apply the annual stress test requirements of this final rule to Federal branches or agencies of a foreign bank. The company stress test provisions under section 165(i)(2) of the Dodd-Frank Act are intended primarily to assess the impact of stress conditions on a covered institution's capital. Because Federal branches and agencies are not separately capitalized, the application of these requirements to such entities would not be meaningful.

3. Shell Holding Companies and Multi-Bank Holding Companies

When a covered institution comprises the bulk of the assets for a given parent holding company, the inputs to the stress tests conducted by that institution and the holding company, and the conclusions reached, would be expected to be similar. The OCC expects to take this into account in applying the requirements of this rule. For example, for a bank holding company that is essentially a shell holding company with a single national bank that has total consolidated assets of more than $10 billion, the Board and the OCC would coordinate efforts and communicate with the bank holding company and the bank on how to adequately address their respective stress testing requirements while avoiding duplication of effort.

The OCC recognizes that certain parent company structures may include one or more subsidiary banks or savings associations, each with total consolidated assets greater than $10 billion. The stress test requirements of section 165(i)(2) apply to the parent company and to each subsidiary bank or savings association of the covered company that has $10 billion or more in total consolidated assets. The OCC anticipates addressing, on a case-by-case basis through the supervisory process, instances in which it may be appropriate to modify stress testing requirements when there are multiple covered institutions within a single parent organization. In this regard, the OCC notes that even where such a covered institution is required to conduct its own stress test, the OCC does not believe that the covered institution must duplicate unnecessary stress testing systems and processes. A covered institution that is a subsidiary of a holding company subject to the Board's annual stress testing rule

[13] However, the final rule requires a covered institution that has not filed a Call Report in each of the four most recent quarters must calculate total consolidated assets based on the average total consolidated assets reported in the most recent Call Reports that have been filed.

generally may use the stress testing systems and processes of the holding company. For example, the covered institution may use the same data collection processes, and methods and models for projecting and calculating potential losses, pre-provision net revenues, provisions for loan and lease losses, and pro forma capital positions over the stress testing planning horizon, where appropriate.

*C. Stress Test Scenarios*

Under the final rule, each covered institution would be required to conduct an annual stress test using its financial data as of September 30th of that year, unless the OCC communicates, in the fourth quarter of that year, a different required as-of date for any or all categories of financial data. The stress test must assess the potential impact of different scenarios on the capital of the covered institution and certain related items over a forward-looking, nine-quarter planning horizon (that is, through the December 31 reporting date of the second calendar year following the year containing the September 30 as-of date), taking into account all relevant exposures and activities.

The OCC will provide a minimum of three economic scenarios, reflecting baseline, adverse, and severely adverse conditions, or such additional conditions as the OCC determines appropriate, no later than November 15, which the covered institution must use for the stress test. While each scenario includes the paths of a number of economic variables that are typically considered in stress test models, the OCC expects that covered institutions may use all or a subset of the economic variables provided, and may extrapolate other variables (such as local economic variables) from the paths of the economic variables provided, as appropriate, to conduct the stress test.

The OCC notes that certain provisions within the final rule relate to covered institutions with significant trading activities. While most covered institutions will follow the stress test procedures outlined, certain covered institutions with significant amounts of trading activities (as determined by the OCC) may be required to include trading and counterparty components in its adverse and severely adverse scenarios. For these covered institutions, the OCC will select an as-of date between October 1 and December 1 of that calendar year for the data used in this component. This date will be communicated to the covered institution no later than December 1 of the calendar year. This provision is necessary to allow the OCC to tailor the trading and counterparty components for those covered institutions to ensure that the stress tests provide a meaningful identification of downside risks and assessment of the potential impact of adverse outcomes on the covered institution's capital.

The OCC anticipates that the annual stress test scenarios will be revised as appropriate to ensure that each scenario remains relevant under prevailing economic and industry conditions. The OCC will consult closely with the Board and FDIC on the development of the annual stress test scenarios to ensure consistent and comparable stress tests for all covered financial institutions and to minimize regulatory burden. Absent specific supervisory concerns, the OCC anticipates that the annual stress test scenarios will be identical for all covered financial institutions and will be the same as or nearly identical to the scenarios developed by the Board for the supervisory stress tests conducted by the Board under section 165(i)(1).

The OCC anticipates issuing proposed guidance and procedures for scenario development for comment at a later date.

*D. Stress Test Methodologies and Practices*

The final rule requires each covered institution to use the annual stress test scenarios provided by the OCC in conducting its annual stress tests. Each covered institution must use a planning horizon of at least nine quarters over which the impact of specified scenarios would be assessed. The nine-quarter planning horizon would permit the covered institution to make informed projections of its financial and capital positions for a two-calendar-year period. The covered institution is required to calculate, for each quarter-end within the planning horizon, estimates of pre-provision net revenues (''PPNR''), potential losses, loan loss provisions, and net income that result from the conditions specified in each scenario. A covered institution also is required to calculate, for each quarter-end within the planning horizon, the potential impact on its regulatory capital levels and ratios applicable to the institution under 12 CFR part 3 or 12 CFR part 167, incorporating the effects of any expected capital actions over the planning horizon. The applicable regulatory capital levels and ratios include, for national banks, Minimum Leverage Capital Ratio Requirement (12 CFR 3.6), Risk-Based Capital Guidelines based on Basel I (Appendix A to Part 3), Risk-Based Capital Guidelines; Market Risk Adjustment (Appendix B to Part 3), and Internal-Ratings-Based and Advanced Measurement Approaches under Basel II (Appendix C to Part 3), and for Federal savings associations, Regulatory Capital Requirements (12 CFR part 167) and Risk-Based Capital Requirements and Internal-Ratings-Based and Advanced Measurement Approaches (Appendix C to part 167).[14] A covered institution also is required to calculate the potential impact on any other capital ratios specified by the OCC. The stress test must incorporate maintenance by the institution of an allowance for loan losses that would be appropriate for credit exposures throughout the planning horizon.

The final rule also requires each covered institution to establish and maintain a system of controls, oversight, and documentation, including policies and procedures, designed to ensure that the stress testing processes used by the covered institution are effective in meeting the requirements of the final rule. The covered institution's policies and procedures must, at a minimum, outline the covered institution's stress testing practices and methodologies, and processes for validating and updating its stress testing practices consistent with relevant supervisory guidance.[15] The covered institution's board of directors, or a committee thereof, must approve and review the policies and procedures related to stress testing of the covered institution as frequently as economic conditions or the condition of the institution may warrant, but at least annually. The covered institution's senior management must establish and maintain a system of controls, oversight, and documentation designed to ensure that the stress test processes satisfy the requirements under this final rule. The board of directors and senior management must be provided with a summary of the stress test results.

*E. Reporting and Disclosures*

Section 165(i)(2)(B) requires a covered institution to submit a report to the Board and its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require. Section 165(i)(2)(C)(iv) compels the primary financial regulatory agencies to require

[14] The capital adequacy requirements for national banks and Federal savings associations are in the process of being revised to implement changes to the Basel III Capital Framework. *See* 77 FR 52792 (August 30, 2012), 77 FR 52888 (August 30, 2012), 77 FR 52978 (August 30, 2012).

[15] *See* Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets, 77 FR 29458 (May 17, 2012).

a covered institution to publish a summary of its stress test results. This final rule implements the statutory reporting and disclosure requirements.

Specifically, the final rule requires that each over $50 billion covered institution submit a report of the stress test results and documentation to the OCC and to the Board by January 5. The OCC published for notice and comment specific annual stress test reporting requirements for over $50 billion covered institutions in a separate final information collection under the Paperwork Reduction Act (44 U.S.C. 3501–3521).[16] For $10 to $50 billion covered institutions, the final rule requires that each institution submit a report of the stress test results to the OCC and to the Board by March 31. This final rule makes clear that the annual stress test report, and any other information that the OCC may require to be provided on a supplemental basis, will be confidential and exempt from disclosure under the Freedom of Information Act pursuant to 12 CFR 4.32(b) as a record created or obtained by the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulations, and examination, of a national bank, a Federal savings association, a bank holding company, a savings and loan holding company, or an affiliate. The report is the property of the OCC and unauthorized disclosure of the report is generally prohibited pursuant to 12 CFR 4.37.

Consistent with section 165(i)(2), the final rule also requires each covered institution to publish a summary of the results of its annual stress tests after submitting its annual stress test report to the OCC and the Board. Specifically, under the final rule, a $10 to $50 billion covered institution must publish a summary of the results of its annual stress test before June 30, but no earlier than June 15. For an over $50 billion covered institution, disclosures must be made before March 31, but no earlier than March 15.

The final rule reflects two significant changes from the proposed rule. First, the proposed rule would have required all disclosures to be made no later than April 5. The proposed rule did not distinguish between a $10 to $50 billion covered institution and an over $50 billion covered institution. Consistent with the OCC's efforts to minimize the regulatory burden on the $10 to $50 billion covered institutions, the final rule extends the disclosure due date for these institutions to June 30. Second, this final rule replaces the specific disclosure due date with a 15-day period in which disclosures must be made. This change ensures adequate time for review of stress test results prior to disclosure.

As for the form and content of the publication of the summary of results, at a minimum the summary of the severely adverse scenario shall include a description of the types of risks (such as credit default losses and non-default credit losses by portfolio, trading losses, and risks to non-interest revenue) included in the stress test; a summary description of the methodologies used in the stress test; estimates of aggregate losses, PPNR, provisions, and pro forma capital ratios (including regulatory and any other capital ratios specified by the OCC) at the end of the planning horizon; and an explanation of the most significant causes of the changes in regulatory capital ratios. The institution must make summary results readily accessible to the public, for example, by publishing those results on a covered institution's Web site. In order to reduce burden and avoid duplicative regulatory requirements, the OCC is permitting disclosure of the summary of the stress test results by the parent bank holding company or savings and loan holding company of a covered institution if the parent holding company satisfactorily complies with the disclosure requirements under the Board's Company-Run Stress Test rule. However, the OCC reserves the right to require additional disclosures if the OCC believes that the disclosures at the holding company level do not accurately capture the potential impact of the scenarios on the condition of the covered institution.

*F. Process and Timing of Annual Stress Test*

As discussed above, covered institutions are subject to an annual stress test cycle under this final rule. *Table 1—Process Overview of Annual Stress Test Cycles for Covered Institutions* sets out the key dates in the annual stress test cycle under the final rule, with differences as noted for over $50 billion covered institutions and $10 to $50 billion covered institutions. As shown in Table 1, the annual stress test cycle consist of three key events: (1) Distribution of the stress test scenarios by the OCC, (2) conducting of the stress test and submission of the Annual Stress Test Report, and (3) publication of required disclosures.

TABLE 1—PROCESS OVERVIEW OF ANNUAL STRESS TEST CYCLES FOR COVERED INSTITUTIONS

| Key step | Over $50 billion | $10 to $50 billion |
|---|---|---|
| 1. OCC distributes scenarios for annual stress tests | By November 15 | By November 15. |
| 2. Covered institutions conduct annual stress test and submit Annual Stress Test Report to the OCC and the Board. | By January 5 | By March 31. |
| 3. Covered institutions make required public disclosures | Between March 15 and March 31 | Between June 15 and June 30. |

## IV. Regulatory Analysis

*A. Administrative Procedure Act*

This final rule is effective immediately upon publication in the **Federal Register**. Section 553(d)(3) of the Administrative Procedure Act (''APA'') provides for a delayed effective date after publication of a rule, except ''as otherwise provided by the agency for good cause found and published with the rule.'' Consistent with section 553(d)(3) and for the reasons discussed below, the OCC finds good cause exists to publish this final rule with an immediate effective date.

Stress tests are a critical supervisory tool that will provide important forward-looking information to supervisors to assist in the overall assessment of a covered institution's capital adequacy. Stress tests also help determine whether additional analytical techniques and exercises are appropriate for a covered institution to employ in identifying, measuring, and monitoring risks to the financial soundness of the covered institution. Further, stress tests serve as an ongoing risk management tool that support a covered institution's forward-looking assessment of its risks and better equips such institutions to address a range of adverse outcomes.

It is necessary for a final rule be in place this fall to ensure that certain

[16] *See* 77 FR 49485 (August 16, 2012).

large and systemically important covered institutions with assets of $50 billion or more can begin conducting annual stress tests this year. An immediate effective date will allow the OCC to have in place a stress testing framework to permit a covered institution to begin to build and modify the necessary systems and processes and to integrate such systems with the stress testing systems and processes of its parent bank holding company. These systems and processes establish the basis for a covered institution's stress testing framework and will permit the institution to provide critical supervisory information in a timely manner and help to ensure that covered institutions are prepared for adverse economic situations. The OCC believes that these stress testing systems and processes are essential for the health of such institutions and the overall financial stability of the economy. In addition, an immediate effective date permits the OCC to synchronize its supervisory efforts related to stress testing with the Board and the FDIC, especially where a national bank or Federal savings association is a part of a larger holding company with state nonmember affiliates. Accordingly, the OCC finds good cause for the final rule to take effect immediately upon publication in the **Federal Register**.

*B. Riegle Community Development and Regulatory Improvement Act*

Section 302 of Riegle Community Development and Regulatory Improvement Act (''RCDRIA'') generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form unless an agency finds good cause that the regulations should become effective sooner. The final rule will be effective immediately upon publication in the **Federal Register**. The first day of a calendar quarter which begins on or after the date on which the regulations are published will be January 1, 2013. Accordingly, the OCC invokes the good cause exception to the publication requirement because the final rule is necessary to address the continuing exposure of the banking industry to potentially adverse economic factors. For the same reasons discussed in support of the good cause waiver from the 30-day delayed effective date required by the APA, the OCC finds that good cause exists for an immediate effective date for the final rule.

*C. Paperwork Reduction Act*

Request for Comment on Final Information Collection

In accordance with section 3512 of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3501–3521), the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The information collection requirements contained in this final rule were submitted by the OCC to OMB for review and approval in connection with the proposed rule under section 3506 of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320 *et seq.*).

In accordance with 5 CFR 1320, OMB withheld approval of the collection instructing the OCC to examine public comment in response to the proposed rule and include in the supporting statement of the next information collection request (''ICR'')—to be submitted to OMB at the final rule stage—a description of how the OCC has responded to any public comments on the ICR, including comments on maximizing the practical utility of the collection and minimizing the burden. The OCC received no comments on the ICR and is resubmitting it with the issuance of the final rule, as instructed by OMB.

In addition, a 60-day **Federal Register** notice under the PRA for the reporting templates referenced in this rule was issued on August 16, 2012 (77 FR 49485) and is open for comment until October 15, 2012. Subsequent to the closing of the comment period, the information collection requirements contained in this final rule will be consolidated with the information collection requirements contained in the reporting templates into a single OMB control number.

*Title of Information Collection:* Recordkeeping and Disclosure Provisions Associated with Annual Stress Test.

*Frequency of Response:* Annually.

*Affected Public:* Businesses or other for-profit.

*Respondents:* National banks and Federal savings associations.

*Description of Requirements:*

Section 46.6(a) specifies the calculations of the potential impact on capital that must be made during each quarter of a planning horizon. Section 46.6(c) requires that each covered institution must establish and maintain a system of controls, oversight, and documentation, including policies and procedures that, at a minimum, describe the covered institution's stress test practices and methodologies, and processes for updating the covered institution's stress test practices. The board of directors of the covered institution shall approve and review the policies and procedures of the covered institution, as frequently as economic conditions or the condition of the institution may warrant, but no less than annually. The senior management of the covered institution shall establish and maintain a system of controls, oversight, and documentation designed to ensure that the stress test processes satisfy the requirements in this part.

Section 46.7 provides that each covered institution shall report to the OCC and to the Board annually the results of the stress test in the time, manner and form specified by the OCC.

Section 46.8 requires that a covered institution shall publish a summary of the results of its annual stress tests on its Web site or in any other forum that is reasonably accessible to the public. For a $10 to $50 billion covered institution the summary must be published in the period from June 15 to June 30 after the date of the report; for an over $50 billion covered institution the summary must be published in the period from March 15 to March 31 after the date of the report. The summary must include a description of the types of risks being included in the stress test and estimates of aggregate losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the OCC) over the planning horizon, under the severely adverse scenario.

*Estimated PRA Burden:*

*Rule:*

*Estimated Number of Respondents:* 61.

*Estimated Burden per Respondent:* 1,040 hours.

*Total Annual Burden:* 63,440 hours.

*Templates:*

*Estimated Number of Respondents:* 20.

*Estimated Burden per Respondent:* 480 hours.

*Total Annual Burden:* 9,600 hours.

*D. Regulatory Flexibility Act Analysis*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''RFA''), generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[17] The Small Business

[17] *See* 5 U.S.C. 603(a).

Administration has defined ''small entities'' for banking purposes to include a bank or savings association with $175 million or less in assets.[18]

The final rule would apply only to national banks and Federal savings associations with more than $10 billion in total consolidated assets. No small banking organizations satisfy these criteria. No small entities would be subject to this rule. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

*E. Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (''Unfunded Mandates Act''), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate 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 in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

*F. Solicitation of Comments and Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act[19] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC invited comment on how to make the proposed rule easier to understand. The OCC received one public comment advocating the use of plain language and has made an effort to address this comment in the final rule.

**List of Subjects in Part 46**

Banking, Banks, Capital, Disclosures, National banks, Recordkeeping, Reporting, Risk, Stress test.

**Authority and Issuance**

For the reasons stated in the preamble, the OCC is adding part 46 to Title 12, Chapter I of the Code of Federal Regulations to read as follows:

[18] *See* 13 CFR 121.201.

[19] Public Law 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809.

## PART 46—ANNUAL STRESS TEST

Sec.
46.1 Authority and purpose.
46.2 Definitions.
46.3 Applicability.
46.4 Reservation of authority.
46.5 Annual stress test.
46.6 Stress test methodologies and practices.
46.7 Reports to the Office of the Comptroller of the Currency and the Federal Reserve Board.
46.8 Publication of disclosures.

**Authority:** 12 U.S.C. 93a; 12 U.S.C. 1463(a)(2); 12 U.S.C. 5365(i)(2); 12 U.S.C. 5412(b)(2)(B).

### § 46.1 Authority and purpose.

(a) *Authority.* 12 U.S.C. 93a; 12 U.S.C. 1463(a)(2); 12 U.S.C. 5365(i)(2); 12 U.S.C. 5412(b)(2)(B).

(b) *Purpose.* This part implements 12 U.S.C. 5365(i)(2), which requires a national bank or Federal savings association with total consolidated assets of more than $10 billion to conduct an annual stress test and establishes a definition of stress test, methodologies for conducting stress tests, and reporting and disclosure requirements.

### § 46.2 Definitions.

For purposes of this part, the following definitions apply:

*$10 to $50 billion covered institution* means a national bank or Federal savings association with average total consolidated assets, calculated as required under this part, that are greater than $10 billion but less than $50 billion.

*Call Report* means the Consolidated Report of Condition and Income.

*Covered institution* means a $10 to $50 billion covered institution or an over $50 billion covered institution.

*Federal savings association* has the same meaning as in 12 U.S.C. 1813(b)(2).

*Over $50 billion covered institution* means a national bank or Federal savings association with average total consolidated assets, calculated as required under this part, that are not less than $50 billion.

*Planning horizon* means a set period of time over which the impact of the scenarios is assessed.

*Pre-provision net revenue* means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

*Scenarios* means sets of conditions that affect the U.S. economy or the financial condition of a covered institution that the OCC annually determines are appropriate for use in the stress tests under this part, including, but not limited to, baseline, adverse, and severely adverse scenarios.

*Stress test* means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered institution over the planning horizon, taking into account the covered institution's current condition, risks, exposures, strategies, and activities.

### § 46.3 Applicability.

(a) *Measurement of average total consolidated assets for a covered institution.* A covered institution's average total consolidated assets is calculated as the average of the covered institution's total consolidated assets, as reported on the covered institution's Call Reports, for the four most recent consecutive quarters. If the covered institution has not filed a Call Report for each of the four most recent consecutive quarters, the covered institution's average total consolidated assets is calculated as the average of the covered institution's total consolidated assets, as reported on the covered institution's Call Reports, for the most recent one or more consecutive quarters. The date on which a national bank or Federal savings association becomes a covered institution shall be the as-of date of the most recent Call Report used in the calculation of the average.

(b) *First stress test for covered institutions subject to stress testing requirements as of October 9, 2012.* (1) A national bank or Federal savings association that is a $10 to $50 billion covered institution, as defined in § 46.2 of this part, as of October 9, 2012 must conduct its first stress test under this part using financial statement data as of September 30, 2013, and report the results of its stress test on or before March 31, 2014.

(2) A national bank or Federal savings association that is an over $50 billion covered institution, as defined in § 46.2 of this part, as of October 9, 2012 must conduct its first stress test under this part using financial statement data as of September 30, 2012, and report the results of its stress test on or before January 5, 2013.

(c) *Covered institutions that become subject to stress testing requirements after October 9, 2012.* A national bank or Federal savings association that becomes a covered institution, as defined in § 46.2 of this part, after October 9, 2012 shall conduct its first annual stress test under this part beginning in the next calendar year after the date the national bank or Federal savings association becomes a covered institution.

(d) *Ceasing to be a covered institution or changing categories.* (1) A covered institution shall remain subject to the stress test requirements based on its applicable category, as defined in § 46.2 of this part, unless and until total consolidated assets of the covered institution falls below the relevant size threshold for each of four consecutive quarters as reported by the covered institution's most recent Call Reports. The calculation shall be effective on the ''as of'' date of the fourth consecutive Call Report.

(2) Notwithstanding paragraph (d)(1) of this section, a national bank or Federal savings association that migrates from a $10 to $50 billion covered institution to an over $50 billion covered institution shall be subject to the stress test requirements applicable to an over $50 billion covered institution immediately as of the date the national bank or Federal savings association satisfies the size threshold for an over $50 billion covered institution, as defined in § 46.2 of this part.

(e) *Covered institution under bank holding company subject to annual stress test requirements.* (1) Notwithstanding the requirements applicable to a $10 to $50 billion covered institution under this part, a $10 to $50 billion covered institution that is controlled by a bank holding company or savings and loan holding company that is subject to annual stress test requirements pursuant to applicable regulations of the Board of Governors of the Federal Reserve System may elect to conduct its stress test under this part pursuant to the requirements applicable to an over $50 billion covered institution.

(2) Any $10 to $50 billion covered institution that elects to apply the requirements of an over $50 billion covered institution under this paragraph shall remain subject to the requirements applicable to an over $50 billion covered institution until otherwise approved by the OCC.

**§ 46.4 Reservation of authority.**

(a) *Generally.* The OCC may require a national bank or Federal savings association not otherwise subject to this part to comply with the stress test requirements of this part. With respect to any national bank or Federal savings association subject to the stress test requirements of this part pursuant to § 46.3(a), the OCC may modify or delay some or all of the requirements of this part which include:

(1) *Timing of stress test.* The OCC may accelerate or extend any specified deadline for stress testing, reporting, or publication of disclosures of the stress test results.

(2) *Stress tests.* The OCC may require additional stress tests not otherwise required by this part or may require or permit different or additional analytical techniques and methods, different scenarios, or different assumptions, as appropriate for the covered institution to use in meeting the stress test requirements of this part. In addition, the OCC may specify a different as-of date for any or all categories of financial data used by the stress test.

(3) *Reporting and disclosures.* The OCC may modify the reporting date or any reporting requirement of a report required by this part, or may require any additional reports relating to stress testing as may be appropriate. The OCC may delay or otherwise modify the publication requirements of this part if the disclosure of stress test results under this part would not provide sufficiently meaningful or useful information to the public. In addition, the OCC may require different or additional disclosures not otherwise required by this part, if the existing disclosures do not adequately address one or more material elements of the stress test.

(b) *Factors considered.* Any exercise of authority under this section by the OCC will be in writing and will consider the nature and level of the activities, complexity, risks, operations, and regulatory capital of the national bank or Federal savings association, in addition to any other relevant factors.

(c) *Notice and comment procedures.* In making a determination under paragraph (a) of this section, the OCC will apply notice and response procedures, in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12, as appropriate.

**§ 46.5 Annual stress test.**

Each covered institution must conduct the annual stress test under this part subject to the following requirements:

(a) *Financial data.* A covered institution must use financial data as of September 30 of that calendar year.

(b) *Scenarios provided by the OCC.* In conducting the stress test under this part, each covered institution must use the scenarios provided by the OCC. The scenarios provided by the OCC will reflect a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios. The OCC will provide a description of the scenarios required to be used by each covered institution no later than November 15 of that calendar year.

(c) *Significant trading activities.* The OCC may require a covered institution with significant trading activities, as determined by the OCC, to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component will be as of a date between October 1 and December 1 of that calendar year that will be selected by the OCC and communicated to the covered institution no later than December 1 of the calendar year.

(d) *Use of stress test results.* The board of directors and senior management of each covered institution must consider the results of the stress tests conducted under this section in the normal course of business, including but not limited to the covered institution's capital planning, assessment of capital adequacy, and risk management practices.

**§ 46.6 Stress test methodologies and practices.**

(a) *Potential impact on capital.* During each quarter of the planning horizon, a covered institution shall estimate the following for each scenario required to be used:

(1) Pre-provision net revenues, losses, loan loss provisions, and net income, and

(2) The potential impact on the covered institution's regulatory capital levels and ratios applicable to the covered institution under 12 CFR part 3 or part 167, as applicable, and any other capital ratios specified by the OCC, incorporating the effects of any capital actions over the planning horizon and maintenance by the covered institution of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.

(b) *Planning horizon.* A covered institution must use a minimum planning horizon of at least nine quarters, beginning with the first day of the period covered by the stress tests.

(c) *Controls and oversight of stress test processes.* (1) The senior management of the covered institution must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, designed to ensure that the stress test processes used by the covered institution satisfy the requirements in this part. These policies and procedures must, at a minimum, describe the covered institution's stress test practices and methodologies, and processes for validating and updating the covered institution's stress test practices and methodologies consistent with

applicable laws, regulations, and supervisory guidance.

(2) The board of directors of the covered institution, or a committee thereof, shall approve and review the policies and procedures of the covered institution's stress testing processes as frequently as economic conditions or the condition of the institution may warrant, but no less than annually. The board of directors and senior management must be provided with a summary of the stress test results.

**§ 46.7 Reports to the Office of the Comptroller of the Currency and the Federal Reserve Board.**

(a) *$10 to $50 billion covered institution.* A $10 to $50 billion covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before March 31, the results of the stress test in the manner and form specified by the OCC.

(b) *Over $50 billion covered institution.* An over $50 billion covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before January 5, the results of the stress test in the manner and form specified by the OCC.

(c) *Confidentiality of Reports.* As provided by § 4.32(b) of this title, the report required under this section is non-public OCC information because it is deemed to be a record created or obtained by the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulations, and examination, of a national bank, a Federal savings association, a bank holding company, a savings and loan holding company, or an affiliate. The report is the property of the OCC and unauthorized disclosure of the report is generally prohibited pursuant to § 4.37 of this part.

**§ 46.8 Publication of disclosures.**

(a) *Publication date.* (1) An over $50 billion covered institution must publish a summary of the results of its annual stress tests in the period starting March 15 and ending March 31 of the next calendar year.

(2) A $10 to $50 billion covered institution must publish a summary of the results of its annual stress test in the period starting June 15 and ending June 30 of the next calendar year.

(3) A $10 to $50 billion covered institution that is subject to its first annual stress test pursuant to § 46.3(b)(1) of this part must make its initial public disclosure in the period starting June 15 and ending June 30 of 2015 by disclosing the results of a stress test conducted in 2014, using financial statement data as of September 30, 2014.

(b) *Publication method.* The summary required under this section may be published on the covered institution's Web site or in any other forum that is reasonably accessible to the public. A covered institution controlled by a bank holding company that is required to conduct an annual company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System will be deemed to have satisfied the publication requirement of this section when the bank holding company publicly discloses summary results of its annual stress test in satisfaction of the requirements of applicable regulations of the Board of Governors of the Federal Reserve System, unless the OCC determines that the disclosures at the holding company level do not adequately capture the potential impact of the scenarios on the capital of the covered institution.

(c) *Information to be disclosed in the summary.* The information disclosed shall, at a minimum, include—

(1) A description of the types of risks included in the stress test under this part;

(2) A summary description of the methodologies used in the stress test;

(3) Estimates of aggregate losses, pre-provision net revenue, provisions for loan and lease losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the OCC); and

(4) An explanation of the most significant causes of the changes in regulatory capital ratios.

(d) *Disclosure of estimates for the planning horizon.* (1) The disclosure of the estimates of aggregate losses, pre-provision net revenue, provisions for loan and lease losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the OCC), as required by paragraph (b) of this section, must reflect the estimated cumulative effects, as well as the estimated capital ratios, at the end of the planning horizon for the severely adverse scenario.

(2) With respect to the capital ratio disclosure required in paragraph (d)(1) of this section, the disclosure must also include the value at the beginning of the planning horizon, and the minimum over the planning horizon of the estimated quarter-end values of each ratio.

Dated: October 1, 2012.

**Thomas J. Curry,**

*Comptroller of the Currency.*

[FR Doc. 2012–24608 Filed 10–5–12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**Docket No. FAA–2012–0379; Airspace Docket No. 12–ANM–7**

## Establishment of Class E Airspace; Deer Lodge, MT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Deer Lodge-City-County Airport, Deer Lodge, MT. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Deer Lodge-City-County Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Effective date, 0901 UTC, January 10, 2013. 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 July 17, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Deer Lodge, MT (77 FR 41939). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, 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 establishing Class E airspace, extending upward from 700 feet above the surface, at Deer Lodge-City-County Airport, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This

action is necessary for the safety and management of IFR operations.

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 establishes controlled airspace at Deer Lodge-City-County Airport, Deer Lodge, 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 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 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 Deer Lodge, MT [New]**

Deer Lodge-City-County Airport, MT
(Lat. 46°23′16″ N., long. 112°45′54″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Deer Lodge-City-County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°41′00″ N., long. 114°08′00″ W.; to lat. 47°03′00″ N., long. 113°33′00″ W.; to lat. 46°28′00″ N., long. 112°15′00″ W.; to lat. 45°41′00″ N., long. 112°13′00″ W.; to lat. 45°44′00″ N., long. 113°03′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on September 25, 2012.

**Vered Lovett,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2012–24663 Filed 10–5–12; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Part 744

**[Docket No. 120816347–2347–01]**

**RIN 0694–AF77**

## Addition of Certain Persons to the Entity List

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR) by adding one hundred and sixty-four persons under one hundred and sixty-five entries to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under twelve destinations. These additions to the Entity List consist of one person under Belize; thirteen persons under Canada; two persons under Cyprus; one person under Estonia; eleven persons under Finland; five persons under Germany; one person under Greece; two persons under Hong Kong; one person under Kazakhstan; one hundred and nineteen persons under Russia; two persons under Sweden; and seven persons under the United Kingdom, including six persons located in the British Virgin Islands.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

**DATES:** *Effective Date:* This rule is effective October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Entity List (Supplement No. 4 to 15 CFR part 744) provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from BIS and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-user Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

### ERC Entity List Decisions

*Additions to the Entity List*

This rule implements the decision of the ERC to add one hundred and sixty-

four persons under one hundred and sixty-five entries to the Entity List on the basis of Section 744.11 (license requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The one hundred and sixty-five entries added to the Entity List, one of which is an alternate address for a person being added to the Entity List, consist of one entry under Belize; thirteen entries under Canada; two entries under Cyprus; one entry under Estonia; eleven entries under Finland; five entries under Germany; one entry under Greece; two entries under Hong Kong; one entry under Kazakhstan; one hundred and nineteen entries under Russia; two entries under Sweden; and seven entries under the United Kingdom, including six entries for persons located in the British Virgin Islands.

The ERC reviewed Section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to Section 744.11. Paragraphs (b)(1)–(b)(5) of Section 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. All one hundred and sixty-four persons being added under one hundred and sixty-five entries are believed to have been involved in activities described under paragraph (b)(5) of Section 744.11. Paragraph (b)(5) specifies that the types of activities that could be contrary to the national security or foreign policy interests of the United States include engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the ERC believes that prior review of exports, reexports, or transfers (in-country) involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

The ERC determined to add the one hundred and sixty-four persons to the Entity List on the basis of § 744.11 of the Export Administration Regulations (EAR): engaging in activities contrary to the national security and foreign policy interests of the United States. Specifically, the persons recommended for addition to the Entity List in this rule were identified during a U.S. Government investigation of a network of companies and individuals involved in the procurement and delivery of items subject to the EAR and the International Traffic in Arms Regulations to Russia in violation of the EAR and ITAR. These persons undertook procurement and delivery activities, activities to conceal the procurement and delivery activities, activities to circumvent EAR and ITAR license requirements, and/or activities to facilitate the procurement of export-restricted items for Russian military-related and other governmental or related end-uses.

For the one hundred and sixty-four persons added to the Entity List, the ERC specified a license requirement for all items subject to the EAR, and established a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following one hundred and sixty-four persons under one hundred and sixty-five entries to the Entity List:

Belize

(1) *Experian Holdings, Inc.,* N Eyre St., Blake Bldg, Suite 302, Belize City, Belize 99008.

Canada

(1) *Alex Woolf,* 2021 Atwater Street, Suite 216, Montreal, Quebec, Canada H3H2P2;

(2) *Alexandre Ivjenko,* a.k.a., the following one alias:

—Alexander Ivjenko,
7150 Rue Chouinard, Montreal, QC, H8N 2Z6 Canada;

(3) *Anastasiya Ivjenko,* 7150 Rue Chouinard, Montreal, QC, H8N 2Z6, Canada;

(4) *Anastassia Voronkevitch,* 7320 St. Jacques St. W. Montreal QC, H4B1W1, Canada;

(5) *Atlas Electronic Systems (AES),* 7320 St. Jacques St. W. Montreal, QC, H4B1W1, Canada;

(6) *Enterprise Chips Hunter (ECH),* 2021 Atwater Street, Suite 216, Montreal, Quebec, Canada H3H2P2;

(7) *Liubov ''Luba'' Skvortsova,* a.k.a., the following one alias:

—Lubov Skvortsova,
7150 Rue Chouinard, Montreal, QC, H8N 2Z6 Canada;

(8) *Magtech,* a.k.a., the following one alias:

—M.A.G. Tech,
5762 Royalmount Ave, Montreal, QC, H4P 1K5, Canada; *and* 5440 Queen Mart St, Office 103, Montreal, Canada;

(9) *Maria Pashovkina,* 7150 Rue Chouinard, Montreal, QC, H8N 2Z6, Canada;

(10) *Mercury Electronic Solutions,* a.k.a., the following one alias:

—Mercury Group International,
380 Vansickle Rd Unit 660, St. Catharines, ON L2126P7, Canada; *and* 127 Rue Wilson, Dollard-des-Ormeaux, Quebec H9A1W7, Canada;

(11) *Natalie Sobolev,* 5762 Royalmount Ave, Montreal, QC H4P 1K5, Canada; *and* 5440 Queen Mart St., Office 103, Montreal, Canada;

(12) *Sputnik E,* 7150 Rue Chouinard, Montreal, QC H8N 2Z6 Canada; *and*

(13) *Zurab Kartvelishvili,* a.k.a., the following one alias:

—George Kartveli,
7380 Vansickle Rd. Unit 660, St. Catharines, ON L2126P7, Canada; *and* 7320 St. Jacques St., W. Montreal QC, H4B1W1, Canada; *and* 380 Vansickle Rd, Unit 660, St. Catharines, ON L2126P7, Canada; *and* 127 Rue Wilson, Dollard-des-Ormeaux, Quebec H9A1W7, Canada.

Cyprus

(1) *Didessar Limited,* Archbishop Makarios III Ave., Nicosia, Cyprus; *and*

(2) *Leondica Holding Ltd,* 25 Kolonakiou Str, Za Vos Kolonakioy Center, Limassol, Cyprus.

Estonia

(1) *Yaxart OU,* Kalevipoja 12A, 13625 Tallinn, Estonia.

Finland

(1) *Aleksei Kolominen,* 20 Nuolitie, Vantaa, Finland 01740;

(2) *Andrey Kirievski,* Lastaajanvayla 22, Lappeenranta, Finland 53420;

(3) *Eliron Logistics Oy,* Vanha Porvoontie 229, Vantaa, Finland 01380;

(4) *Irina Pavlova,* Lastaajanvayla 22, Lappeenranta, Finland 53420;

(5) *Kuusiaaren Sarnetex & Ter Oy,* Kaasuntintie 8A, Helsinski, Finland 00770;

(6) *Lemon LLC Oy,* Peltoinlahdentie 19, FI–54800 Savitaipale, Finland;

(7) *Olkerboy Oy/Nurminen Oy,* 231B Vanha Porvoontie, Vantaa, Finland 01380;

(8) *Russian Cargo Oy,* 22 Lastaajanvayla, Lappeenranta, Finland 53420;

(9) *SM Way Oy,* Lastaajanvayla 22, Lappeenranta, Finland 53420;

(10) *Transsphere Oy,* a.k.a., the following two aliases:

—Transsphere Limited Oy; *and*

—Transsphere Oy Ltd.,

20 Nuolitie, Vantaa, Finland 01740; *and*

(11) *Vitaliy Dankov,* Vanha Porvoontie 231B, Vantaa, Finland 01380.

Germany

(1) *Albrecht Import-Export,* a.k.a., the following one alias:

—Elena Albrecht Import-Export,

Gmunder Str. 25, Heubach, Germany 73540;

(2) *Alexander Brovarenko,* Fasanenweg 9L, Kelsterbach, Germany D–65451; *and* Fasanenweg 9, Gate 23, Kelsterbach, Germany 65451; *and* Fasanenweg 7, Kelsterbach, Germany D–65451; *and* IM Taubengrund 35 Gate 1–2, Kelsterbach, Germany 65451;

(3) *Elena Albrecht,* a.k.a., the following one alias:

—Elena Grinenko,

Gmunder Str. 25, Heubach, Germany 73540;

(4) *Russ Cargo Service GMBH,* Fasanenweg 9L, Kelsterbach, Germany D–65451; *and* Fasanenweg 9, Gate 23, Kelsterbach, Germany 65451; *and* Fasanenweg 7, Kelsterbach, Germany D–65451; *and* IM Taubengrund 35 Gate 1–2, Kelsterbach, Germany 65451; *and*

(5) *Sergey Grinenko,* a.k.a., the following one alias:

—Sergey Albrecht,

Gmunder Str. 25, Heubach, Germany 73540.

Greece

(1) *Top Electronics Components S.A.,* 66 Alkminis & Aristovoulov Str, Kato Petralona, Athens, Greece 11853.

Hong Kong

(1) *Sergey Koynov,* a.k.a., the following one alias:

—Sergey V. Coyne,

Room 704 7/F, Landwide Commercial Building, 118–120 Austin Rd., Tsim Sha Tsui, Hong Kong (See alternate address under Russia); *and*

(2) *Serko Limited,* Room 704 7/F, Landwide Commercial Building, 118–120 Austin Rd, Tsim Sha Tsui, Hong Kong.

Kazakhstan

(1) *APEX Kazakhstan,* 126 Jarokova Str, Almaty, Kazakhstan.

Russia

(1) *Abris,* 6 Aptekarskiy Prospeckt, Office 710, St. Petersburg, Russia 197376; *and* 30 16th Parkovaya St., Office 319, Moscow, Russia 105484;

(2) *Abris-KEY,* 6 Aptekarskiy Prospeckt, Office 710, St. Petersburg, Russia 197376; *and* 30 16th Parkovaya St, Office 319, Moscow, Russia 105484;

(3) *Abris-Technology,* 6 Aptekarskiy Prospeckt, Office 710, St. Petersburg, Russia 197376; *and* 30 16th Parkovaya St, Office 319, Moscow, Russia 105484;

(4) *Aleksander Cheremshin,* Ulitsa Mitinskaya 36/1, Moscow, Russia 125430; *and* Ordzhonikidze 10, Moscow, Russia 119071; *and* 10 Ordjonikidze Street, Moscow, Russia 119071; *and* Ulitsa Polyany 9/6, Moscow, Russia 117042; *and* Poljani Str., 9–6, 117042, Moscow, Russia; *and* 9 Polyany Street, Suite 6, Moscow, Russia 117042; *and* 33 Ulitsa Marshala Tukhachevskogo, Suite 231, Moscow, Russia 123154; *and* Bolshaya Semenovskaya, 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401;

(5) *Aleksander Kuznetsov,* a.k.a., the following one alias:

—Alexander Kuznetsov,

Ordzhonikidze 10, Moscow, Russia 119071; *and* 10 Ordjonikidze Street, Moscow, Russia 119071; *and* Ulitsa Polyany 9/6, Moscow, Russia 117042; *and* Poljani Str., 9–6, 117042, Moscow, Russia; *and* 9 Polyany Street, Suite 6, Moscow, Russia 117042; *and* 33 Ulitsa Marshala Tukhachevskogo, Suite 231, Moscow, Russia 123154;

(6) *Aleksey Markov,* 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia;

(7) *Alex Pikhtin,* a.k.a., the following one alias:

—Alexander Pikhtin,

Pr. Yuria Gagarina 2, St. Petersburg, Russia 196105;

(8) *Alexander Georgievich Mallabiu,* 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376;

(9) *Alexander Kuznetsov,* Ulitsa Artyukhina 6B, 106, Moscow, Russia;

(10) *Alexander V. Brindyuk,* a.k.a., the following one alias:

—Aleksander Brendyuk,

Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105;

(11) *Alexander Vedyashkin,* 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia;

(12) *Alexey Ivanov Zhuravlev,* a.k.a., the following one alias:

—Alexy Ivanov,

Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105; *and* Pr. Yuria Gagarina 1, Office 230, St. Petersburg, Russia 196105; *and* Pr. Yuri Gagarin 1, Office 230, St. Petersburg, Russia 196105;

(13) *Alexey Kulakov,* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia;

(14) *Alexey Polynkov,* 471–4–98 Shosse Entuziastov, Moscow, Russia;

(15) *Anastasya Arkhipova,* a.k.a., the following one alias:

—Anatasiya Arkhipova,

26 General Belov St, Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia;

(16) *Andrey Gruzdew,* 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376;

(17) *Andrey V Gromadskih,* 32 Korablestroiteley St., building #1, Apt #119, St. Petersburg, Russia 199397; *and* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(18) *Andrey Vladimirovich Saponchik,* 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln., St.

Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484;

(19) *Anna V Libets,* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(20) *Anton Khramov,* 86 N Prospect Obukhovskoy Oborony, St. Petersburg, Russia 190000;

(21) *Anton Lebedev,* Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105; *and* Pr. Yuria Gagarina 1, Office 230, St. Petersburg, Russia 196105; *and* Pr. Yuri Gagarin 1, Office 230, St. Petersburg, Russia 196105;

(22) *Anton Yurevich Alekseyev,* Ulitsa Mitinskaya 30/4, Moscow, Russia 123430;

(23) *APEX,* a.k.a., the following four aliases:

—APEKS;
—APEX Systems;
—OOO APEX; *and*
—APEX Ltd.,

26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, Moscow, Russia 105318;

(24) *APEX St. Petersburg,* 140 Leninsky Prospekt, Office 57, St. Petersburg, Russia;

(25) *APEX Yekaterinburg,* 106 Kuybyshev Str, Office 68, Yekaterinburg, Russia; *and* Ulitsa 9 March, D. 120B, Office 312 620100, Yekaterinburg, Russia; *and* 106 K 68 ul Kuibysheva, 620100, Yekaterinburg, Russia;

(26) *Arsenal,* 26 General Belov St, Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583;

(27) *Atrilor, Ltd,* a.k.a., the following two aliases:

—Atrilor LLC; *and*
—OOO Atrilor,

36 Mitinskaya St., Building 1, Office 406, Moscow, Russia 125430; *and* 53 Shcherbakovskaya Street, Moscow 105187;

(28) *Aviton,* a.k.a., the following three aliases:

—Aviton company;
—For Salmi; *and*
—Salmi LLC,

6 Aptekarskiy Prospect, Office 710, St. Petersburg, Russia 197376; *and* 7 Belovodskiy Ln., St. Petersburg, Russia 194044; *and* Belovodskiy Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484;

(29) *Best Komp Group,* P.O. Box 242, St. Petersburg, Russia 196240;

(30) *Bitreit,* a.k.a., the following one alias:

—OOO Bitreit,

Neglinnaya Str., 18/1, emb.1 ''A'', Moscow, Russia;

(31) *Bolshaya Semenovskaya,* 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401;

(32) *Denis A Kizha,* Pulkovskoe Shosse, 20–4 #159, St. Petersburg, Russia 196158; *and* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(33) *DM Link,* P.O. Box 242, St. Petersburg, Russia 196240;

(34) *Dmitri Ezhov,* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583;

(35) *Dmitriy Averichev,* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia;

(36) *Dmitriy Moroz,* Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105;

(37) *Dmitriy Rakhimov,* 26 General Belov Str Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583;

(38) *Dmitriy V Lukhanin,* 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376;

(39) *Dmitry Andreev,* 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482;

(40) *Dmitry Kochanov,* 4 Pokhodnyy Dr, Bldg 1, 4th Floor, Room 417, Moscow, Russia 125373;

(41) *Dmitry M Rodov,* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(42) *Dmitry Shegurov,* a.k.a., the following one alias:

—Dmitriy Shegurov,

53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 26 General Belov Str, Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583;

(43) *ECO–MED–SM Ltd,* Petrovsko-Razumovsky proyezd 29, bed.2, Moscow, Russia 127287;

(44) *Electrotekhnika LLC,* 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482; *and* 4 Yunost Square, NPZ, Suite 1–7, Zelenograd, Russia 124482; *and* 4 Yunost Square, NPZ, Apt. 1–7, Zelenograd, Russia 124482;

(45) *Elena Kuznetsova,* a.k.a., the following one alias:

—Yelena Vladimirovna Kuznetsova,

Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164; *and* 9 Lipovaya alleya, St. Petersburg, Russia 197183;

(46) *Elizaveta Krapivina,* a.k.a., the following one alias:

—Yelizaveta Krapivina,

Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105;

(47) *Evgeni Viktorovich Egorov,* 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482;

(48) *Forward Electronics, LLC,* 86 N Prospect Obukhovskoy Oborony, St. Petersburg, Russia 190000; *and* Kolomyazhsky Prospect 18, Office 4085 BC ''North House,'' St. Petersburg, Russia 197348;

(49) *Hermann Derkach,* Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105;

(50) *Igor Samusev,* Ulitsa Artyukhina 6B, 106, Moscow, Russia;

(51) *Incorporated Electronics Systems,* 9 Lipovaya Alleya, St. Petersburg, Russia 197183; *and* 9A Lipovaya Alleya, St. Petersburg, Russia 197183;

(52) *Ivan Komarov,* Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105;

(53) *Ivan Zubarev,* 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482;

(54) *Kirill A Stekhovskiy,* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavaskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(55) *Kirill Drozdov,* 86 N Prospect Obukhovskoy Oborony, St. Petersburg, Russia 190000;

(56) *Kirill Pechorin Starodvorsky,* 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376;

(57) *Lyudmila V Talyanova,* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376;

(58) *Magnetar,* Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105;

(59) *Mariya Lomova,* 9 Lipovaya Alleya, St. Petersburg, Russia 197183;

(60) *Mark Gofman,* P.O. Box 242, St. Petersburg, Russia 196240;

(61) *Maxim Yevgenevich Ivakin,* 106 Kuybyshev Str, Office 68, Yekaterinburg, Russia;

(62) *MaxiTechGroup,* a.k.a., the following two aliases:

—MaksiTekhGrup; *and*

—JSC MaksiTekhGrup, 4 Pokhodnyy Dr, Bldg 1, 4th floor, Room 417, Moscow, Russia 125373; *and* 46 Chkalova St., Zhukovskiy, Moscow Region, 140180;

(63) *Megel,* 26 General Belov St, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583;

(64) *Mekom,* a.k.a., the following one alias:

—Mecom,

Ulitsa Mitinskaya 36/1, Moscow, Russia 125430;

(65) *Melkom,* a.k.a., the following two aliases:

—Melcom; *and*

—Melkon JSC,

Ulitsa Ordzhonikidze 10, Moscow, Russia 119071; *and* 10 Ordjonikidze Street, Moscow, Russia 119071; *and* Ultisa Polyany 9/6, Moscow, Russia 117042; *and* Polijani str., 9–6, 117042, Moscow, Russia; *and* 33 Ulitsa Marshala Tukhachevskogo, Suite 231, Moscow, Russia 123154; *and* Bolshaya Semenovskaya, 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401;

(66) *MicroComponent LLC,* 2/1, 4th Zapadny proezd, Zelenograd, Russia 124460; *and* 4 Yunost Square, NPZ, Suite 1–7, Zelenograd, Russia 124482; *and* 4thWest Passage Dr., Building 2, 124460, Zelenograd, Russia;

(67) *MIG Engineering,* a.k.a., the following one alias:

—MIG Electronics,

26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 53 Scherbakovskaya St, Bldg 3, Moscow, Russia 105187;

(68) *Mikhail Davidovich,* a.k.a., the following one alias:

—Mike Davidovich,

P.O. Box 242, St. Petersburg, Russia 196240;

(69) *Mikhail Karpushin,* 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russi; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia;

(70) *Mikhail Vinogradov,* 4 Pokhodnyy Dr, Bldg 1, 4th Floor, Room 417, Moscow, Russia 125373;

(71) *Neva Electronica,* a.k.a., the following one alias:

—Neva Elektronika,

Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105; *and* 5 Professora Popova St., Saint Petersburg, 197022;

(72) *Nikolai Bragin,* 2A Chernyshevskogo St., St. Petersburg, Russia 191123; *and* Zastavkaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(73) *Nova Technologies,* a.k.a., the following five aliases:

—Novie Technologies; *and*

—Nova SPB; *and*

—New Technology; *and*

—Nova Technologies Co., Ltd.; *and*

—Novyye Tekhnologii, LLC,

25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376;

(74) *Oksana Timohina,* 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln., St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484;

(75) *Oleg Koshkin,* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova St Office 415, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia;

(76) *Oleg Kunilov,* 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482;

(77) *Olga Naumova,* 53 Sherbakovskaya St, Bldg 3, Moscow, Russia 105187; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583;

(78) *Olga Pakhmutova,* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583;

(79) *Olga Petrovna Kuznetsova,* 33 Ulitsa Marshala Tukhachevskogo, Suite 231 Moscow, Russia 123154; *and* Ordzhonikidze 10, Moscow, Russia 119071; *and* 10 Ordjonikidze Street, Moscow, Russia 119071; *and* Ulitsa Polyany 9/6, Moscow, Russia 117042; *and* Poljani Str., 9–6, 117042 Moscow, Russia; *and* 9 Polyany Street, Suite 6, Moscow, Russia 117042; *and* Bolshaya Semenovskaya, 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401;

(80) *Olga Ruzmanova,* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 26 General Belov Str, Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583;

(81) *Olga V Bobrikova,* 8 Pushkinskaya St., Apt. #47, St.

Petersburg, Russia 196607; *and* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(82) *Pavel Grishanovich,* 9 Lipovaya alleya, St. Petersburg, Russia 197183;

(83) *Petersburg Electronic Company (PEC),* LLC, a.k.a., the following one alias:

—Petersburg Electron-Komplekt Ltd., Zastavskaya St 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(84) *Petersburg Electronic Company Warehouse,* Zastavskaya St. 15–B, St. Petersburg, Russia 196084;

(85) *ProExCom,* Ulitsa Artyukhina 6B, 106, Moscow, Russia;

(86) *Radel Ltd.,* a.k.a., the following one alias:

—Firm Radel Ltd., 20 Novaya Basmannaya St., Moscow, Russia;

(87) *Ramil Yarullovich Magzhanov,* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(88) *Ravil Mukminovich Bagautdinov,* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583;

(89) *RCM Group,* 6 Aptekarskiy Prospekt, Office 700, St. Petersburg, Russia 197376; *and* 30 16th Parkovaya St, Office 319, Moscow, Russia 105484; *and* 16-aya Parkovaya Str., 30, Office 319, Moscow, Russia 105484;

(90) *Roman Eliseev,* a.k.a., the following one alias:

—Roman Yeliseyev, 26 General Belov Str Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583;

(91) *Saransk Electronic Company,* a.k.a., the following one alias:

—APEX Saransk, 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia;

(92) *SCTB Engineering,* Pr. Yuria Gagarina 1, Office 230, St. Petersburg, Russia 196105; *and* Pr. Yuri Gagarin 1, Office 230, St. Petersburg, Russia 196105;

(93) *Sergei Evgenevich Klinov,* a.k.a., the following one alias:

—Sergey Yevgenyevich Klinov, 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova St Office 1010, Moscow, Russia 115583;

(94) *Sergei G Yuropov,* Zastavskaya St 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(95) *Sergey Koynov,* a.k.a., the following one alias:

—Sergey V. Coyne, 106 Kuybyshev Str, Office 68, Yekaterinburg, Russia (See alternate address in Hong Kong);

(96) *Sergey Nikolayevich Sanaev,* a.k.a., the following one alias:

—Sergei Nikoleivich Sanev, 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia;

(97) *Specelkom,* a.k.a., the following one alias:

—Special Electronic Components, Ulitsa Mitinskaya 30/4, Moscow, Russia 123430;

(98) *SpekElectronGroup,* 72 Lenigradsky Avenue, Bldg 4, Moscow, Russia 125315;

(99) *Stanislav Berezovets,* Ulitsa Polyany 9/6, Moscow, Russia 117042.

(100) *Stanislav Bolt,* 9 Lipovaya Alleya, St. Petersburg, Russia 197183;

(101) *Stanislav Orelsky,* 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln., St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484;

(102) *Systema VP,* a.k.a., the following one alias:

—Sistema VP, 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482; *and* Savelkinsky Pr 4, Office 512, Zelenograd, Russia 124482; *and* Savelkinskiy Proyedz 4, Office 512, Zelenograd, Russia 124482; *and* 4 Yunost Square, NPZ, Suite 1–7, Zelenograd, Russia 124482; *and* Ofis 511, Prospeckt Savelinksi, Moscow, Russia 124482; *and* 4 Yunost Plaza NPZ, rooms 1–7, Zelenograd, Moscow 124482;

(103) *Timur Nikoleavich Edigeev,* a.k.a., the following one alias:

—Timur Yedigeyev, 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583;

(104) *Vadim Shuletskiy,* 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044, *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484;

(105) *Valentina Mazalova,* 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln., St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484;

(106) *Video Logic,* 4 Yunost Square, NPZ, Suite 1–7, Zelenograd, Russia 124482;

(107) *Viktor Bokovoi,* Ulitsa Polyany 9/6, Moscow, Russia 117042;

(108) *Vitaliy Nagorniy,* Ulitsa Polyany 9/6, Moscow, Russia 117042;

(109) *Vladimir Davidenko,* 20 Novaya Basmannaya St., Moscow, Russia;

(110) *Vladimir Safronov,* 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376;

(111) *Vladimir Viktorovich Lavrov,* Vavilovykh Street 4–2 #267, St. Petersburg, Russia 195257; *and* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(112) *Vladislav A. Sokolov,* 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484;

(113) *Vyacheslav Y Shillin,* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164;

(114) *Yekaterina Parfenova,* 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482;

(115) *Yevgeniy L Biryukov,* Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105;

(116) *Yuliya L. Molkova-Poluh,* a.k.a., the following three aliases:

—Yuliya Molkova-Polukh;

—Yuliya Leonidovna Molkova-Polyukh; *and*

—Yuliya Molkova-Polah,

Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and*

Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and*

Raketnyy Bul'var 15, Moscow, Russia 129164; *and*

16 Raketnyy Bul'var, Moscow, Russia 129164;

(117) *Yuri A. Krasheninnikov,* 9 Lipovaya Alleya, St. Petersburg, Russia 197183;

(118) *Yuri Savin,* 39 Dnepropetrovskaya Str., Build 1, Apt. 287, Moscow, Russia; *and*

36 Mitinskaya St, Building 1, Office 406, Moscow, Russia 125430; *and*

53 Shcherbakovskaya Street, Moscow 105187; *and*

72 Lenigradsky Avenue, Bldg 4, Moscow, Russia 125315; *and*

(119) *Yuriy Vasilyevich Kuzminov,* a.k.a., the following one alias:

—Yuri Kuzminov,

53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and*

26 General Belov Str, Office 19, Moscow, Russia 115583; *and*

26 Generala Belova Street, Office 19, Moscow, Russia 115583.

Sweden

(1) *Andrey Shevlyakov,* Grev Turegatan 14, 11446 Stockholm, Sweden; *and*

(2) *Catomi Consulting AB,* Grev Turegatan 14, 11446 Stockholm, Sweden.

United Kingdom, Including the British Virgin Islands

(1) *Flamar Shipping Ltd,* P.O. Box 3321, Road Town, Tortola, British Virgin Islands;

(2) *Latebrook Trading Ltd,* Drake Chambers, Road Town, Tortola, British Virgin Islands;

(3) *Nelford United Corp,* P.O. Box 3321, Road Town, Tortola, British Virgin Islands;

(4) *Oystercredit Ltd Ogb,* OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands;

(5) *Profin Estates, Inc.,* Palm Chambers 5, Suite 120, The Lake Building, Wickhams Cay 1, P.O. Box 3175, Road Town, Tortola, British Virgin Islands;

(6) *Unimont S.A.,* Drake Chambers, P.O. Box 3321, Road Town, Tortola, British Virgin Islands; *and*

(7) *Voltero Alliance LLP,* 45–51 Newhall Street 330, Birmingham, West Midlands, B3 3RB, United Kingdom.

*Savings Clause*

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on October 9, 2012, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public

comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published, it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

**List of Subject in 15 CFR Part 744**

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

## PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012) Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September, 12, 2012).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By adding in alphabetical order, the destination of Belize under the Country column and one Belizean entity;
■ b. By adding under Canada, in alphabetical order, thirteen entities;
■ c. By adding under Cyprus, in alphabetical order, two entities;
■ d. By adding in alphabetical order, the destination of Estonia under the Country column and one Estonian entity;
■ e. By adding in alphabetical order, the destination of Finland under the Country column and eleven Finnish entities;
■ f. By adding under Germany, in alphabetical order, five German entities;
■ g. By adding under Greece, in alphabetical order, one Greek entity;
■ h. By adding under Hong Kong, in alphabetical order, two Hong Kong entities;
■ i. By adding in alphabetical order, the destination of Kazakhstan under the Country column and one Kazakhstani entity;
■ j. By adding under Russia, in alphabetical order, one hundred and nineteen Russian entities;
■ k. By adding in alphabetical order, the destination of Sweden under the Country column, and two Swedish entities; and
■ l. By adding under United Kingdom, in alphabetical order, seven British entities.

The additions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| * | * | * | * | * |
| Belize | Experian Holdings, Inc., N Eyre Str, Blake Bldg, Suite 302, Belize City, Belize 99008; *and* Corner Hutson Eyre Str, Blake Bldg, Suite 302, Belize City, Belize 99008. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER] 10/9/2012. |
| * | * | * | * | * |
| Canada | * | * | * | * |
| | Alex Woolf, 2021 Atwater Street, Suite 216, Montreal, Quebec, Canada H3H2P2. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER] 10/9/2012. |
| | Alexandre Ivjenko, a.k.a., the following one alias:<br>—Alexander Ivjenko, 7150 Rue Chouinard, Montreal, QC, H8N 2Z6 Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * | * | * |
| | Anastasiya Ivjenko, 7150 Rue Chouinard, Montreal, QC, H8N 2Z6, Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | Federal Register citation |
|---|---|---|---|---|
| | Anastassia Voronkevitch, 7320 St. Jacques St. W. Montreal QC, H4B1W1, Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Atlas Electronic Systems (AES), 7320 St. Jacques St. W. Montreal, QC, H4B1W1, Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * | * | * |
| | Enterprise Chips Hunter (ECH), 2021 Atwater Street, Suite 216, Montreal, Quebec, Canada H3H2P2. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * | * | * |
| | Liubov "Luba" Skvortsova, a.k.a., the following one alias:<br>—Lubov Skvortsova, 7150 Rue Chouinard, Montreal, QC, H8N 2Z6 Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Magtech, a.k.a., the following one alias:<br>—M.A.G. Tech, 5762 Royalmount Ave, Montreal, QC, H4P 1K5, Canada; *and* 5440 Queen Mart St, Office 103, Montreal, Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Maria Pashovkina, 7150 Rue Chouinard, Montreal, QC, H8N 2Z6, Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Mercury Electronic Solutions, a.k.a., the following one alias:<br>—Mercury Group International, 380 Vansickle Rd Unit 660, St. Catharines, ON L2126P7, Canada; *and* 127 Rue Wilson, Dollard-des-Ormeaux, Quebec H9A1W7, Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Natalie Sobolev, 5762 Royalmount Ave, Montreal, QC H4P 1K5, Canada; *and* 5440 Queen Mart St., Office 103, Montreal, Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Sputnik E, 7150 Rue Chouinard, Montreal, QC H8N 2Z6 Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Zurab Kartvelishvili, a.k.a., the following one alias:<br>—George Kartveli, 7380 Vansickle Rd. Unit 660, St. Catharines, ON L2126P7, Canada; *and* 320 St. Jacques St., W. Montreal QC, H4B1W1, Canada; *and* 7380 Vansickle Rd, Unit 660, St. Catharines, ON L2126P7, Canada; *and* 127 Rue Wilson, Dollard-des-Ormeaux, Quebec H9A1W7, Canada. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| * | * | * | * | * | * | * |
| Cyprus | Didessar Limited, Archbishop Makarios III Ave, Nicosia, Cyprus. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Leondica Holding Ltd, 25 Kolonakiou Str, Za Vos Kolonakioy Center, Limassol, Cyprus. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * * * * * | | | |
| * * * * * * * | | | | |
| Estonia | Yaxart OU, Kalevipoja 12A, 13625 Tallinn, Estonia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| Finland | Aleksei Kolominen, 20 Nuolitie, Vantaa, Finland 01740. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Andrey Kirievski, Lastaajanvayla 22, Lappeenranta, Finland 53420. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Eliron Logistics Oy, Vanha Porvoontie 229, Vantaa, Finland 01380. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Irina Pavlova, Lastaajanvayla 22, Lappeenranta, Finland 53420. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Kuusiaaren Sarnetex & Ter Oy, Kaasuntintie 8A, Helsinski, Finland 00770. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Lemon LLC Oy, Peltoinlahdentie 19, FI–54800 Savitaipale. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Olkerboy Oy/Nurminen Oy, 231B Vanha Porvoontie, Vantaa, Finland 01380. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Russian Cargo Oy, 22 Lastaajanvayla, Lappeenranta, Finland 53420. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | SM Way Oy, Lastaajanvayla 22, Lappeenranta, Finland 53420. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Transsphere Oy, a.k.a., the following two aliases:<br>—Transsphere Limited Oy; *and*<br>—Transsphere Oy Ltd., 20 Nuolitie, Vantaa, Finland 01740. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Vitaliy Dankov, Vanha Porvoontie 231B, Vantaa, Finland 01380. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| * * * * * * * | | | | |
| Germany | Albrecht Import-Export, a.k.a., the following one alias:<br>—Elena Albrecht Import-Export, Gmunder Str. 25, Heubach, Germany 73540. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Alexander Brovarenko, Fasanenweg 9L, Kelsterbach, Germany D–65451; *and* Fasanenweg 9, Gate 23, Kelsterbach, Germany 65451; *and* Fasanenweg 7, Kelsterbach, Germany D–65451; *and* IM Taubengrund 35 Gate 1–2, Kelsterbach, Germany 65451. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * | * | * |
| | Elena Albrecht, a.k.a., the following one alias:<br>—Elena Grinenko, Gmunder Str. 25, Heubach, Germany 73540. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * | * | * |
| | Russ Cargo Service GMBH, Fasanenweg 9L, Kelsterbach, Germany D–65451; *and* Fasanenweg 9, Gate 23, Kelsterbach, Germany 65451; *and* Fasanenweg 7, Kelsterbach, Germany D–65451; *and* IM Taubengrund 35 Gate 1–2, Kelsterbach, Germany 65451. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * | * | * |
| | Sergey Grinenko, a.k.a., the following one alias:<br>—Sergey Albrecht, Gmunder Str. 25, Heubach, Germany 73540. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| Greece | * | * | * | * |
| | Top Electronics Components S.A., 66 Alkminis & Aristovoulov Str, Kato Petralona, Athens, Greece 11853. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| Hong Kong | * | * | * | * |
| | Sergey Koynov, a.k.a., the following one alias:<br>—Sergey V. Coyne, Room 704 7/F, Landwide Commercial Building, 118–120 Austin Rd, Tsim Sha Tsui, Hong Kong (See alternate address in Russia). | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Serko Limited, Room 704 7/F, Landwide Commercial Building, 118–120 Austin Rd, Tsim Sha Tsui, Hong Kong. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| * | * | * | * | * |
| Kazakhstan | APEX Kazakhstan, 126 Jarokova Str, Almaty, Kazakhstan. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| * | * | * | * | * |
| Russia | Abris, 6 Aptekarskiy Prospeckt, Office 710, St. Petersburg, Russia 197376; *and* 30 16th Parkovaya St, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Abris-KEY, 6 Aptekarskiy Prospeckt, Office 710, St. Petersburg, Russia 197376; *and* 30 16th Parkovaya St, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Abris-Technology, 6 Aptekarskiy Prospeckt, Office 710, St. Petersburg, Russia 197376; *and* 30 16th Parkovaya St, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Aleksander Cheremshin, Ulitsa Mitinskaya 36/1, Moscow, Russia 125430; *and* Ordzhonikidze 10, Moscow, Russia 119071; *and* 10 Ordjonikidze Street, Moscow, Russia 119071; *and* Ulitsa Polyany 9/6, Moscow, Russia 117042; *and* Poljani str., 9–6, 117042, Moscow, Russia; *and* 9 Polyany Street, Suite 6, Moscow, Russia 117042; *and* 33 Ulitsa Marshala Tukhachevskogo, Suite 231, Moscow, Russia 123154; *and* Bolshaya Semenovskaya, 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Aleksander Kuznetsov, a.k.a., the following one alias:<br>—Alexander Kuznetsov, Ordzhonikidze 10, Moscow, Russia 119071; *and* 10 Ordjonikidze Street, Moscow, Russia 119071; *and* Ulitsa Polyany 9/6, Moscow, Russia 117042; *and* Poljani str., 9–6, 117042, Moscow, Russia; *and* 9 Polyany Street, Suite 6, Moscow, Russia 117042; *and* 33 Ulitsa Marshala Tukhachevskogo, Suite 231, Moscow, Russia 123154; *and* Bolshaya Semenovskaya, 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Aleksey Markov, 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Alex Pikhtin, a.k.a., the following one alias:<br>—Alexander Pikhtin, Pr. Yuria Gagarina 2, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Alexander Georgievich Mallabiu, 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Alexander Kuznetsov, Ulitsa Artyukhina 6B, 106, Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Alexander V. Brindyuk, a.k.a., the following one alias:<br>—Aleksander Brendyuk, Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Alexander Vedyashkin, 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Alexey Ivanov Zhuravlev, a.k.a., the following one alias:<br>—Alexy Ivanov, Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105; *and* Pr. Yuria Gagarina 1, Office 230, St. Petersburg, Russia 196105; *and* Pr. Yuri Gagarin 1, Office 230, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Alexey Kulakov, Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Alexey Polynkov, 471–4–98 Shosse Entuziastov, Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
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SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Anastasya Arkhipova, a.k.a., the following one alias:<br>—Anatasiya Arkhipova, 26 General Belov St, Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Andrey Gruzdew, 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Andrey V Gromadskih, 32 Korablestroiteley St., building #1, Apt #119, St. Petersburg, Russia 199397; *and* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Andrey Vladimirovich Saponchik, 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Anna V Libets, Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Anton Khramov, 86 N Prospect Obukhovskoy Oborony, St. Petersburg, Russia 190000. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Anton Lebedev, Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105; *and* Pr. Yuria Gagarina 1, Office 230, St. Petersburg, Russia 196105; *and* Pr. Yuri Gagarin 1, Office 230, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Anton Yurevich Alekseyev, Ulitsa Mitinskaya 30/4, Moscow, Russia 123430. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

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|---|---|---|---|---|
| | APEX, a.k.a., the following four aliases:<br>—APEKS;<br>—APEX Systems;<br>OOO APEX; *and*<br>—APEX Ltd., 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, Moscow, Russia 105318. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | APEX St. Petersburg, 140 Leninsky Prospekt, Office 57, St. Petersburg, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | APEX Yekaterinburg, 106 Kuybyshev Str, Office 68, Yekaterinburg, Russia; *and* Ulitsa 9 March, D. 120B, Office 312 620100, Yekaterinburg, Russia; *and* 106 K 68 ul Kuibysheva, 620100, Yekaterinburg, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Arsenal, 26 General Belov St, Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Atrilor, Ltd, a.k.a., the following two aliases:<br>—Atrilor LLC; *and*<br>—OOO Atrilor,<br>36 Mitinskaya St, Building 1, Office 406, Moscow, Russia 125430; *and* 53 Shcherbakovskaya Street, Moscow 105187. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Aviton, a.k.a., the following three aliases:<br>—Aviton company;<br>—For Salmi; *and*<br>—Salmi LLC,<br>Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 6 Aptekarskiy Prospect, Office 710, St. Petersburg, Russia 197376; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskiy Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Best Komp Group, P.O. Box 242, St. Petersburg, Russia 196240. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Bitreit, a.k.a., the following one alias:<br>—OOO Betreit,<br>Neglinnaya Str., 18/1, emb.1 ''A'', Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Bolshaya Semenovskaya, 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

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|---|---|---|---|---|
| | Denis A Kizha, Pulkovskoe Shosse, 20–4 #159, St. Petersburg, Russia 196158; *and* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | DM Link, P.O. Box 242, St. Petersburg, Russia 196240. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitri Ezhov, 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitriy Averichev, Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitriy Moroz, Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitriy Rakhimov, 26 General Belov Str Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitriy V Lukhanin, 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitry Andreev, 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitry Kochanov, 4 Pokhodnyy Dr, Bldg 1, 4th Floor, Room 417, Moscow, Russia 125373. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitry M Rodov, Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Dmitry Shegurov, a.k.a., the following one alias:<br>—Dmitriy Shegurov, | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 26 General Belov Str, Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583. | | | |
| | ECO–MED–SM Ltd, Petrovsko-Razumovsky proyezd 29, bed.2, Moscow, Russia 127287. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Electrotekhnika LLC, 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482; *and* 4 Yunost Square, NPZ, Suite 1–7, Zelenograd, Russia 124482; *and* 4 Yunost Square, NPZ, Apt. 1–7, Zelenograd, Russia 124482. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Elena Kuznetsova, a.k.a., the following one alias:<br>—Yelena Vladimirovna Kuznetsova,<br>9 Lipovaya alleya, St. Petersburg, Russia 197183; *and* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Elizaveta Krapivina, a.k.a., the following one alias:<br>—Yelizaveta Krapivina,<br>Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Evgeni Viktorovich Egorov, 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Forward Electronics, LLC, 86 N Prospect Obukhovskoy Oborony, St. Petersburg, Russia 190000; *and* Kolomyazhsky Prospect 18, Office 4085 BC "North House," St. Petersburg, Russia 197348. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Hermann Derkach, Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Igor Samusev, Ulitsa Artyukhina 6B, 106, Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Incorporated Electronics Systems, 9 Lipovaya alleya, St. Petersburg, Russia 197183; *and* 9A Lipovaya alleya, St. Petersburg, Russia 197183. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

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|---|---|---|---|---|
| | Ivan Komarov, Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Ivan Zubarev, 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Kirill A Stekhovskiy, Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavaskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Kirill Drozdov, 86 N Prospect Obukhovskoy Oborony, St. Petersburg, Russia 190000. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Kirill Pechorin Starodvorsky, 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Lyudmila V Talyanova, Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Magnetar, Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Mariya Lomova, 9 Lipovaya alleya, St. Petersburg, Russia 197183. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Mark Gofman, P.O. Box 242, St. Petersburg, Russia 196240. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Maxim Yevgenevich Ivakin, 106 Kuybyshev Str, Office 68, Yekaterinburg, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | MaxiTechGroup, a.k.a., the following two aliases:<br>—MaksiTekhGrup; *and*<br>—JSC MaksiTekhGrup,<br>4 Pokhodnyy Dr, Bldg 1, 4th floor, Room 417, Moscow, Russia 125373; *and* 46 Chkalova St., Zhukovskiy, Moscow Region, 140180. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Megel, 26 General Belov St, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

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|---|---|---|---|---|
| | Mekom, a.k.a., the following one alias:<br>—Mecom,<br>Ulitsa Mitinskaya 36/1, Moscow, Russia 125430. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Melkom, a.k.a., the following two aliases:<br>—Melcom; *and*<br>—Melkom JSC,<br>Ulitsa Ordzhonikidze 10, Moscow, Russia 119071; *and* 10 Ordjonikidze Street, Moscow, Russia 119071; *and* Ultisa Polyany 9/6, Moscow, Russia 117042; *and* Polijani str., 9–6, 117042, Moscow, Russia; *and* 33 Ulitsa Marshala Tukhachevskogo, Suite 231, Moscow, Russia 123154; *and* Bolshaya Semenovskaya, 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | MicroComponent LLC, 2/1, 4th Zapadny proezd, Zelenograd, Russia 124460; *and* 4 Yunost Square, NPZ, Suite 1–7, Zelenograd, Russia 124482; *and* 4th West Passage Dr., Building 2, 124460, Zelenograd, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | MIG Engineering, a.k.a., the following one alias:<br>—MIG Electronics,<br>26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 53 Scherbakovskaya St, Bldg 3, Moscow, Russia 105187. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Mikhail Davidovich, a.k.a., the following one alias:<br>—Mike Davidovich, P.O. Box 242, St. Petersburg, Russia 196240. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Mikhail Karpushin, 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Mikhail Vinogradov, 4 Pokhodnyy Dr, Bldg 1, 4th Floor, Room 417, Moscow, Russia 125373. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Neva Electronica, a.k.a., the following one alias:<br>—Neva Elektronika, | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

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|---|---|---|---|---|
| | Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105; *and* 5 Professora Popova St., Saint Petersburg, 197022. | | | |
| | Nikolai Bragin, 2A Chernyshevskogo St., St. Petersburg, Russia 191123; *and* Zastavkaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya st. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Nova Technologies, a.k.a., the following five aliases:<br>—Novie Technologies; *and*<br>—Nova SPB; *and*<br>—New Technology; *and*<br>—Nova Technologies Co., Ltd.; *and*<br>—Novyye Tekhnologii, LLC,<br>25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Oksana Timohina, 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Oleg Koshkin, 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova St Office 415, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Oleg Kunilov, 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Olga Naumova, 53 Sherbakovskaya St, Bldg 3, Moscow, Russia 105187; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Olga Pakhmutova, 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Olga Petrovna Kuznetsova, 33 Ulitsa Marshala Tukhachevskogo, Suite 231 Moscow, Russia 123154; *and* Ordzhonikidze 10, Moscow, Russia 119071; *and* 10 Ordjonikidze Street, Moscow, Russia 119071; *and* Ulitsa Polyany 9/6, Moscow, Russia 117042; *and* Poljani str., 9–6, 117042 Moscow, Russia; *and* 9 Polyany Street, Suite 6, Moscow, Russia 117042; *and* Bolshaya Semenovskaya, 40/505, Moscow, Russia 107023; *and* Ulitsa Metallurgov, 29, Str. 1, Komnata Pravleni, Moscow, Russia 111401. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Olga Ruzmanova, 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 26 General Belov Str, Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Olga V Bobrikova, 8 Pushkinskaya St., Apt. #47, St. Petersburg, Russia 196607; *and* Zastavskaya St 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Pavel Grishanovich, 9 Lipovaya alleya, St. Petersburg, Russia 197183. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Petersburg Electronic Company (PEC), LLC, a.k.a., the following one alias:<br>—Petersburg Electron-Komplekt Ltd.,<br>Zastavskaya St 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Petersburg Electronic Company Warehouse, Zastavskaya St. 15–B, St. Petersburg, Russia 196084. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | ProExCom, Ulitsa Artyukhina 6B, 106, Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Radel Ltd., a.k.a., the following one alias:<br>—Firm Radel Ltd.,<br>20 Novaya Basmannaya St., Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Ramil Yarullovich Magzhanov, Zastavskaya St 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Ravil Mukminovich Bagautdinov, 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | RCM Group, 6 Aptekarskiy Prospekt, Office 700, St. Petersburg, Russia 197376; *and* 30 16th Parkovaya St, Office 319, Moscow, Russia 105484; *and* 16-aya Parkovaya Str., 30, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Roman Eliseev, a.k.a., the following one alias:<br>—Roman Yeliseyev,<br>26 General Belov Str Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Saransk Electronic Company, a.k.a., the following one alias:<br>—APEX Saransk,<br>5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | SCTB Engineering, Pr. Yuria Gagarina 1, Office 230, St. Petersburg, Russia 196105; *and* Pr. Yuri Gagarin 1, Office 230, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Sergei Evgenevich Klinov, a.k.a., the following one alias:<br>—Sergey Yevgenyevich Klinov, 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova St Office 1010, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Sergei G Yuropov, Zastavskaya St 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Sergey Koynov, a.k.a., the following one alias:<br>—Sergey V. Coyne, 106 Kuybyshev Str, Office 68, Yekaterinburg, Russia (see alternate address in Hong Kong). | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Sergey Nikolayevich Sanaev, a.k.a., the following one alias:<br>—Sergei Nikoleivich Sanev, 5A North Street, Saransk, Republic of Mordovia, Russia 43006; *and* 53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583; *and* 60 Bolshevistskaya St., Office 905, Saransk, Republic of Mordovia, Russia; *and* 60 Bolshevistskaya St., Office 910, Saransk, Republic of Mordovia, Russia; *and* 5a Severnaya Street, Saransk, Republic of Mordovia, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Specelkom, a.k.a., the following one alias:<br>—Special Electronic Components,<br>Ulitsa Mitinskaya 30/4, Moscow, Russia 123430. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | SpekElectronGroup, 72 Lenigradsky Avenue, Bldg 4, Moscow, Russia 125315. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Stanislav Berezovets, Ulitsa Polyany 9/6, Moscow, Russia 117042. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Stanislav Bolt, 9 Lipovaya alleya, St. Petersburg, Russia 197183. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Stanislav Orelsky, 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Systema VP, a.k.a., the following one alias:<br>—Sistema VP,<br>4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482; *and* Savelkinsky Pr 4, Office 512, Zelenograd, Russia 124482; *and* Savelkinskiy Proyedz 4, Office 512, Zelenograd, Russia 124482; *and* 4 Yunost Square, NPZ, Suite 1–7, Zelenograd, Russia 124482; *and* Ofis 511, Prospeckt Savelinksi, Moscow, Russia 124482; *and* 4 Yunost Plaza NPZ, rooms 1–7, Zelenograd, Moscow 124482. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Timur Nikoleavich Edigeev, a.k.a., the following one alias:<br>—Timur Yedigeyev,<br>53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 1010, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 1010, Moscow, Russia 115583; *and* 26 General Belov St Office 415, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 415, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Vadim Shuletskiy, 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044, *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Valentina Mazalova, 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Video Logic, 4 Yunost Square, NPZ, Suite 1–7, Zelenograd, Russia 124482. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Viktor Bokovoi, Ulitsa Polyany 9/6, Moscow, Russia 117042. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Vitaliy Nagorniy, Ulitsa Polyany 9/6, Moscow, Russia 117042. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Vladimir Davidenko, 20 Novaya Basmannaya St., Moscow, Russia. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Vladimir Safraonov, 25 Red Cadets Street Letter H, Office Block 2, St. Petersburg, Russia 99034; *and* 130–17 Nevskiy Ave., Saint Petersburg, Russia 191036; *and* 16 Linia V.O., 7 Office 43, St. Petersburg, Russia 99034; *and* Krestovski River Quay 3, Suite 42, St. Petersburg, Russia 197376. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Vladimir Viktorovich Lavrov, Vavilovykh Street 4–2 #267, St. Petersburg, Russia 195257; *and* Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Vladislav A. Sokolov, 6 Aptekarskiy Prospekt, Office 710, St. Petersburg, Russia 197376; *and* Naberezhnaya Chernoi Rechki 61–1, St. Petersburg, Russia 197342; *and* 7 Belovodskiy Ln, St. Petersburg, Russia 194044; *and* Belovodskyi Per, 7, St. Petersburg, Russia 194044; *and* Naberegnaja Chernoj Rechki 61–1, 197342, Saint Petersburg, Russia; *and* 16 Parkovaya 30, Office 319, Moscow, Russia 105484. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
|---|---|---|---|---|
| | Vyacheslav Y Shillin, Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Yekaterina Parfenova, 4 Savelkinskiy Dr., Suite 511–512, Zelenograd, Russia 124482. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Yevgeniy L Biryukov, Pr. Yuria Gagarina 2, Office 801, St. Petersburg, Russia 196105. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Yuliya L. Molkova-Poluh, a.k.a., the following three aliases:<br>—Yuliya Molkova-Polukh; *and*<br>—Yuliya Leonidovna; Molkova-Polyukh; *and*<br>—Yuliya Molkova-Polah, Zastavskaya St. 32A, St. Petersburg, Russia 196084; *and* Zastavskaya St. 15–B, St. Petersburg, Russia 196084; *and* Raketnyy Bul'var 15, Moscow, Russia 129164; *and* 16 Raketnyy Bul'var, Moscow, Russia 129164. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Yuri A. Krasheninnikov, 9 Lipovaya alleya, St. Petersburg, Russia 197183. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Yuri Savin, 39 Dnepropetrovskaya Str., Build 1, Apt. 287, Moscow, Russia; *and* 36 Mitinskaya St, Building 1, Office 406, Moscow, Russia 125430; *and* 53 Shcherbakovskaya Street, Moscow 105187; *and* 72 Lenigradsky Avenue, Bldg 4, Moscow, Russia 125315. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Yuriy Vasilyevich Kuzminov, a.k.a., the following one alias:<br>—Yuri Kuzminov,<br>53 Sherbakovskaya Street, Building 3, Office 509, 105318 Moscow, Russia; *and* 26 General Belov Str, Office 19, Moscow, Russia 115583; *and* 26 Generala Belova Street, Office 19, Moscow, Russia 115583. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| * | * * * | * | * | * * |
| Sweden | Andrey Shevlyakov, Grev Turegatan 14, 11446 Stockholm, Sweden. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Catomi Consulting AB, Grev Turegatan 14, 11446 Stockholm, Sweden. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| * | * * * | * | * | * * |
| United Kingdom | * | * | * | * * |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | Federal Register citation |
|---|---|---|---|---|
| | Flamar Shipping Ltd, P.O. Box 3321, Road Town, Tortola, British Virgin Islands. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * * | * | * |
| | Latebrook Trading Ltd, Drake Chambers, Road Town, Tortola, British Virgin Islands. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * * | * | * |
| | Nelford United Corp, P.O. Box 3321, Road Town, Tortola, British Virgin Islands. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * * | * | * |
| | Oystercredit Ltd Ogb, OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Profin Estates, Inc., Palm Chambers 5, Suite 120, The Lake Building, Wickhams Cay 1, P.O. Box 3175, Road Town, Tortola, British Virgin Islands | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | * | * * | * | * |
| | Unimont S.A., Drake Chambers, P.O. Box 3321, Road Town, Tortola, British Virgin Islands. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |
| | Voltero Alliance LLP, 45–51 Newhall Street 330, Birmingham, West Midlands, B3 3RB, United Kingdom. | For all items subject to the EAR. (See § 744.11 of the EAR.) | Presumption of denial .... | 77 FR [INSERT FR PAGE NUMBER ] 10/9/2012. |

Dated: October 2, 2012.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2012–24760 Filed 10–5–12; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

**[CPCLO Order No. 014–2012]**

### Privacy Act of 1974: Implementation

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice (DOJ or Department) is issuing a final rule for the new Federal Bureau of Investigation (FBI) Privacy Act system of records titled FBI Data Warehouse System, JUSTICE/FBI–022. This system is being exempted from the subsections of the Privacy Act listed below for the reasons set forth in the following text. Information in this system of records relates to law enforcement matters, and the exemptions are necessary to avoid interference with the national security and criminal law enforcement functions and responsibilities of the FBI.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kristin Meinhardt, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, Washington, DC 20535–0001, telephone 202–324–3000.

**SUPPLEMENTARY INFORMATION:** Notice of the proposed rule with invitation to comment was published on July 10, 2012, at 77 FR 40539. The Department received one comment from a member of the public questioning the legality and appropriateness of the proposed exemptions. The Department has carefully considered the comment but has declined to adopt it because these exemptions are expressly authorized by the Privacy Act and are appropriate and justified for the reasons set forth in the rule.

**List of Subjects in 28 CFR Part 16**

Administrative practices and procedures, Courts, Freedom of Information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, 28 CFR part 16 is amended as follows:

### PART 16—[AMENDED]

■ 1. The authority citation for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

### Subpart E—Exemption of Records Systems Under the Privacy Act

■ 2. Amend § 16.96 to revise paragraphs (v) and (w) to read as follows:

**§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.**

* * * * *

(v) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4);

(d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g) of the Privacy Act:

(1) FBI Data Warehouse System, (JUSTICE/FBI–022).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Where compliance with an exempted provision could not appear to interfere with or adversely affect interests of the United States or other system stakeholders, the Department of Justice (DOJ) in its sole discretion may waive an exemption in whole or in part; exercise of this discretionary waiver prerogative in a particular matter shall not create any entitlement to or expectation of waiver in that matter or any other matter. As a condition of discretionary waiver, the DOJ in its sole discretion may impose any restrictions deemed advisable by the DOJ (including, but not limited to, restrictions on the location, manner, or scope of notice, access, or amendment).

(w) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any law enforcement or national security investigative interest in the individual by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and defuse any potential acts of terrorism or other potential violations of criminal law. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to circumvent the investigation.

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the accounting of disclosures provision of subsection (c)(3).

(3) From subsections (d)(1), (2), (3), and (4) and (e)(4)(G) and (H) because these provisions concern individual access to and amendment of law enforcement, intelligence and counterintelligence, and counterterrorism records, and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the investigative interest of the FBI or other law enforcement or intelligence agencies. Providing access could compromise sensitive information classified to protect national security; disclose information that would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; could provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, and witnesses. The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases with subjects of the information.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. The relevance and utility of certain information that may have a nexus to terrorism or other crimes may not always be evident until and unless it is vetted and matched with other sources of information that are necessarily and lawfully maintained by the FBI.

(5) From subsections (e)(2) and (3) because application of these provisions could present a serious impediment to efforts to solve crimes and improve national security. Application of these provisions would put the subject of an investigation on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI. Further, greater specificity of properly classified records could compromise national security.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. With time, seemingly irrelevant or untimely information may acquire new significance when new details are brought to light. Additionally, the information may aid in establishing patterns of activity and providing criminal or intelligence leads. It could impede investigative progress if it were necessary to assure relevance, accuracy, timeliness and completeness of all information obtained during the scope of an investigation. Further, some of the records in this system come from other agencies and it would be administratively impossible for the FBI to vouch for the compliance of these agencies with this provision.

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the FBI and may alert the subjects of law enforcement investigations, who might be otherwise unaware, to the fact of those investigations.

(9) From subsections (f) and (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: September 27, 2012.

**Joo Y. Chung,**

*Acting Chief Privacy and Civil Liberties Officer.*

[FR Doc. 2012–24753 Filed 10–5–12; 8:45 am]

BILLING CODE P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2012–0402; FRL–9738–7]

### Approval and Promulgation of Implementation Plans; Mississippi; 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve the State Implementation Plan (SIP) submissions, submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), as demonstrating that the State meets portions of the SIP requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that

each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. MDEQ certified that the Mississippi SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_2$ NAAQS are implemented, enforced, and maintained in Mississippi (hereafter referred to as ''infrastructure submissions''). With the exception of sections 110(a)(2)(D)(i), 110(a)(2)(E)(ii) and 110(a)(2)(G), each of which will be addressed in separate actions, Mississippi's infrastructure submissions, provided to EPA on December 7, 2007, and October 6, 2009, address all the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_2$ NAAQS.

**DATES:** *Effective Date:* This rule will be effective November 8, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0402. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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I. Background
II. This Action
III. Final Action
IV. Statutory and Executive Order Reviews

## I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA promulgated a new annual $PM_{2.5}$ NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On June 12, 2012, EPA proposed to approve Mississippi's December 7, 2007, and on October 6, 2009, infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. *See* 77 FR 34898. A summary of the background for today's final action is provided below. See EPA's June 12, 2012, proposed rulemaking at 77 FR 34898 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

## II. This Action

EPA is taking final action to approve Mississippi's infrastructure submissions as demonstrating that the State meets portions of the applicable requirements of sections 110(a)(1) and (2) of the CAA

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment plan requirements of section 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's final rulemaking.

for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. MDEQ certified that the Mississippi SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_2$ NAAQS are implemented, enforced, and maintained in Mississippi. EPA is taking separate action on sections 110(a)(2)(D)(i), 110(a)(2)(E)(ii) and 110(a)(2)(G) of Mississippi 1997 annual and 2006 24-hour $PM_2$ infrastructure submissions.

EPA received no adverse comments on its June 12, 2012, proposed approval of portions of Mississippi's December 7, 2007, and on October 6, 2009, infrastructure submissions. Additionally, on September 6, 2012, EPA signed a final rulemaking action approving revisions to Mississippi's New Source Review (NSR) requirements, which Mississippi relies in part on to meet the requirements for sections 110(a)(2)(C) and 110(a)(2)(J) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is not taking action today on Mississippi's NSR program, as these requirements are already approved for Mississippi's SIP.

EPA is finalizing its determination that Mississippi's infrastructure submissions, provided to EPA on December 7, 2007, and October 6, 2009, address all the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with the exceptions noted above. EPA has determined that Mississippi's December 7, 2007, and October 6, 2009, submissions are consistent with section 110 of the CAA.

## III. Final Action

EPA has determined that MDEQ has addressed certain elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Mississippi. As such, EPA is taking final action to approve those elements as described in Mississippi's December 7, 2007, and October 6, 2009, submissions for 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because these portions of the submissions are consistent with section 110 of the CAA. As noted above, EPA is not taking action on the portions Mississippi's infrastructure submissions related to sections 110(a)(2)(D)(i), 110(a)(2)(E)(ii) and 110(a)(2)(G). In addition, EPA notes that today's action is not approving any specific rule, but rather making a determination that Mississippi's already approved SIP meets certain CAA requirements.

## IV. Statutory and Executive Order Reviews

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

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

In addition, this 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, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### List of Subjects in 40 CFR Part 52

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

Dated: September 25, 2012.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart Z—Mississippi

■ 2. Section 52.1270 paragraph (e), is amended by adding two new entries for ''110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards'' and ''110(a)(1) and

(2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards'' at the end of the table to read as follows:

**§ 52.1270 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards. | Mississippi ..... | 12/7/2007 | 10/9/2012 [Insert citation of publication]. | With the exception of sections 110(a)(2)(D)(i), 110(a)(2)(E)(ii) and 110(a)(2)(G). |
| 110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards. | Mississippi ..... | 10/6/2009 | 10/9/2012 [Insert citation of publication]. | With the exception of sections 110(a)(2)(D)(i), 110(a)(2)(E)(ii) and 110(a)(2)(G). |

[FR Doc. 2012–24631 Filed 10–5–12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2012–0238; FRL–9738–6]**

## Approval and Promulgation of Implementation Plans; Mississippi; 110(a)(2)(G) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve the State Implementation Plan (SIP) revision, submitted by the Mississippi Department of Environmental Quality, on July 26, 2012. This SIP revision was submitted to address Clean Air Act (CAA or Act) section 110(a)(2)(G). Specifically, EPA is approving Mississippi's July 26, 2012, submission addressing section 110(a)(2)(G), of the CAA for both the 1997 and 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. The subject of this notice is limited to infrastructure element 110(a)(2)(G). All other applicable Mississippi infrastructure elements are being addressed in a separate rulemakings.

**DATES:** *Effective Date:* This rule will be effective on November 8, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0238. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information 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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

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### I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA promulgated a new annual $PM_{2.5}$ NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On July 31, 2012, EPA proposed to approve Mississippi's submission addressing section 110(a)(2)(G). A summary of the background for today's final action is provided below. See EPA's July 31, 2012, proposed rulemaking at 77 FR 45320 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through

earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. However, EPA is only addressing element 110(a)(2)(G) in this action.

## II. This Action

EPA is taking final action to approve Mississippi's infrastructure submission as demonstrating that the State meets the applicable requirements of section 110(a)(2)(G) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. In a draft SIP revision provided to EPA on July 13, 2012, for parallel processing, Mississippi provided public notification of its certification that the Mississippi SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, as it relates to section 110(a)(2)(G), is implemented, enforced, and maintained in Mississippi.

On July 31, 2012, EPA proposed to approve Mississippi's July 13, 2012, draft SIP revision addressing section 110(a)(2)(G). EPA's July 31, 2012 (77 FR 45320), proposed approval was contingent upon Mississippi providing EPA with a final SIP revision that was not changed significantly from the July 13, 2012, draft SIP revision. Mississippi provided its final SIP revision on July 26, 2012. There were no significant changes made to the final submittal. All other applicable Mississippi infrastructure elements are being addressed in a separate rulemakings.

EPA received one off-topic comment on its July 31, 2012, proposed rulemaking to approve Mississippi's July 13, 2012, draft SIP revision as meeting the section 110(a)(2)(G) requirements of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The Commenter stated that EPA's $PM_{2.5}$ standard forces expensive mandates on states and industry and the designation process places a strain on local resources and discourages economic growth and EPA should withdraw the $PM_{2.5}$ standard. Also, the Commenter stated that EPA should consider public interest prior to entering into consent decrees.

This comment does not appear to be related to the issues presented in the proposed rulemaking, and instead, appears related to a wholly separate topic—promulgation of the PM NAAQS. Promulgations of NAAQS involve public comment opportunities, and that would be the time to raise concerns specific to a particular NAAQS. Additionally, with regard to Commenter's general statement about consent decrees, although it is not clear to which specific consent decree Commenter is referring, the CAA does provide for opportunities for public input regarding certain consent decrees.

EPA does not interpret these comments as relevant to the topic of EPA's July 31, 2012, proposed action, which proposed approval of Mississippi's draft SIP revision pertaining to section 110(a)(2)(G) infrastructure requirements for the existing 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Instead, EPA interprets these comments as being off-topic and outside of the scope of today's final rulemaking.

Mississippi's infrastructure submission regarding section 110(a)(2)(G), provided to EPA on July 26, 2012, in final form, addressed the 110(a)(2)(G) requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has determined that Mississippi's July 26, 2012, submission is consistent with section 110 of the CAA.

## III. Final Action

As already described, Mississippi has addressed section 110(a)(2)(G) requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Mississippi. EPA is taking final action to approve Mississippi's July 26, 2012, submission for 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because the submission is consistent with section 110 of the CAA. Today's action is not approving any specific rule, but rather making a determination that Mississippi's already approved SIP meets certain CAA requirements.

## IV. Statutory and Executive Order Reviews

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

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

In addition, this 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, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 25, 2012.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart Z—Mississippi

■ 2. Section 52.1270 paragraph (e), is amended by adding a new entry for ''110(a)(2)(G) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards'' at the end of the table to read as follows:

**§ 52.1270 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 110(a)(2)(G) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards. | Mississippi ..... | 7/26/2012 | 10/9/2012 [Insert citation of publication]. | |

[FR Doc. 2012–24628 Filed 10–5–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

**[EPA–HQ–OAR–2012–0223; FRL 9733–3]**

## Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard and Diesel Sulfur Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is issuing this direct final rule to amend the definition of heating oil in the Renewable Fuel Standard (''RFS'' or ''RFS2'') program under section 211(o) of the Clean Air Act. This amendment will expand the scope of renewable fuels that can generate Renewable Identification Numbers (RINs) as heating oil to include fuel oil produced from qualifying renewable biomass that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. Fuel oils used to generate process heat, power, or other functions will not be included in the amended definition. Producers or importers of fuel oil that meets the amended definition of heating oil will be allowed to generate RINs, provided that the fuel oil meets the other requirements specified in the RFS regulations. This amendment will not modify or limit fuel included in the current definition of heating oil. EPA is also amending the requirements under EPA's diesel sulfur program related to the sulfur content of locomotive and marine diesel fuel produced by transmix processors. These amendments will allow locomotive and marine diesel fuel produced by transmix processors to meet a maximum 500 parts per million (ppm) sulfur standard provided that; the fuel is used in older technology locomotive and marine engines that do not require 15 ppm sulfur diesel fuel, the fuel is used outside of the Northeast Mid-Atlantic Area, and the fuel is kept segregated from other fuel. These amendments will provide significant regulatory relief for transmix processors while having a neutral or net positive environmental impact. EPA is also amending the fuel marker requirements for 500 ppm sulfur locomotive and marine (LM) diesel fuel to address an oversight in the original rulemaking where the regulations failed to incorporate provisions described in the rulemaking preamble to allow for solvent yellow 124 marker to transition out of the distribution system.

**DATES:** This rule is effective on December 10, 2012 without further notice, unless EPA receives adverse comment or a public hearing request by November 8, 2012. If EPA receives a timely adverse comment or a hearing request on the rule or any specific portion of this rule, we will publish a withdrawal of the rule or a specific portion of the rule in the **Federal Register** informing the public that the rule or portions of the rule with adverse comment will not take effect. If a public hearing is requested, we will publish a notice in the **Federal Register** announcing the date and location of the hearing at least 14 days prior to the hearing.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0223, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*, Attention Air and Radiation Docket ID EPA–HQ–OAR–2012–0223.
- *Fax:* 731–214–4051.
- *Mail:* Air and Radiation Docket, Docket No. EPA–HQ–OAR–2012–0223,

Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, 20460, Attention Air and Radiation Docket, ID No. EPA–HQ–OAR–2012–0223. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0223. 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.*

*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 and Radiation Docket and Information Center, EPA, 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 Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Kristien Knapp, Office of Transportation and Air Quality, Mail Code: 6405J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., 20460; telephone number: (202) 343–9949; fax number: (202) 343–2800; email address: *knapp.kristien@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

### *A. Purpose*

EPA is issuing a direct final rule to amend provisions in the renewable fuel standard (RFS) and diesel sulfur fuel programs. The RFS amendment changes the definition of home heating oil, and the diesel sulfur amendments provide additional flexibility for transmix processors who produce locomotive and marine diesel fuel, and allow solvent yellow 124 marker to transition out of the distribution system. EPA is taking this action under section 211 of the Clean Air Act.

### *B. Summary of Today's Rule*

#### Amended Definition of Home Heating Oil

This rule amends the definition of heating oil in 40 CFR 80.1401 in the renewable fuel standard (''RFS'' or ''RFS2'') program promulgated under section 211(o) of the Clean Air Act (CAA). This amendment will expand the scope of renewable fuels that can generate Renewable Identification Numbers (''RINs'') as ''home heating oil'' to include fuel oil that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. This rule will allow producers or importers of fuel oil that meets the amended definition of heating oil to generate RINs, provided that other requirements specified in the regulations are met. Fuel oils used to generate process heat, power, or other functions will not be approved for RIN generation under the amended definition of heating oil. The amendment will not modify, limit, or change fuel included in the current definition of heating oil at 40 CFR 80.2(ccc).

#### Diesel Transmix Amendments

The diesel transmix amendments will reinstate an allowance for transmix processors to produce 500 ppm sulfur diesel fuel for use in older technology locomotive and marine diesel outside of the Northeast Mid-Atlantic Area after 2014. EPA's ocean-going vessels rule forbade this allowance beginning 2014 because a new stream of diesel, containing up to 1000 ppm sulfur, was introduced at that time, which we believed would provide a suitable outlet for transmix distillate product. Transmix processors stated that they were not aware of the changes to the 500-ppm LM transmix provisions until after they were finalized, and that the ocean-going vessels market would not be a viable outlet for their distillate product. Based on additional input that we received from transmix processors and other stakeholders in the fuel distribution system during our consideration of the petition, EPA believed that it would be appropriate to extend the 500-ppm diesel transmix flexibility beyond 2014. EPA finalized a settlement agreement and this DFR and NPRM are in accord with the settlement agreement. Our analysis indicates that extending this flexibility beyond 2014 will have a neutral or net beneficial effect on overall emissions.

#### Yellow Marker Amendments

The yellow marker amendments address an oversight in the original nonroad diesel rulemaking. In that rulemaking, the regulations failed to incorporate provisions described in the rulemaking preamble. The preamble made clear that EPA intended to allow 500 ppm locomotive marine (LM) diesel fuel containing greater than 0.10 milligrams per liter of Solvent Yellow 124 (SY124) time to transition out of the fuel distribution system. However, the regulations are not consistent with the preamble and did not provide this same allowance.

Specifically, the regulations as currently written do not provide any transition time for unmarked LM fuel delivered from a truck loading rack beginning June 1, 2012 to work its way through the fuel distribution system downstream of the truck loading rack. The yellow marker amendments will allow 500 ppm LM diesel fuel at any point in the fuel distribution and end use system to contain more than 0.10 milligrams per liter of SY 124 through November 30, 2012. This regulatory change will allow marked LM diesel fuel to transition normally through the LM fuel distribution and use system. Today's rule also amends the regulation

to clarify the transition of the solvent yellow 124 marker out of heating oil beginning June 1, 2014. After December 1, 2014, EPA will no longer have any requirements with respect to the use of the SY 124 marker.

*C. Costs and Benefits*

These three sets of amendments attempt to provide new opportunities for RIN generation under the RFS program and necessary flexibilities and transition periods for those affected by EPA's transmix and marker requirements. Therefore, EPA believes that these amendments will impose no new direct costs or burdens on regulated entities beyond the minimal costs associated with reporting and recordkeeping requirements. At the same time, EPA does not believe that any of these amendments will adversely impact emissions.

## II. Why is EPA issuing a direct final rule?

EPA is publishing this rule without a prior proposed rule because this may be viewed as a noncontroversial action that would not receive adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule if adverse comments or a hearing request are filed on the rule or any portion of the rule.[1] We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

## III. Does this action apply to me?

Entities potentially affected by this action include those involved with the production, distribution and sale of transportation fuels, including gasoline and diesel fuel, or renewable fuels such as ethanol and biodiesel, as well as those involved with the production, distribution and sale of other fuel oils that are not transportation fuel. Regulated categories and entities affected by this action include:

| Category | NAICS codes [a] | SIC codes [b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 324110 | 2911 | Petroleum refiners, importers. |
| Industry | 325193 | 2869 | Ethyl alcohol manufacturers. |
| Industry | 325199 | 2869 | Other basic organic chemical manufacturers. |
| Industry | Various | Various | Transmix Processors. |
| Industry | 424690 | 5169 | Chemical and allied products merchant wholesalers. |
| Industry | 424710 | 5171 | Petroleum bulk stations and terminals. |
| Industry | 424720 | 5172 | Petroleum and petroleum products merchant wholesalers. |
| Industry | 454319 | 5989 | Other fuel dealers. |

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

## IV. What should I consider as I prepare my comments for EPA?

A. *Submitting information claimed as CBI.* Do not submit this information to EPA through *www.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.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree. Suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

## V. Amendments Under the Renewable Fuel Standard Program

*A. Amended Definition of Heating Oil*

EPA is issuing a direct final rule to amend the definition of heating oil in 40 CFR 80.1401 in the renewable fuel standard (''RFS'' or ''RFS2'') program promulgated under section 211(o) of the Clean Air Act (CAA).[2] This amendment will expand the scope of renewable fuels that can generate Renewable Identification Numbers (''RINs'') as

[1] The proposed rule contains all aspects of this direct final rule and seeks comments. Additionally, this document also requests comments on one issue that is not included in the direct final rule: whether the amendments to the requirements for locomotive and marine diesel fuel produced by transmix processors should be extended to fuel used inside the Northeast Mid-Atlantic Area.

[2] The Energy Independence and Security Act (EISA) of 2007 amended section 211(o) of the Clean Air Act (CAA), which was originally added by the Energy Policy Act (EPAct) of 2005.

home heating oil to include fuel oil that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. This rule will allow producers or importers of fuel oil that meets the amended definition of heating oil to generate RINs, provided that other requirements specified in the regulations are met. Fuel oils used to generate process heat, power, or other functions will not be approved for RIN generation under the amended definition of heating oil, as these fuels are not within the scope of ''home heating oil'' as that term is used in the Energy Independence and Security Act of 2007 (''EISA''), for the RFS program. The amendment will not modify or limit fuel included in the current definition of heating oil at 40 CFR 80.2(ccc).

The RFS program requires the production and use of renewable fuel to replace or reduce the quantity of fossil fuel present in transportation fuel. Under EPA's RFS program this is accomplished by providing for the generation of RINs by producers or importers of qualified renewable fuel. RINs are transferred to the producers or importers of gasoline and diesel transportation fuel who then use the RINs to demonstrate compliance with their renewable fuel volume obligations. RINs also serve the function of credits under the RFS program.

Congress provided that EPA could also establish provisions for the generation of credits by producers of certain renewable fuel that was not used in transportation fuel, called ''additional renewable fuel.'' [3] Additional renewable fuel is defined as fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel.[4] In essence, additional renewable fuel has to meet all of the requirements applicable to qualify it as renewable fuel under the regulations, with the only difference being that it is blended into or is home heating oil or jet fuel. This does not change the volume requirements of the statute itself, however this can provide an important additional avenue for parties to generate RINs for use by obligated parties, thus promoting the overall cost-effective production and use of renewable fuels.

EPA addressed the provision for additional renewable fuels in the RFS2 rulemaking, specifically addressing the category of ''home heating oil.'' EPA determined that this term was ambiguous, and defined it by incorporating the existing definition of heating oil at 40 CFR 80.2(ccc). EPA stated that:

> EISA uses the term ''home heating oil'' in the definition of ''additional renewable fuel.'' The statute does not clarify whether the term should be interpreted to refer only to heating oil actually used in homes, or to all fuel of a type that can be used in homes. We note that the term 'home heating oil' is typically used in industry in the latter manner, to refer to a type of fuel, rather than a particular use of it, and the term is typically used interchangeably in industry with heating oil, heating fuel, home heating fuel, and other terms depending on the region and market. We believe this broad interpretation based on typical industry usage best serves the goals and purposes of the statute. If EPA interpreted the term to apply only to heating oil actually used in homes, we would necessarily require tracking of individual gallons from production through ultimate [use] in homes in order to determine eligibility of the fuel for RINs. Given the fungible nature of the oil delivery market, this would likely be sufficiently difficult and potentially expensive so as to discourage the generation of RINs for renewable fuels used as home heating oil. This problem would be similar to that which arose under RFS1 for certain renewable fuels (in particular biodiesel) that were produced for the highway diesel market but were also suitable for other markets such as heating oil and non-road applications where it was unclear at the time of fuel production (when RINs are typically generated under the RFS program) whether the fuel would ultimately be eligible to generate RINs. Congress eliminated the complexity with regards to non-road applications in RFS2 by making all fuels used in both motor vehicle and nonroad applications subject to the renewable fuel standard program. We believe it best to interpret the Act so as to also avoid this type of complexity in the heating oil context. Thus, under today's regulations, RINs may be generated for renewable fuel used as ''heating oil,'' as defined in existing EPA regulations at § 80.2(ccc). In addition to simplifying implementation and administration of the Act, this interpretation will best realize the intent of EISA to reduce or replace the use of fossil fuels.[5]

The existing definition of heating oil at 40 CFR 80.2(ccc) means ''any #1, #2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, stationary diesel engines, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, or similar trade names, and that is not jet fuel, kerosene, or [Motor Vehicle, Non-Road, Locomotive and Marine (MVNRLM)] diesel fuel.'' The existing definition of non-petroleum diesel at 40 CFR 80.2(sss) means a diesel fuel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats. Thus, in order to generate RINs for home heating oil that is a non-petroleum diesel blend, the fuel must contain at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, as well as meeting all other requirements of the RFS2 regulations. Since the promulgation of the RFS2 final rule, we have received a number of requests from producers to consider expanding the scope of the home heating oil provision to include additional fuel oils that are produced from qualifying renewable biomass but do not meet the regulatory definition of heating oil because they are not #1 or #2 diesel and do not contain at least 80 percent mono-alkyl esters. Parties raising this issue have suggested that limiting ''home heating oil'' to the fuel types defined in 40 CFR 80.2(ccc) disqualifies certain types of renewable fuel oils that could be used for home heating and that this limitation does not align with our reasoning in the preamble to take a broad interpretation of the term ''home heating oil'' in CAA section 211(o).

EPA has considered this issue further and is revising the definition of heating oil in the RFS2 program to expand the scope of fuels that can generate RINs as heating oil. EPA is revising the definition such that RINs also may be generated by renewable fuel that is fuel oil and is used to heat interior spaces of homes or buildings to control ambient climate for human comfort. This will not include fuel oils used to generate process heat, power, or other functions. The fuel oil must be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. The fuel oil must only be used in heating applications, where the sole purpose of the fuel's use is for heating and not for any other combined use such as process energy use. We are amending the existing definition of heating oil in 40 CFR 80.1401 to include fuel oils that are used in this way. This is in addition to the fuel oils currently included in the definition of heating oil at 40 CFR 80.2(ccc), and will not modify or limit the fuel included in the current definition.

EPA believes this expansion of the scope of the home heating oil provision is appropriate and authorized under CAA section 211(o). As EPA described

[3] ''EISA changed the definition of 'renewable fuel' to require that it be made from feedstocks that qualify as 'renewable biomass.' EISA's definition of the term 'renewable biomass' limits the types of biomass as well as the types of land from which the biomass may be harvested.'' Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 FR 14670, 14681 (March 26, 2010).

[4] *See* CAA sections 211(o)(1)(A) and (o)(5)(E).

[5] 75 FR 14670, 14687 (March 26, 2010).

in the RFS2 final rule, Congress did not define the term ''home heating oil,'' and it does not have a fixed or definite commercial meaning. In the RFS2 final rulemaking, EPA focused on whether the provision was limited to heating oil actually used in homes. EPA noted that the term home heating oil is usually used in the industry to refer to one type of fuel, and not to a specific use for the fuel. Given this more general usage of the term, and the practical barriers that would have arisen if the term was defined as fuel actually used to heat homes, EPA defined the scope of home heating oil in a more specific fashion by identifying those types of fuel oils that are typically used to heat homes. EPA determined this was a reasonable interpretation of an ambiguous statutory provision that simplified implementation and administration of the Act and promoted achievement of the goals of the RFS program.

In the RFS2 rulemaking, EPA focused on the kinds of fuel oils that can be used to heat homes. The expansion of the definition adopted in this rulemaking will address two types of fuel oils not included in the current definition of heating oil. First, the amended definition will include additional fuel oils that are actually used to heat homes, even if they do not meet the current definition of heating oil. This is clearly within the scope of the statutory provision for home heating oil.

Second, the amended definition will include fuel oils that are used to heat facilities other than homes to control ambient climate for human comfort. Under the current definition of heating oil, a fuel oil meets the definition based on its physical properties and its use in furnaces, boilers, stationary diesel engines, and similar applications, not whether it is actually used to heat a home. The basic decision made in the RFS2 final rulemaking was to allow RIN generation for the group of fuel oils that are typically used for home heating purposes. Under the current definition the relationship of the fuel oil to heating homes is that the fuel oil is of the type that is typically used for and can be used for that purpose.[6]

In the amended definition, qualifying fuel oils will be used for heating places where people live, work, or recreate, and not just their homes. It focuses more on what is getting heated—people—and not where the people are located. EPA believes this is a reasonable interpretation of the phrase ''home heating oil,'' while recognizing that it is not an obvious interpretation. This interpretation recognizes the ambiguity of the phrase used by Congress, which is not defined and does not have a clear and definite commercial meaning. It gives reasonable meaning to the term home heating oil, by limiting the additional fuel oils to fuel oils when used for heating of facilities that people will occupy, and excluding fuel oils when used for other purposes such as generation of energy used in the manufacture of products. It also focuses on the aspect of home that is important here—the heating of people—recognizing that EPA has already determined that fuel oil can be included in the scope of home heating oil even if it is not actually used to heat a home. This interpretation will also promote the purposes of the EISA and the RFS program. It will promote the purposes of the EISA in that it will increase the production and use of renewable fuels by introducing new sources of fuel producers to the RFS program. It will specifically promote the RFS programmatic goals by facilitating the generation of RINs for renewable fuels that reduce emissions of greenhouse gases compared to fossil fuels. For example, EPA has received information from Envergent Technologies (alliance of Ensyn and UOP/Honeywell) that such an expanded definition of heating oil would result in nearly immediate production of 3.5 million gallons from their existing facilities, with an additional projected production of up to 45 million gallons per year within 24 months following regulatory action. Based on this information from Envergent Technologies, application of the expanded definition of heating oil to the entire industry would result in the production of many more million additional gallons of renewable fuel.

*B. Lifecycle Greenhouse Gas Assessment of the Amended Definition of Heating Oil*

EPA has also evaluated whether any revisions will need to be made to Table 1 to 40 CFR 80.1426 that lists the applicable D codes for each fuel pathway for use in generating RINs in the RFS2 regulations in light of the additional fuel oils included in the expanded definition of heating oil. As discussed below, EPA has determined that the applicable D code entries for heating oil in Table 1 to 40 CFR 80.1426 will continue to be appropriate and will not need to be revised in light of the expanded definition of heating oil.

Under the RFS program, EPA must assess lifecycle greenhouse gas (GHG) emissions to determine which fuel pathways meet the GHG reduction thresholds for the four required renewable fuel categories. The RFS program requires a 20% reduction in lifecycle GHG emissions for conventional renewable fuel (except for grandfathered facilities and volumes), a 50% reduction for biomass-based diesel or advanced biofuel, and a 60% reduction for cellulosic biofuel. For the final RFS2 rule, EPA assessed the lifecycle greenhouse gas emissions of multiple renewable fuel pathways and classified pathways based on these GHG thresholds, as compared to the EISA statutory baseline.[7] In addition, EPA has added several pathways since the final rule was published. Expanding the definition of heating oil does not affect these prior analyses.

The fuel pathways consist of fuel type, feedstock, and production process requirements. GHG emissions are assessed at all points throughout the lifecycle pathway. For instance, emissions associated with sowing and harvesting of feedstocks and in the production, distribution and use of the renewable fuel are examples of what are accounted for in the GHG assessment. A full accounting of emissions is then compared with the petroleum baseline emissions for the transportation fuel being replaced. The lifecycle GHG emissions determination is one factor used to determine compliance with the regulations.

There are currently several fuel pathways that list heating oil as a fuel type with various types of feedstock and production processes used, qualifying the heating oil pathways as either biomass-based diesel, advanced, or cellulosic. The determinations for these different pathways were based on the current definition of heating oil. The pathways also include several types of distillate product including diesel fuel, jet fuel and heating oil.

The lifecycle calculations and threshold determinations are based on the GHG emissions associated with production of the fuel and processing of the feedstock. Converting biomass feedstocks such as triglycerides (if oils are used as feedstock) or hemi-cellulose, cellulose, lignin, starches, etc. (if solid biomass feedstock is used) into heating oil products and can be accomplished through either a biochemical or thermochemical process converting those molecules into a fuel product. The existing heating oil pathways were based on the current definition of the fuel, and were based on a certain level of processing to produce #1, #2, or a non-petroleum diesel blend and the

[6] This is different from other renewable fuels in the RFS program, which are defined in terms of their use as transportation fuel or jet fuel. *See* 40 CFR 80.1401, definitions of ''renewable fuel'' and ''transportation fuel.''

[7] *See* Table 1 to 40 CFR 80.1426.

related energy use and GHG emissions that were part of the lifecycle determination for those fuel pathways.

The main difference between the current definition of heating oil, which refers to #1, #2, or a non-petroleum diesel blend, and the expanded definition adopted in this rulemaking is that the expanded definition will include heavier types of fuel oil with larger molecules. Based on the type of conversion process, producing these heavier fuel oil products versus the #1, #2, or a non-petroleum diesel blend will affect the amount of energy used and therefore the GHG emissions from the process. There are two main paths for producing a fuel oil product from biomass. In one the biomass is converted into a biocrude which is further refined into lighter products. In this case producing a heavier fuel oil product will require less processing energy and have lower GHG emissions than converting the same feedstock into a #1, #2, or non-petroleum diesel blend.

In the other type of process the compounds in the biomass are changed into a set of intermediary products, such as hydrogen (H) and carbon monoxide (CO).[8] These compounds are then either catalytically or biochemically converted into the fuel product. In this case, the vast majority of the energy is associated with breaking down the feedstock into the set of intermediary compounds. The process used and the energy needed for it does not vary based on the type of fuel that is then produced from these intermediary compounds. The type of fuel could affect the type of catalyst or biological process used to change the intermediary compounds into the fuel product, but based on EPA calculations and assessments developed as part of the RFS2 rulemaking,[9] this will have no real impact on the energy used or the GHG emissions associated with converting the biomass into a different fuel product.

Based on these considerations, EPA believes the GHG emissions associated with producing the fuel oil included in the expanded definition will be the same or lower than the GHG emissions associated with producing #1, #2, or non-petroleum diesel blend. Therefore, EPA believes the prior life cycle analysis for heating oil support applying the existing pathways for fuel oil in the RFS2 regulations to the expanded definition of heating oil. Once the regulatory change to the definition of ''heating oil'' is final, all of the pathways currently applicable to heating oil under Table 1 to 40 CFR § 80.1426 would apply to the expanded definition of heating oil.

### *C. Additional Registration, Reporting, Product Transfer Document, and Recordkeeping Requirements*

#### 1. Additional Requirements for the Amended Definition of Heating Oil

An important issue to address is how to implement such an expanded definition. As EPA recognized in the RFS2 rulemaking, fuel oils end up being used in a variety of different uses, where the fuel producer may have little knowledge at the time of production as to eventual use of the fuel. This is especially the case where the fuel oil is distributed in a fungible distribution system. EPA addressed this in the RSF2 rulemaking by defining home heating oil as a type of fuel with certain characteristics, irrespective of where it was used. This approach avoided the need to track the fuel to its actual use, and including the characteristics of the fuel in its definition in 40 CFR 80.1401, was adequate to retain a close tie to the concept underlying home heating oil.

The expansion of the definition raises this same issue but in a more significant way. While the expansion of the definition includes some limited physical characteristics that fuels oils will need to meet in order to qualify for generating RINs, it does not provide sufficient specificity to differentiate between those fuels oils used to heat buildings for climate control for human comfort and those used to generate process heat or other purposes. Therefore, for eligible fuel oils other than those qualifying under the existing definition in 40 CFR 80.2(ccc), EPA is requiring that the renewable fuel producer or importer have adequate documentation to demonstrate that the fuel oil volume for which RINs were generated was used to heat buildings for climate control for human comfort and meets the expanded definition of heating oil prior to generating RINs.

EPA recognizes that under the current definition of heating oil no tracking or other documentation of end use is required, and some heating oils that meet the current definition could end up being used for other purposes. However, in all cases the heating oil under the current definition has to have the physical or other characteristics that tie it to the type of fuel oil used to heat homes. In addition, because these fuel oils will qualify to generate RINs under the RFS program, it will likely lead to their use for heating of buildings, and not for generation of process heat. For the fuel oils included in the expanded definition, the tie to home heating oil will not be the physical characteristics of the fuel oil but instead its actual usage for heating for the purposes of climate control for human comfort.

In order to verify that the fuel oils are actually used to generate heat for climate control purposes, EPA is adopting the following registration, recordkeeping, product transfer document (PTD) and reporting requirements. These requirements will not apply to fuels qualifying under the existing 40 CFR 80.2(ccc) of the regulations. If RINs are generated for fuel oils under the expansion of the scope of home heating oil in today's rule, and those fuel oils are designated for but not actually used to generate heat for climate control purposes, but for some other purpose, all parties involved in either the generation, assignment, transfer or use of that RIN, including the end user of that fuel oil, are subject to and liable for violations of the RFS2 regulations and the CAA.

##### a. Registration

For the purpose of registration, EPA is allowing the producer of the expanded fuel oil types to establish their facility's baseline volume in the same manner as all other producers under the RFS program, *e.g.,* based on the facility's permitted capacity or actual peak capacity. Additionally though, we are requiring producers of the expanded fuel oil types to submit affidavits in support of their registration, including a statement that the fuel will be used for the purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose. We also require that producers submit secondary affidavits from the existing end users to verify that the fuel is actually being used for a qualifying purpose. We are also adopting new reporting, product transfer documents (PTD), and recordkeeping requirements discussed below that will be used as a means for verification that the qualifying fuel is being used in an approved application. These requirements are necessary to assure confidence that the fuel used to generate RINs is actually used for a qualifying purpose because these types of fuel have not previously been used as heating oil, and are not readily identifiable by their physical characteristics. Without such

[8] This describes the Fischer-Tropsch process. Other processes rely on forming different sets of compounds from the biomass, and then producing the fuel product from the set of compounds.

[9] ''Regulation of Fuel and Fuel Additives; Changes to Renewable Fuel Standard Program,'' 75 FR 14670, *available at http://www.gpo.gov/fdsys/pkg/FR-2010-03-26/pdf/2010–3851.pdf. See also,* EPA's summary factsheet, ''EPA Lifecycle Analysis of Greenhouse Gas Emissions from Renewable Fuels,'' *available at http://www.epa.gov/otaq/renewablefuels/420f10006.pdf.*

safeguards, EPA could not be confident that the fuel is used as heating oil, and end users might not have adequate notice that the fuel must be used as heating oil. EPA believes these requirements will place a small burden on producers and end users, and greatly benefit the integrity of the program.

b. Reporting, Product Transfer Documents and Recordkeeping Requirements

For the purpose of continued verification after registration, EPA is adopting additional requirements for reporting in § 80.1451(b)(1)(ii)(T), PTDs in § 80.1453(d), and recordkeeping in 40 CFR 80.1454(b), for the expanded fuel oil types.

The reporting, PTD, and recordkeeping requirements will help ensure that the expanded fuel oil types that are used to generate RINs are actually used in a qualifying application. For reporting, producers are required to file quarterly reports with EPA that identify certain information about the volume of fuel oil produced and used as heating oil. The additional reporting requirements stipulate that the producer of fuel oils submit affidavits to EPA reporting the total quantity of the fuel oils produced, the total quantity of the fuel oils sold to end users, and the total quantity of fuel oils sold to end users for which RINs were generated. Additionally, affidavits from each end user must be obtained by the producer and reported to EPA, describing the total quantity of fuel oils received from the producer, the total amount of fuel oil used for qualifying purposes, the date the fuel oil was received from the producer, the blend level of the fuel oil, quantity of assigned RINs received with the renewable fuel, and quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.[10] The additional product transfer document requirement associated with the expanded definition of heating oil is that a PTD must be prepared and maintained between the fuel oil producer and the final end user for the legal transfer of title or custody of a specific volume of fuel oil that is designated for use, and is actually used, only for the purpose of heating interior spaces of buildings to control ambient climate for human comfort. This additional PTD requirement requires that the PTD used to transfer ownership or custody of the renewable fuel must contain the statement: ''This volume of renewable fuel is designated and intended to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or any other purpose, pursuant to 40 CFR § 80.1460(g).'' EPA believes that this PTD requirement will help to ensure that each gallon of fuel oil that is transferred from the producer to the end user is used for qualifying purposes under the expanded definition of heating oil. If the fuel oil is sent to the end user, but the fuel oil is not actually used to generate heat for climate control purposes, but for some other non-qualifying purpose, then the RINs that were generated for that fuel oil must be immediately retired and reported under 40 CFR 80.1451. The additional recordkeeping requirement is that producers are required to keep copies of the contracts which describe the fuel oil under contract with each end user. Consistent with existing regulations, producers are required to maintain all documents and records submitted for registration, reporting, and PTDs as part of the producer's recordkeeping requirements. EPA believes the producer's maintenance of these records will allow for continued tracking and verification that the end use of the fuel oil is in compliance with the expanded definition of heating oil.

*D. Additional Requirement for RIN Generation*

We are also amending the regulatory text that describes the general requirements for how RINs are generated and assigned to batches of renewable fuel by renewable fuel producers and importers. This will explicitly clarify a requirement that always existed: that producers and importer of renewable fuel who generate RINs must comply with the registration requirements of 40 CFR 80.1450, the reporting requirements of 40 CFR 80.1451, the recordkeeping requirements of 40 CFR 80.1454, and all other applicable regulations of this subpart M. This is a generally applicable requirement—not specific to fuel meeting the definition of home heating oil. *See* amended section 80.1426(a)(1)(iii).

## VI. Amendments Related to Transmix

The final regulations for the nonroad diesel program were published in the **Federal Register** on June 24, 2004.[11] The provisions in the nonroad diesel rule related to transmix processors were modified by the Category 3 Marine diesel final rule that was published on April 30, 2010.[12] This action amends the requirements for diesel fuel produced by transmix processors. Below is a table listing the provisions that we are amending. The following sections provide a discussion of these amendments.

| Proposed amendments to the diesel program section | Description |
|---|---|
| 80.511(b)(4) | Amended to allow for the production and sale of 500 ppm locomotive and marine (LM) diesel fuel produced from transmix past 2014. |
| 80.513 (entire section) | Amended to allow for the production and sale of 500 ppm LM diesel fuel produced from transmix past 2014. |
| 80.572(d) | Amended to extend 500 ppm LM diesel fuel label past 2012. |
| 80.597(d)(3)(ii) | Amended to include 500 ppm LM diesel fuel in the list of fuels that an entity may deliver or receive custody of past June 1, 2014. |

[10] EPA does not expect that the expanded definition of home heating oil will result in an obligation on home owners or small businesses. Based on our analysis of the market, qualifying fuel oil is expected to be used in large industrial settings or apartment buildings, not in individual homes. Therefore, EPA anticipates that the information it is requiring would be readily available and producible by these entities.

[11] 69 FR 38958 (June 24, 2004).

[12] 75 FR 22896 (April 30, 2010).

*A. Extension of the Diesel Transmix Provisions Outside of the Northeast Mid-Atlantic Area and Alaska Beyond 2014*

Batches of different fuel products commonly abut each other as they are shipped in sequence by pipeline. When the mixture between two adjacent products is not compatible with either product, it is removed from the pipeline and segregated as transmix. Transmix typically is gathered for reprocessing at the end of the fuel distribution system far from a refinery. In addition to the long transportation distances to return transmix to a refinery for reprocessing, incorporating transmix into a refinery's feed also presents technical and logistical refining process challenges that typically make refinery reprocessing an unattractive option. Thus, transmix processers provide a valuable service in maintaining an efficient fuel distribution system. Transmix processing facilities handle very low volumes of fuel compared to a refinery and hence are limited to the use of a simple distillation tower and additional blendstocks to manufacture finished fuels. There is currently no desulfurization equipment which has been demonstrated to be suitable for application at a transmix processor facility. The cost of installing and operating a currently available desulfurization unit is too high in relation to the small volume of distillate fuel produced at transmix processing facilities. Some products shipped by pipeline such as jet fuel and heating oil are subject to relatively high sulfur specifications (*e.g.,* maximum 3,000 ppm for jet fuel). The presence of such high sulfur products in multi-product pipelines and consequently in transmix constrains the ability of transmix processors to produce a low sulfur distillate product.

The engine emission standards finalized in the nonroad diesel rulemaking for new nonroad, locomotive, and Category 1 & 2 (C1 & C2) marine engines necessitates the use of sulfur-sensitive emissions control equipment which requires 15 ppm sulfur diesel fuel to function properly.[13] Accordingly, the nonroad rule required that nonroad, locomotive and marine (NRLM) diesel fuel must meet a 15 ppm sulfur standard in parallel with the introduction of new sulfur-sensitive emission control technology to NRLM equipment. Beginning June 1, 2014, the nonroad diesel rule required that all NRLM diesel fuel produced by refiners and importers must meet a 15 ppm sulfur standard. The nonroad diesel rule included special provisions to allow the continued use of 500 ppm sulfur locomotive and marine (LM) diesel fuel produced from transmix beyond 2014 in older technology engines as long as such engines remained in the in-use fleet. These provisions along with other now expired flexibilities in the diesel program were designed to minimize and postpone the impacts on transmix processors of transitioning to a condition where all highway, nonroad, locomotive, and marine diesel engines can only operate on 15 ppm diesel fuel.[14] The 500 ppm LM diesel transmix provisions were limited to areas outside of the Northeast Mid-Atlantic Area (NEMA) and Alaska because it was judged that the heating oil market in these areas would provide a sufficient outlet for transmix distillate in these areas.[15] Excluding the NEMA area and Alaska also allowed us to exempt the NEMA area and Alaska from the fuel marker provisions that are a part of the compliance assurance regime. The continuation of the 500 ppm LM diesel transmix provisions beyond 2014 (finalized in the nonroad rule) was supported by ongoing recordkeeping, reporting, and fuel marker provisions that were established to facilitate enforcement during the phase in of the diesel sulfur program.[16]

In the development of the proposed requirements for Category 3 (C3) marine engines, EPA worked with industry to evaluate how the enforcement provisions for the new 1,000-ppm C3 marine diesel fuel to be introduced in June of 2014 could be incorporated into existing diesel program provisions.[17] Our assessment based on input from industry at the time indicated that incorporating the new C3 marine fuel into the diesel program enforcement mechanisms while preserving the 500 ppm diesel transmix flexibility could not be accomplished without retaining significant existing burdens and introducing new burdens on a broad number of regulated parties. We also concluded that the new C3 marine diesel market would provide a sufficient outlet for transmix processors distillate product in place of the 500 ppm LM diesel market. Thus, we believed the 500 ppm LM diesel transmix flexibility would no longer be needed after 2014. Hence, we requested comment on whether we should eliminate the 500 ppm LM transmix provisions in parallel with the implementation of the C3 marine diesel sulfur requirement. This approach allowed for a significant reduction in the regulatory burden on a large number of industry stakeholders through the retirement of the diesel program's designate-and-track and fuel marker requirements. All of the comments that we received on the proposed rule were supportive of the approach. Consequently, we finalized the approach in the C3 marine final rule that was published on April 30, 2010.[18]

EPA received a petition from a group of transmix processors on June 29, 2010, requesting that the Agency reconsider and reverse the 2014 sunset date for the 500 ppm LM transmix flexibility.[19] A parallel petition for judicial review was filed with the U.S. Court of Appeals, DC Circuit.[20] The transmix processors stated that they were not aware of the

[13] Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, Final Rule, 69 FR 38958 (June 24, 2004).

[14] As discussed in the original nonroad diesel rulemaking, as LM equipment is retired from service, the market for 500 ppm LM will gradually diminish and eventually disappear. Given the long lifetime of LM equipment (in many cases 40 years or more), we anticipate that a market for 500 ppm LM will remain for a significant amount of time. This phase-out time will also allow transmix processors to transition to their >15ppm sulfur distillate product to other markets (C3 marine, heating oil, process heat). It may also allow sufficient time for the introduction of desulfurization equipment that is suitable for use at transmix processing facilities.

[15] The NEMA area is defined in 40 CFR 80.510(g)(1) as follows: (1) Northeast/Mid-Atlantic Area, which includes the following States and counties, through May 31, 2014: North Carolina, Virginia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Washington DC, New York (except for the counties of Chautauqua, Cattaraugus, and Allegany), Pennsylvania (except for the counties of Erie, Warren, McKean, Potter, Cameron, Elk, Jefferson, Clarion, Forest, Venango, Mercer, Crawford, Lawrence, Beaver, Washington, and Greene), and the eight eastern-most counties of West Virginia (Jefferson, Berkeley, Morgan, Hampshire, Mineral, Hardy, Grant, and Pendleton).

[16] This included the now-completed phase-in of 15 ppm highway diesel fuel and 15 ppm nonroad diesel fuel as well as the phase-out of the small refiner and credits provisions for LM diesel fuel that will be completed in 2014.

[17] Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Proposed Rule, 74 FR 44442 (August 28, 2009).

[18] Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Final Rule, 75 FR 22896 (April 30, 2010).

[19] ''Petition to Reconsider Final Rule: Control of Emissions from New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder; Final Rule,'' 75 FR 22,896 (April 30, 2010), Letter to EPA Administrator Lisa Jackson dated June 29, 2010, from Chet Thompson of Crowell and Moring LLP, on behalf of Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, Liquid Titan, LLC, and Seaport Refining and Environmental, LLC.

[20] Petition for Review, United States Court of Appeals for the District of Columbia Circuit, Petitioners, *Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, LiquidTitan, LLC, and Seaport Refining and Environmental LLC,* v. *Respondent,* U.S. Environmental Protection Agency, Case 10–1146, Document 1252640, Filed 06/29/2010.

changes to the 500 ppm LM transmix provisions until after they were finalized. The petitioners also stated that they believe that the C3 marine market would not be a viable outlet for their distillate product given the increased distribution costs compared to the 500 ppm LM market. Based on the additional input that we received from transmix processors and other stakeholders in the fuel distribution system during our consideration of the petition, EPA believes that while the increased costs for transportation of transmix distillate product could be accommodated, there is no compelling reason not to extend the 500 ppm diesel transmix flexibility beyond 2014 if such costs can be avoided or deferred without affecting the benefits from the diesel sulfur program. A settlement agreement has been finalized between EPA and the petitioners under which EPA would propose regulatory changes to reintroduce the 500 ppm LM transmix diesel flexibility for legacy LM equipment.[21] The amendments to the diesel transmix provisions contained in today's action are in accord with the settlement agreement.

Our analysis indicates that extending the 500 ppm LM flexibility beyond 2014 would have a neutral or net beneficial effect on overall vehicle emissions. The use of 500 ppm LM from transmix would be limited to older technology engines that do not possess sulfur-sensitive emissions control technology. We believe that the 500 ppm LM segregation and other associated requirements would prevent misfueling of sulfur-sensitive engines.

To evaluate the environmental consequences of extending the diesel transmix provisions, we compared the potential increase in sulfate particulate matter (PM) from the use of 500 ppm LM from transmix in older engines to the additional transportation emissions associated with shipment to the Category 3 (C3) marine market which might be deferred by allowing continued access to the 500 ppm LM market. Markets for locomotive and marine diesel tend to be nearer to transmix processing facilities than markets for C3 marine diesel. Therefore, extending the diesel transmix provisions would result in a reduction in nitrogen oxides ($NO_X$), volatile organic compounds (VOCs), carbon monoxide (CO), as well as PM emissions that would otherwise be associated with transporting transmix distillate product to the more distant C3 market.

Although some batches of transmix distillate product may approach the 500 ppm sulfur limit, we estimate that the average sulfur content of transmix distillate product would be no more than 300 ppm.[22] We estimate that approximately 500 million gallons of distillate fuel per year is produced from transmix.[23] Assuming that all of the transmix distillate product would be used as 500 ppm LM in older engines, we estimate that an additional 70 tons of sulfate PM would be produced annually compared to the use of 15 ppm diesel fuel.[24] We believe that a substantial fraction of transmix distillate product would be used as heating oil and C3 diesel fuel regardless of whether the diesel transmix provisions are extended. Also, as the older LM engines are retired from service, the size of the potential 500 ppm LM market will diminish until all LM engines must use 15 ppm diesel fuel. Therefore, assuming that all transmix distillate product would be used as 500 ppm LM provides an upper bound estimate of the potential impact on PM emissions. We estimate on average that transmix processors would need to ship their transmix distillate product an additional 150 miles by tank truck to reach the C3 Emission Control Area (ECA) marine market as compared to the 500 ppm LM market.[25] This would result in an additional 80 tons of PM emissions annually. Thus, the PM emissions associated with transport to the C3 marine market are roughly equal to the increased sulfate PM emissions associated with the continued use of 500 ppm LM. We estimate that the increased transport distances could also result in an additional 2,200 tons of $NO_X$, 220 tons of VOC, and 650 tons of CO annually. Based on the above discussion, we believe that the extension of the 500 ppm LM provisions beyond 2014 outside the NEMA area and Alaska would have a neutral or net positive environmental impact.

The extension of the 500 ppm LM transmix flexibility would defer additional transportation costs and provide a lower-cost fuel for use in older LM engines for many years to come given that the useful life of LM engines can exceed 40 years.[26] Therefore, extending this flexibility would reduce the overall burden on industry of compliance with EPA's diesel sulfur program. Providing additional time for transmix processors to evaluate how the C3 ECA marine market will develop after 2014 would also facilitate a smoother transition for transmix processors from the 500 ppm LM market as it gradually disappears due to fleet turnover.

*B. Revised Diesel Transmix Provisions*

Industry stakeholders suggested alternative enforcement mechanisms to support the extended flexibility which would not necessitate reinstating and expanding the designate-and-track and fuel marker provisions that were retired by the C3 marine final rule. Reinstatement and expansion of these provisions would likely place an unacceptable burden on a large number of stakeholders, most of whom would not handle 500 ppm LM. The suggested alternative enforcement mechanism would impose minimal additional reporting and recordkeeping burdens only on the parties that produce, handle, and use 500 ppm LM. We believe that this alternative enforcement approach would meet the Agency's goals of ensuring that the pool of 500 ppm LM is limited to transmix distillate and that 500 ppm LM is not used in sulfur-sensitive emissions control equipment.

The compliance assurance provisions that we are using to support the extension of the diesel transmix flexibility are similar to those that were used to support the small refiner flexibilities in Alaska during the phase-in of EPA's diesel sulfur program.[27] In addition to registering as a refiner and certifying that each batch of fuel complies with the fuel quality requirements for 500 ppm LM diesel fuel, producers of 500 ppm transmix distillate product would be required to submit a compliance plan for approval by EPA. This compliance plan would provide details on how the 500 ppm LM would be segregated through to the ultimate consumer and its use limited to the legacy LM fleet. The plan would be required to identify the entities that would handle the fuel and the means of segregation. We believe that it is appropriate to limit the number of entities that would be allowed to handle the fuel between the producer and the ultimate consumer in order to facilitate

[21] Notice of Proposed Settlement Agreement; Request for Public Comment, 76 FR 56194 (September 12, 2011).

[22] This is based on our review of data on the sulfur levels of transmix distillate product from various transmix processors.

[23] Based on information provided by transmix processors, we estimate that approximately 750 million gallons per year of transmix is produced annually and that ⅔ of the transmix-derived product is distillate fuel and ⅓ is gasoline.

[24] Sulfate PM was converted to $PM_{2.5}$ to allow a comparison with $PM_{2.5}$ from increased fuel transport emissions.

[25] There is no ability to ship transmix distillate product to the C3 marine diesel market by pipeline.

[26] In the 2011 edition of ''Railroad Facts,'' the Association of American Railroads reported that in 2010 approximately 35% of the locomotive fleet was at least 21 years old.

[27] *See* 40 CFR 80.554(a)(4).

EPA's compliance assurance activities.[28] Based on conversations with transmix processors, we believe that specifying that no more than 4 separate entities handle the fuel between the producer and the ultimate consumer would not hinder the ability to distribute the fuel.[29] The plan would need to identify the ultimate consumers and include information on how the product would be prevented from being used in sulfur-sensitive equipment.

We understand that some transmix processors currently rely on shipment by pipeline to reach the 500 ppm locomotive diesel market.[30] As a result, the regulations allow 500 ppm LM to be shipped by pipeline provided that it does not come into contact with distillate products that have a sulfur content greater than 15 ppm. The compliance plan would need to include information from the pipeline operator regarding how this segregation would be maintained. Discussions with transmix processors indicate that this requirement would not limit their ability to ship 500 ppm LM by pipeline. If 500 ppm LM was shipped by pipeline abutting 15 ppm diesel, the volume of 500 ppm LM delivered would likely be slightly greater than that which was introduced into the pipeline as a consequence of cutting the pipeline interface between the two fuel batches into the 500 ppm LM batch. This small increase in 500 ppm LM volume would be acceptable.

To provide an additional safeguard to ensure that volume of 500 ppm LM diesel fuel does not swell inappropriately, the volume increase during any single pipeline shipment must be limited to 2 volume percent or less. This limitation on volume swell to 2 volume percent or less is consistent with the limitation in 40 CFR 80.599 (b)(5) regarding the allowed swell in volume during the shipment of highway diesel fuel for the purposes of the determination of compliance with the now expired volume balance requirements under 40 CFR 80.598(b)(9)(vii)(B). Industry did not object to this requirement, and therefore, we believe that limiting the volume swell of 500 ppm LM diesel fuel during shipment by pipeline to 2 volume percent or less should provide sufficient flexibility.

Product transfer documents (PTDs) for 500 ppm LM diesel are required to indicate that the fuel must be distributed in compliance with the approved compliance assurance plan. Entities in the distribution chain for 500 ppm LM diesel fuel are required to keep records on the volumes of the 500 ppm that they receive from and deliver to each other entity. Based on input from fuel distributors, keeping these records will be a minimal additional burden, as discussed in section VIII.B. Such entities are also required to keep records on how the fuel was transported and segregated. We would typically expect that the volumes of 500 ppm LM delivered would be equal to or less than those received unless shipment by pipeline occurred. Some minimal increase in 500 ppm LM volume would be acceptable due to differences in temperature between when the shipped and received volumes were measured and interface cuts during shipment by pipeline. Entities that handle 500 ppm LM are required to calculate a balance of 500 ppm LM received versus delivered/used on an annual basis. If the volume of fuel delivered/dispensed is greater than that received, EPA would expect that the records would indicate the cause. If an entity's evaluation of their receipts and deliveries of 500 ppm LM fuel indicated noncompliance with the product segregation requirements, the custodian would be required to notify EPA. All entities in the 500 ppm LM distribution chain are required to maintain the specified records for 5 years and provide them to EPA upon request.

## VII. Amendments Related to the Marker Requirements for Locomotive and Marine Fuel

Today's rule amends the regulatory provisions regarding the transition in the fuel marker requirements for 500 ppm LM diesel fuel in 2012 to address an oversight in the original rulemaking where the regulations failed to incorporate provisions described in the rulemaking preamble. Today's rule also amends the regulatory provisions regarding the transition in the fuel marker requirements for heating oil in 2014 to provide improved clarity.

The preamble in the nonroad diesel final rule stated that EPA intended to allow 500 ppm LM diesel fuel containing greater than 0.10 milligrams per liter of solvent yellow 124 (SY124) to be present at any location in the fuel distribution system (up to and including retail and wholesale-purchaser-consumer storage tanks) until September 30, 2012.[31] Although it was not explicitly stated in the preamble, it was implied that additional time would be allowed for marked 500 ppm LM to transition from the fuel tanks connected to locomotive and marine engines, consistent with the approach taken regarding the implementation of more stringent diesel fuel sulfur standards. However, the nonroad diesel regulations are not consistent with the preamble and do not provide the allowance for marked 500 ppm LM diesel fuel to transition from fuel distribution and end-user tanks. 40 CFR 80.510(e) requires that all 500 ppm LM diesel fuel delivered from a truck loading rack located outside of the Northeast Mid-Atlantic (NEMA) area and Alaska must contain at least 6 mg/liter of SY124 through May 31, 2012. However, the regulatory text at 40 CFR 80.510(f) requires that beginning June 1, 2012, any diesel fuel that contains 0.10 mg/liter of SY124 must be designated as heating oil. Thus, the regulations as currently written do not provide any transition time for marked LM fuel that is present the distribution system as of May 31, 2012 to work its way through the fuel distribution system downstream of the truck loading rack and through the tanks connected to locomotive and marine engines.

A number of locomotive and marine wholesale purchaser-consumers have taken custody of marked 500 ppm LM diesel fuel that they will not be able to consume prior to June 1, 2012. A number of fuel suppliers also have inventories of 500 ppm LM diesel fuel on hand that they may not be able to sell to LM diesel fuel users because such users are concerned about clearing their tanks of marked LM diesel fuel by June 1, 2012. This new rule allows marked 500 ppm LM diesel fuel to transition normally through the fuel distribution and use system, consistent with the original intent of the nonroad diesel rule preamble. Today's rule allows 500 ppm LM diesel fuel at any point in the fuel distribution and end use system to contain more than 0.10 milligrams per liter of SY 124 through November 30, 2012.

We are implementing a single transition date applicable at all points in

[28] An entity is defined as any company that takes custody of 500 ppm LM diesel fuel.

[29] In most cases, fewer entities would take custody of the product. In many cases, only a single entity (a tank truck operator) would be in the distribution chain between the transmix processor and the ultimate consumer. However, we understand that as many as 4 separate entities may handle the product between the producer and ultimate consumer if it is shipped by pipeline: the tank truck operator to ship the product from the producer to the pipeline, the pipeline operator, the product terminal that receives the fuel from the pipeline, and another tank truck operator to ship the product to the ultimate consumer from the terminal.

[30] 500 ppm LM diesel fuel is shipped by a short dedicated pipeline from a product terminal to a locomotive refueling facility.

[31] ''Control of Emissions for Air Pollution From Nonroad Diesel Engines and Fuel; Final Rule,'' Section V.C.1.c., ''The Period From June 1, 2012 Through May 31, 2014, 69 FR 39083, 39084 (June 29, 2004).

the fuel distribution and use system rather than a separate date applicable through retail and wholesale-purchaser-consumer (WPC) facilities and another date applicable at all locations including the tanks attached to locomotive and marine equipment because we believe that a stepped compliance schedule is not necessary and a single transition date provides the most flexibility for regulated parties. We expect that the marker will typically transition out of retailer and WPC LM diesel storage tanks well in advance of November 30, 2012. We further expect that users of LM diesel fuel can coordinate with retail and WPC facilities regarding deliveries of marked 500 ppm LM diesel fuel to ensure that the fuel in storage tanks attached to LM equipment is in compliance by November 30, 2012.

Today's rule also amends the regulation to clarify the transition of the solvent yellow 124 marker out of heating oil beginning June 1, 2014. Specifically, today's rule amends the regulations to clarify that after December 1, 2014, EPA will no longer have any requirements with respect to the use of the solvent yellow 124 marker. This is consistent with the intent expressed in our original nonroad diesel fuel rulemaking. We do not believe these changes will adversely impact emissions.

## VIII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

Under Executive Order 12866 (58 CFR 51735 (October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821 (January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

### *B. Paperwork Reduction Act*

The information collection requirements in this notice of proposed rulemaking and direct final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* The Information Collection Request (ICR) document prepared by EPA related to the amended heating oil definition has been assigned EPA ICR number 2462.01 and the ICR document prepared by EPA for diesel fuel produced by transmix producers has been assigned EPA ICR number 2463.01. Supporting statements for these proposed ICRs have been placed in the docket. The proposed information collections are described in the following paragraphs.

This action contains recordkeeping and reporting (registration and product transfer documentation) that may affect parties who produce or import renewable fuels subject to the revised definition of heating oil. EPA expects that very few parties will be subject to additional recordkeeping and reporting. We estimate that up to 11 parties (*i.e.*, RIN generators, consisting of up to 10 producers and one importer) may be subject to the proposed information collection over the next several years.[32] We estimate an annual reporting burden of 21 hours per respondent and an annual recordkeeping burden of 24 hours, yielding a total per respondent burden of 45 hours.[33] Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review the instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information. Burden is as defined at 5 CFR 1320.3(b).

This action also contains provisions related to diesel fuel that is produced by transmix processors. We have proposed reporting requirements that would apply to transmix processors (all of whom are refiners) and other parties (such as carriers or distributors) in the distribution chain who handle diesel fuel produced by transmix producers. The collected data will permit EPA to: (1) Process compliance plans from transmix producers; and (2) Ensure that diesel fuel made from transmix meets the standards required under the regulations at 40 CFR Part 80, and that the associated benefits to human health and the environment are realized. We estimate that 25 transmix processors and 150 other parties may be subject to the proposed information collection.[34] We estimate an annual reporting burden of 28 hours per transmix processor (respondent) and 8 hours per other party (respondent); considering all respondents (transmix producers and other parties) who would be subject to the proposed information collection, the annual reporting burden, per respondent, would be 11 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review the instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information. Burden is as defined at 5 CFR 1320.3(b).

The amendments to the fuel marker requirements for locomotive and marine diesel fuel in today's rule do not contain any new recordkeeping and reporting requirements.

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes the ICRs described above, under Docket ID number EPA–HQ–OAR–2012–0223. Submit any comments related to the ICR to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and

[32] We project that the number of effected parties will remain essentially constant over time.

[33] This includes the time to train staff, formulate and transmit responses, and other miscellaneous compliance related activities.

[34] This is based on current transmix production. Although the total volume of transmix produced in the fuel distribution system may decline in parallel with the projected decrease in overall petroleum-based fuel use, we anticipate that the number of transmix processors will remain essentially constant since their number is dependent on the configuration of the petroleum-based fuel distribution system.

Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 9, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by November 8, 2012.

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

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any new requirements on small entities. The amendments to the diesel transmix provisions would lessen the regulatory burden on all affected transmix processors and provide a source of lower cost locomotive and marine diesel fuel to consumers. The relatively minor corrections and modifications this rule do not impact small entities.

*D. Unfunded Mandates Reform Act*

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 and diesel sulfur regulations.

*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. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 and diesel sulfur regulations. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249 (November 9, 2000)). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS2 and diesel sulfur regulations, and does not impose any enforceable duties on communities of Indian 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*

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

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this rule is not likely to have adverse energy effects because we do not anticipate adverse energy effects related to the additional generation of RINs for home heating oil or the reduced regulatory burden for transmix processors. This rule will facilitate the use of 500 ppm sulfur locomotive and marine (LM) diesel fuel, which contains the SY 124 marker that is already in the fuel distribution and use system consistent with EPA's original intent. Today's action will avoid the potential need to remove marked 500 ppm LM diesel fuel from the system for reprocessing, and the associated increased costs and potential disruption to the supply of LM diesel fuel.

*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 to do so will be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income

populations because it does not affect the level of protection provided to human health or the environment. These amendments will not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources. We have determined that proposed amendments to the diesel transmix provisions and marker provisions for locomotive and marine diesel fuel under the diesel sulfur program would have a neutral or positive impact on diesel vehicle emissions.[35]

*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).

## IX. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

## List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel fuel, Transmix, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

[35] *See* section VI and VII of today's notice for details of this analysis.

Dated: September 17,2012.

**Lisa P. Jackson,**

*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

**Authority:** 42 U.S.C. 7414, 7542, 7545, and 7601(a).

## Subpart I—[Amended]

■ 2. Section 80.510 is amended by revising paragraph (f) to read as follows:

### § 80.510 What are the standards and marker requirements for NRLM diesel fuel and ECA marine fuel?

* * * * *

(f) *Marking provisions.* From June 1, 2012 through November 30, 2014:

(1) Except as provided for in paragraph (i) of this section, prior to distribution from a truck loading terminal, all heating oil shall contain six milligrams per liter of marker solvent yellow 124 from June 1, 2012 through May 31, 2014.

(2) All motor vehicle and NR diesel fuel shall be free of marker solvent yellow 124, and all LM diesel fuel shall be free of marker solvent yellow 124 beginning December 1, 2012.

(3) From June 1, 2012 through November 30, 2012, any diesel fuel that contains greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 shall be deemed to be either heating oil or 500 ppm sulfur LM diesel fuel and shall be prohibited from use in any motor vehicle or nonroad diesel engine (excluding locomotive, or marine diesel engines).

(4) From December 1, 2012 through November 30, 2014, any diesel fuel that contains greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 shall be deemed to be heating oil and shall be prohibited from use in any motor vehicle or nonroad diesel engine (including locomotive, or marine diesel engines).

(5) Except as provided for in paragraph (i) of this section, from June 1, 2012 through November 30, 2014, any diesel fuel, other than jet fuel or kerosene that is downstream of a truck loading terminal, that contains less than 0.10 milligrams per liter of marker solvent yellow 124 shall be considered motor vehicle diesel fuel or NRLM diesel fuel, as appropriate.

(6) Any heating oil that is required to contain marker solvent yellow 124 pursuant to the requirements of this paragraph (f) must also contain visible evidence of dye solvent red 164.

(7) Beginning December 1, 2014 there are no requirements or restrictions on the use of marker solvent yellow 124 under this subpart.

* * * * *

■ 3. Section 80.511 is amended by revising paragraphs (b)(4) and (b)(10) to read as follows:

### § 80.511 What are the per-gallon and marker requirements that apply to NRLM diesel fuel, ECA marine fuel, and heating oil downstream of the refiner or importer?

* * * * *

(b) * * *

(4) Except as provided in paragraphs (b)(5) through (8) of this section, the per-gallon sulfur standard of § 80.510(c) shall apply to all NRLM diesel fuel beginning August 1, 2014 for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, shall apply to all NRLM diesel fuel beginning October 1, 2014 for retail outlets and wholesale purchaser-consumer facilities, and shall apply to all NRLM diesel fuel beginning December 1, 2014 for all locations. This paragraph (b)(4) does not apply to LM diesel fuel produced from transmix or interface fuel that is sold or intended for sale in areas other than those listed in § 80.510(g)(1) or (g)(2), as provided by § 80.513(f).

* * * * *

(10) For the purposes of this subpart, on any occasion where a distributor directly dispenses fuel into vehicles or equipment from a mobile facility such as a tanker truck, the distributor shall be treated as a retailer, and the mobile facility shall be treated as a retail outlet.

■ 4. Section 80.513 is amended as follows:

■ a. By revising the section heading.

■ b. By revising the introductory text.

■ c. By revising paragraph (e).

■ d. By adding a new paragraph (f).

### § 80.513 What provisions apply to facilities that process transmix?

For purposes of this section, transmix means a mixture of finished fuels, such as pipeline interface, that no longer meets the specifications for a fuel that can be used or sold without further processing. This section applies to refineries (or other facilities) that produce diesel fuel from transmix by distillation or other refining processes but do not produce diesel fuel by processing crude oil. This section only applies to the volume of diesel fuel produced by such a processor using these processes, and does not apply to any diesel fuel produced by the

blending of blendstocks. For the purposes of this section, pipeline interface means the mixture between different fuels that abut each other during shipment by pipeline.

* * * * *

(e) From June 1, 2012 through June 1, 2014, NRLM diesel fuel produced by a facility that processes transmix is subject to the standards of § 80.510(c), except that LM diesel fuel produced from transmix is subject to the sulfur standard of § 80.510(a). This paragraph (e) does not apply to NRLM or LM diesel fuel that is sold or intended for sale in the areas listed in § 80.510(g)(1) or (g)(2).

(f) Beginning June 1, 2014, LM diesel fuel produced from transmix is subject to the sulfur standard of § 80.510(a), provided that the conditions in this paragraph are satisfied. Diesel fuel produced from transmix that does not meet the conditions in this paragraph is subject to the sulfur standard in § 80.510(c).

(1) The fuel must be produced from transmix.

(2) The fuel must not be sold or intended for sale in the areas listed in § 80.510(g)(1) or (g)(2).

(3) A facility producing 500 ppm LM diesel fuel must obtain approval from the Administrator for a compliance plan. The compliance plan must detail how the facility will segregate any 500 ppm LM diesel fuel produced subject to the standards under § 80.510(a) from the producer through to the ultimate consumer from fuel having other designations. The compliance plan must identify the entities that handle the 500 ppm LM through to the ultimate consumer. No more than 4 separate entities shall handle the 500 ppm LM between the producer and the ultimate consumer. The compliance plan must also identify all ultimate consumers to whom the refiner supplies the 500 ppm LM diesel fuel. The compliance plan must detail how misfueling of 500 ppm LM into vehicles or equipment that require the use of 15 ppm diesel fuel will be prevented.

(i) Producers of 500 ppm LM diesel fuel must be registered with EPA under § 80.597 prior to the distribution of any 500 ppm LM diesel fuel after June 1, 2014.

(ii) Producers of 500 ppm LM must initiate a PTD that meets the requirements in paragraph (f)(3)(iii) of this section.

(iii) All transfers of 500 ppm LM diesel fuel must be accompanied by a PTD that clearly and accurately states the fuel designation; the PTD must also meet all other requirements of § 80.590.

(iv) Batches of 500 ppm LM may be shipped by pipeline provided that such batches do not come into physical contact in the pipeline with batches of other distillate fuel products that have a sulfur content greater than 15 ppm.

(v) The volume of 500 ppm LM shipped via pipeline under paragraph (f)(3)(iv) of this section may swell by no more than 2% upon delivery to the next party. Such a volume increase may only be due to volume swell due to temperature differences when the volume was measured or due to normal pipeline interface cutting practices notwithstanding the requirement under paragraph (f)(3)(iv) of this section.

(vi) Entities that handle 500 ppm LM must calculate the balance of 500 ppm LM received versus the volume delivered and used on an annual basis.

(vii) The records required in this section must be maintained for five years, by each entity that handles 500 ppm LM and be made available to EPA upon request.

(4) All parties that take custody of 500 ppm LM must segregate the product from other fuels and observe the other requirements in the compliance plan approved by EPA pursuant to paragraph (f)(3) of this section.

■ 5. Section 80.572 is amended by revising the section heading and paragraph (d) to read as follows:

**§ 80.572 What labeling requirements apply to retailers and wholesale purchaser-consumers of Motor Vehicle, NR, LM and NRLM diesel fuel and heating oil beginning June 1, 2010?**

* * * * *

(d) From June 1, 2010 and beyond, for pumps dispensing LM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a):

LOW SULFUR LOCOMOTIVE AND MARINE DIESEL FUEL (500 ppm Sulfur Maximum)

WARNING

Federal law *prohibits* use in nonroad engines or in highway vehicles or engines.

* * * * *

■ 6. Section 80.597 is amended by revising paragraph (d)(3)(ii) to read as follows:

**§ 80.597 What are the registration requirements?**

* * * * *

(d) * * *

(3) * * *

(ii) Fuel designated as 500 ppm LM diesel fuel.

* * * * *

■ 7. Section 80.598 is amended by revising paragraph (b)(9)(ii) to read as follows:

**§ 80.598 What are the designation requirements for refiners, importers, and distributors?**

* * * * *

(b) * * *

(9) * * *

(ii) Until June 1, 2014, any distillate fuel containing greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 required under § 80.510(d), (e), or (f) must be designated as heating oil except that from June 1, 2010, through November 30, 2012, it may also be designated as LM diesel fuel as specified under § 80.510(e).

* * * * *

■ 8. Section 80.601 is amended by revising paragraph (a)(2) to read as follows:

**§ 80.610 What acts are prohibited under the diesel fuel sulfur program?**

(a) * * *

(2) Beginning June 1, 2007, produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport any diesel fuel for use in motor vehicle or nonroad engines that contains greater than 0.10 milligrams per liter of solvent yellow 124, except for 500 ppm sulfur diesel fuel sold, offered for sale, dispensed, supplied, offered for supply, stored, or transported for use in LM. from June 1, 2010 through November 30, 2012 for use only in locomotive or marine diesel engines that is marked under the provisions of § 80.510(e).

* * * * *

■ 9. Section 80.1401 is amended by revising the definition of ''Heating Oil'' to read as follows:

**§ 80.1401 Definitions.**

* * * * *

*Heating oil* means either of the following:

(1) A #1, #2, or non-petroleum diesel meeting the definition set forth in § 80.2(ccc); or

(2) A fuel oil that, pursuant to §§ 80.1450(b)(1)(ix) and (d)(4), 80.1451(b)(1)(ii)(T), 80.1453(d) and 80.1454(b)(7), is demonstrated to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort, is capable of flowing at 60 degrees Fahrenheit and 1 atmosphere of pressure, and is not used for any other purpose.

* * * * *

■ 10. Section 80.1426 is amended by revising paragraph (a)(1)(ii) introductory text and adding (a)(1)(iii) to read as follows:

**§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?**

(a) * * *

(1) * * *

(ii) Is demonstrated to be produced from renewable biomass pursuant to the reporting requirements of § 80.1451 and the recordkeeping requirements of § 80.1454; and

* * * * *

(iii) Was produced in compliance with the registration requirements of § 80.1450, the reporting requirements of § 80.1451, the recordkeeping requirements of § 80.1454, and all other applicable regulations of this subpart M.

* * * * *

■ 11. Section 80.1450 is amended by adding new paragraph (b)(1)(ix) to read as follows:

**§ 80.1450 What are the registration requirements under the RFS program?**

* * * * *

(b) * * *

(1) * * *

(ix) For a producer of fuel oil meeting paragraph (2) of the definition of heating oil in § 80.1401:

(A) An affidavit from the producer of the fuel oil stating that the fuel oil for which RINs are generated will be sold for the purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

(B) Affidavits from existing final end users of the fuel oil stating that the fuel oil for which RINs are generated is being used for purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

* * * * *

■ 12. Section 80.1451 is amended by adding a new paragraph (b)(1)(ii)(T) to read as follows:

**§ 80.1451 What are the reporting requirements under the RFS program?**

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(T) Producers of fuel oil that meets the paragraph (2) of the definition of heating oil in § 80.1401, shall report, on a quarterly basis, all the following for each volume of fuel oil:

(*1*) Total volume of fuel oil produced and sold to end users, in units of U.S. gallon, and the respective heating content of the fuel oil, in units of BTU per U.S. gallon.

(*2*) Total volume of fuel oil for which RINs were generated, in units of U.S. gallon, and the respective quantities of fuel oil sold to end users, names and locations of the buildings in which the fuel oil was used to heat interior spaces of those buildings to control ambient climate for human comfort, and the RIN numbers assigned to each batch of fuel oil.

(*3*) For each batch of transferred fuel oil for which RINs are generated that the renewable fuel producer claims to meet paragraph (2) of the definition of heating oil in § 80.1401 and is sold for those purposes, affidavits from the end user of the fuel that includes, but not limited to, the following information:

*(i)* Quantity of fuel oil received from producer.

*(ii)* Quantity of fuel oil used for purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

*(iii)* Date the fuel oil was received from producer.

*(iv)* Blend level of the fuel oil in petroleum based fuel oil when received (if applicable).

*(v)* Quantity of assigned RINs received with the renewable fuel, if applicable.

*(vi)* Quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.

* * * * *

■ 13. Section 80.1453 is amended by adding a new paragraph (d) to read as follows:

**§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?**

* * * * *

(d) For fuel oil meeting paragraph (2) of the definition of heating oil in § 80.1401, the PTD which is used to transfer ownership or custody of the renewable fuel shall state: ''This volume of renewable fuel is designated and intended to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or any other purpose, pursuant to 40 CFR § 80.1460(g).''

■ 14. Section 80.1454 is amended by adding new paragraph (b)(7) to read as follows:

**§ 80.1454 What are the recordkeeping requirements under the RFS program?**

* * * * *

(b) * * *

(7) Copies of all contracts which describe the fuel oil under contract with each end user.

* * * * *

■ 15. Section 80.1460 is amended by adding a new paragraph (g).

**§ 80.1460 What acts are prohibited under the RFS program?**

* * * * *

(g) *Failing to use a renewable fuel for its intended use.* No person shall use qualifying fuel oil that meets paragraph (2) of the definition of heating oil in § 80.1401 in an application other than to heat interior spaces of homes or buildings to control ambient climate for human comfort.

* * * * *

[FR Doc. 2012–23713 Filed 10–5–12; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 120403249–2492–02]**

**RIN 0648–BC03**

## Snapper-Grouper Fishery off the Southern Atlantic States; Snapper-Grouper Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement a regulatory amendment (Regulatory Amendment 12) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). Regulatory Amendment 12 revises the optimum yield (OY) for golden tilefish in the South Atlantic exclusive economic zone (EEZ) and modifies the golden tilefish annual catch limit (ACL) to be equal to the OY. Regulatory Amendment 12 also revises the recreational accountability measures (AMs). This rule specifies the revised commercial and recreational ACLs for golden tilefish and the revised recreational AMs for golden tilefish. Additionally, through this final rule, NMFS announces the reopening of the golden tilefish commercial sector with a commercial trip limit of 300 lb (136 kg) for the 2012 fishing year. The intent of this rule is to modify management measures for golden tilefish in the commercial and recreational sectors in the South Atlantic based on new stock assessment analyses.

**DATES:** This rule is effective October 9, 2012 except regulations at § 622.49(b)(1)(ii) which will be effective November 8, 2012. The commercial

sector for golden tilefish will reopen at 12:01 a.m. on October 9, 2012 and will remain open until the end of the fishing year or until further notice is published in the **Federal Register**.

**ADDRESSES:** Electronic copies of Regulatory Amendment 12, which includes an environmental assessment, regulatory flexibility analysis, regulatory impact review, and fishery impact statement, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm.*

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, Southeast Regional Office, NMFS, telephone: 727–824–5305, or email: *Karla.Gore@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On July 20, 2012, NMFS published a proposed rule in the **Federal Register** for Regulatory Amendment 12 and requested public comment (77 FR 42688). The proposed rule and Regulatory Amendment 12 explained the rationale for the actions contained in this final rule, and they are not repeated here.

## Management Measures Contained in This Final Rule

This final rule increases the South Atlantic golden tilefish commercial ACL from 316,757 lb (143,679 kg), round weight, or 282,819 lb (128,285 kg), gutted weight, to 606,250 lb (274,990 kg), round weight, or 541,295 lb (245,527 kg), gutted weight, and increases the recreational ACL from 1,578 fish to 3,019 fish. The commercial and recreational ACL increases are based on the stock ACL increase in Regulatory Amendment 12 and the commercial and recreational allocations previously established in Amendment 17B to the FMP.

This final rule also modifies the AMs for the golden tilefish recreational sector of the snapper-grouper fishery. If recreational landings for golden tilefish reach, or are projected to reach the recreational ACL, NMFS will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. Additionally, if the ACL is exceeded, then during the following fishing year, recreational landings will be monitored and, if necessary, the length of the following recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year.

## Management Measures Contained in Regulatory Amendment 12

Additionally, Regulatory Amendment 12 revises OY for golden tilefish and establishes the ACL equal to the OY and equal to the yield at 75 percent of the fishing mortality at MSY when the population is at equilibrium.

## Reopening the Commercial Sector for Golden Tilefish

The golden tilefish fishing year extends from January 1 through December 31 each year. NMFS closed the commercial sector for golden tilefish on February 17, 2012, because the commercial ACL (equal to the commercial quota) was projected to have been reached by that date (77 FR 8750, February 15, 2012). However, due to the increased commercial ACL implemented through this final rule, NMFS has determined based on current information that additional golden tilefish may be harvested. Therefore, NMFS announces the reopening of the commercial sector for golden tilefish through this final rule. The commercial sector for golden tilefish will reopen at 12:01 a.m. on October 9, 2012. Regulations at § 622.44(c)(2)(ii) state that after 75 percent of the fishing year quota (commercial ACL) specified in § 622.42(e)(2) is reached, the trip limit for the commercial sector of golden tilefish is 300 lb (136 kg), gutted weight. NMFS has determined that 75 percent of the commercial quota (commercial ACL) has been landed and, thus, reopens the commercial sector for golden tilefish with the reduced trip limit of 300 lb (136 kg), gutted weight, for the remainder of the fishing year, or until the new ACL is reached or projected to be reached. If the new ACL is reached or projected to be reached before the end of the fishing year, NMFS will file a notification with the Office of the Federal Register to close the commercial sector for golden tilefish for the remainder of the fishing year.

NMFS closed the recreational sector for golden tilefish on June 4, 2012, because the recreational ACL was projected to have been reached by that date (77 FR 32914, June 4, 2012). NMFS has determined that the increased recreational ACL, implemented through this final rule, has been harvested. Therefore, NMFS is not reopening the recreational sector for golden tilefish for the current fishing year.

## Other Changes Not Contained in Regulatory Amendment 12

NMFS updates regulations at § 622.49(b)(1)(i) for the golden tilefish commercial sector AMs to clarify that the commercial quota is equal to the commercial ACL.

## Comments and Responses

A total of 6 comments were received on the proposed rule for Regulatory Amendment 12, including comments from individuals and two fishing associations. Specific comments related to the actions contained in Regulatory Amendment 12 and the proposed rule, as well as NMFS' respective responses, are summarized below. Similar comments are grouped together.

*Comment 1:* Multiple comments were received regarding the reopening of the commercial sector for golden tilefish, specifically with regards to the commercial trip limit and reopening procedures. One comment stated that the golden tilefish trip limit should be set at 300 lb (136 kg), gutted weight, rather than 4,000 lb (1,814 kg), gutted weight, to ensure that the hook-and-line component of the commercial sector has the opportunity to fish for golden tilefish and the quota is not exceeded. A second comment stated that golden tilefish should reopen for a fixed time-period based on projections of past highest weeks of landings instead of the 4,000 lb (1,814 kg), gutted weight, trip limit. A third comment stated that if 75 percent of the hook-and-line quota is not met by September 1, boats with longline endorsements should be able to participate in the hook-and-line component of the commercial sector, using bandit reels, under a 500 lb (227 kg), gutted weight, trip limit. A fourth comment stated that golden tilefish should be open for the first 15 days of each month with a 4,000 lb (1,814 kg), gutted weight, trip limit. The fourth comment continued by stating that after 70 percent of the quota (ACL) is caught, reporting of catch should be required 24 hours after landing to ensure the ACL is not exceeded and that this procedure should continue monthly until the ACL is reached.

*Response:* Current regulations specify that the trip limit for the golden tilefish commercial sector is reduced from 4,000 lb (1,814 kg), gutted weight, to 300 lb (136 kg), gutted weight, after 75 percent of the quota (ACL) is met. If 75 percent of the fishing-year ACL has not been taken on or before September 1, the trip limit will not be reduced. Based on landings information for 2012, NMFS has determined that 75 percent of the revised ACL was landed before

September 1. Therefore, NMFS is reopening the commercial sector with a trip limit of 300 lb (136 kg), gutted weight.

Regulatory Amendment 12 and this rule do not modify the commercial trip limit or reopening procedures. Many of the comments related to the reopening of the commercial sector appear to be directed to Amendment 18B to the FMP, which is under review by the Secretary and not part of this rulemaking. For reference, Amendment 18B considers the establishment of a longline endorsement program, allocations of the quota to the longline and hook-and-line components of the commercial sector, and modifications to the golden tilefish trip limit, including a 500-lb (227-kg), gutted weight, trip limit for fishermen with a South Atlantic Unlimited Snapper-Grouper Permit who do not qualify for an endorsement.

*Comment 2:* The revised ACL and reopening of the commercial sector for golden tilefish should take effect on August 1, 2012.

*Response:* The comment period on the proposed rule ended on August 20, 2012. NMFS must consider all public comments before implementing the amendment.

*Comment 3:* The recreational allocation for golden tilefish should be increased from 3 percent to 20 percent.

*Response:* Sector allocations were not considered in Regulatory Amendment 12. The recreational ACL implemented in this final rule is based on the allocations previously specified by the Council in Amendment 17B to the FMP.

*Comment 4:* The recreational bag limit should be increased to two fish per person or six fish per vessel, whichever is fewer.

*Response:* The current recreational bag limit for golden tilefish is one fish per vessel. Regulatory Amendment 12 did not consider an action to modify the recreational bag limit for golden tilefish and therefore NMFS did not propose any change to the current bag limit.

*Comment 5:* The current ACL for golden tilefish is too low. There needs to be a new stock assessment to revise the ACL.

*Response:* Regulatory Amendment 12 increases the ACL for golden tilefish based on the results of a stock assessment completed in November 2011, and reviewed by the Council in December 2011. This stock assessment is the best scientific information available. When new data and information become available, a new stock assessment for golden tilefish will be completed and will be reviewed by the Council's Scientific and Statistical Committee (SSC) and considered by the Council. At the time of this final rule, the date of the next stock assessment has not been determined.

*Comment 6:* Regulatory Amendment 12 does not address the need to reduce participation in the golden tilefish component of the snapper-grouper fishery so that the fishing season can be extended and the ACL is not exceeded.

*Response:* NMFS agrees that Regulatory Amendment 12 does not address reducing participation in the golden tilefish component of the snapper-grouper fishery. Amendment 18B, under review by the Secretary, would establish an endorsement program for golden tilefish to limit participation in the longline component, and allocate a portion of the quota to the hook-and-line and longline components of the commercial sector. These measures, if implemented, would be expected to extend the fishing season.

## Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary to more efficiently manage the golden tilefish component of the snapper-grouper fishery and is consistent with the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

## Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. No changes to the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternatives would best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble to the final rule provides a statement and need for, and the objectives of this rule, and is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not introduce any changes to current reporting, record-keeping, and other compliance requirements.

NMFS expects the rule to directly affect commercial fishers and for-hire operators. The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

A total of 142 vessels using hook-and-line gear and 38 vessels using longline gear landed golden tilefish in any one year during 2005–2010. Vessels using hook-and-line gear landed an annual average of about 27,000 lb (12,247 kg), gutted weight, of golden tilefish and 220,000 lb (99,790 kg), gutted weight, of other snapper-grouper species. Gross revenues of these vessels annually averaged $76,000 (2010 dollars) from golden tilefish and $567,000 (2010 dollars) from other snapper-grouper species. For 2005–2010, vessels using longline gear landed an annual average of about 298,000 lb (135,172 kg), gutted weight, of golden tilefish and 153,000 lb (69,400 kg), gutted weight, of other snapper-grouper species. For this period, their revenues annually averaged $802,000 from golden tilefish and $286,000 from other snapper-grouper species. On average, vessels using hook-and-line gear depended on other snapper-grouper species for a majority of their revenues while vessels using longline gear depended on golden tilefish as their major source of revenues. Some vessels using hook-and-line gear could be expected to be more dependent on golden tilefish as a major source of revenues. Similarly, some vessels using longline gear could be more dependent on other snapper-grouper species as a major source of revenues. These vessels, using hook-and-line or longline gear, are considered to comprise the universe of commercial vessels directly affected by actions in this regulatory amendment, including the ACL alternatives. With the ACL increase, other commercial vessels may enter or re-enter the golden tilefish portion of the snapper-grouper fishery, but it is not reasonably possible to determine how many vessels would do so.

Based on revenue information, all commercial vessels affected by this final rule can be considered small entities.

From 2005–2010, an annual average of 1,985 vessels had valid permits to operate in the snapper-grouper for-hire sector, of which 85 are estimated to have operated as headboats. The for-hire fleet consists of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue (2010 dollars) is estimated to range from approximately $62,000–$84,000 for Florida vessels, $73,000–$89,000 for North Carolina vessels, $68,000–$83,000 for Georgia vessels, and $32,000–$39,000 for South Carolina vessels. For headboats, the corresponding revenue estimates are $170,000–$362,000 for Florida vessels, and $149,000–$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered small entities.

Some fleet activity, *i.e.,* multiple vessels owned by a single entity, may exist in both the commercial and for-hire snapper-grouper sectors to an unknown extent, and all vessels are considered as independent entities in this analysis.

NMFS expects the rule to directly affect all federally permitted commercial vessels harvesting golden tilefish and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that the rule would affect a substantial number of small entities.

Because NMFS determines that all entities expected to be affected by the rule are small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

This rule will not modify the commercial AM. Therefore, an ACL increase will result in revenue increases to the commercial vessels. It is also expected that such revenue increases would lead to profit increases, although the magnitude of profit increases cannot be estimated based on available information.

This rule will modify the current recreational post-season AM and add a new recreational in-season AM. The recreational sector has exceeded its ACL in recent years. In 2011, this sector exceeded its ACL by more than 500 percent. The ACL increase would not be enough to compensate for the expected overages in the recreational sector. Hence, with the in-season and post-season AM for the recreational sector, the for-hire entities may be expected to experience profit reductions even if the ACL is increased. The magnitude of such profit reduction cannot be estimated based on available information.

Because the commercial sector harvests substantially more golden tilefish than the recreational sector, receiving 97 percent of the combined ACL, NMFS expects that the profit increases to the commercial sector would cumulatively outweigh the profit decreases to the for-hire sector. Hence, NMFS expects that the ACL increase would yield positive net profit to small entities that participate in the golden tilefish component of the snapper-grouper fishery.

Reopening the 2012 fishing season for the commercial harvest of golden tilefish with a 300 lb (136 kg) trip limit would result in the immediate realization of some of the benefits of the rule.

The following discussion analyzes the alternatives that were not chosen as preferred by the Council. Five alternatives, including the preferred alternative, were considered for revising the ACL and OY for golden tilefish. The first alternative, the no action alternative, would maintain the existing ACL, which is equal to OY and the OY is equal to 75 percent of the fishing mortality at MSY. This is not a viable alternative because, based on updated biomass information, it would result in an ACL that is greater than the acceptable biological catch (ABC) recommended by the Council's SSC. The second alternative would set the ACL equal to the OY and the OY equal to the ABC. Due to its larger ACL, this alternative would result in larger short-term revenue and profit increases to commercial vessels than the preferred alternative. For the same reason, it would also result in better fishing opportunities and possibly higher profits to for-hire vessels than the preferred alternative. However, this alternative poses some risks, largely absent in the preferred alternative, of pushing the stock to an overfished level; fishery managers can overshoot the equilibrium biomass target, which could result in the population biomass dropping below both target and limit levels. In addition, this alternative provides for declining ACLs over time, which would tend to invite controversy, especially when the stock is abundant and not overfished. On the other hand, the preferred alternative would provide for stable harvest levels over time that, although lower than those of the second alternative, would still be substantially higher than current levels. The third alternative would set the ACL equal to the OY and the OY equal to 90 percent of the ABC. The fourth alternative would set the ACL equal to the OY and the OY equal to 80 percent of the ABC. These two other alternatives would provide for lower ACLs than the preferred alternative, and thus lower economic benefits as well.

Four alternatives, including the preferred alternative, were considered for revising the recreational AMs for golden tilefish. The first alternative, the no action alternative, is a post-season AM and employs a 3-year averaging method for determining ACL overages. Without an in-season AM, this alternative would not be as effective as the preferred alternative in preventing overages in the recreational sector. In addition, given the relatively large recreational harvests in recent years, the 3-year averaging method for determining ACL overages could potentially trigger the application of the AM even if no overages occurred in the current year. This would result in short-term reductions in profits and might also delay the benefits that would accrue from increasing the sector's ACL. The second alternative would specify a recreational sector AM trigger and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector AM trigger, thus possibly limiting adverse effects on the profits of small entities. However, it would not provide for a measurable index in addressing the overages in the recreational sector. The third alternative would specify a recreational sector in-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector in-season AM. This sub-alternative would likely result in higher profits to small entities than the preferred sub-alternative. However, it would not address the overages in the recreational sector that would eventually result in more restrictive regulations and larger reductions in the profits of small entities. The fourth alternative would specify a recreational sector post-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would specify a recreational sector post-season AM in terms of paybacks for the prior year's overages if golden tilefish were overfished. This sub-alternative would likely result in larger profit reductions to small entities than the preferred sub-alternative. Moreover, this sub-alternative would be unnecessary

because golden tilefish is not overfished.

**Administrative Procedure Act**

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on the reopening of the commercial sector for golden tilefish in the South Atlantic EEZ, as notice and comment would be unnecessary and contrary to the public interest. Providing prior notice and the opportunity for public comment is unnecessary because the increased commercial and recreational ACLs for golden tilefish were subject to notice and comment as part of the proposed rule for Regulatory Amendment 12 (77 FR 42688); therefore, this waiver only covers the portion of the final rule that informs the public that additional commercial harvest is available and that the commercial sector will reopen. In addition, delaying implementation of this rulemaking to provide for prior notice and public comment is contrary to the public interest because it would reduce the likelihood of reopening the commercial sector for golden tilefish in the early fall months, when weather conditions are more favorable and fishing conditions are safer. Delaying the reopening to allow for public comment would therefore endanger the health and safety of the fishing fleets without providing any benefits to the public.

Three provisions in this final rule are exempt from the requirement to delay the effectiveness of a final rule by 30 days after publication in the **Federal Register**, under 5 U.S.C. 553(d)(1). Specifically, the following provisions relieve restrictions on the regulated community: The increases in the commercial and recreational ACLs for golden tilefish set forth in § 622.42(e)(2) and § 622.49(b)(1)(ii), and the reopening of the commercial sector to allow for the harvest of the new commercial ACL and achievement of OY. However, the recreational ACL is contained in the same paragraph in the regulations as the recreational AMs for golden tilefish. The provisions that implement the in-season AM and revise the post-season AM for the recreational sector for golden tilefish do not relieve a restriction and are therefore subject to the 30-day delay in effectiveness. Further, because the increased recreational ACL has already been reached, and the recreational sector will not reopen, the increased recreational ACL does not need to be effective immediately. Therefore, the paragraph in the regulations containing both the recreational ACL and AMs for golden tilefish, § 622.49(b)(1)(ii), will be effective 30 days after publication of this final rule.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders in the South Atlantic snapper-grouper fishery.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 3, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.42, paragraph (e)(2) is revised to read as follows:

**§ 622.42 Quotas.**

* * * * *

(e) * * *

(2) *Golden tilefish*—541,295 lb (245,527 kg).

* * * * *

■ 3. In § 622.49, the section heading is revised, and paragraphs (b)(1)(i) and (b)(1)(ii) are revised to read as follows:

**§ 622.49 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

* * * * *

(b) * * *

(1) * * *

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.42(e)(2), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) *Recreational sector.* If recreational landings for golden tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 3,019 fish, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. If recreational landings for golden tilefish, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year.

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[FR Doc. 2012–24791 Filed 10–3–12; 4:15 pm]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 0907301205–0289–02]**

**RIN 0648–XC157**

## Fisheries of the Northeastern United States; Atlantic Herring Fishery; Sub-ACL (Annual Catch Limit) Harvested for Management Area 3

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing the directed herring fishery in Management Area 3, because 95 percent of the catch limit for that area has been caught. Effective 0001 hr, October 7, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) per calendar day of Atlantic herring in or from Area 3 until January 1, 2013, when the 2013 allocation for Area 3 becomes available.

**DATES:** Effective 0001 hr local time, October 7, 2012, through December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Lindsey Feldman, Fishery Management Specialist, (978) 675–2079.

**SUPPLEMENTARY INFORMATION:** Regulations governing the Atlantic herring (herring) fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing

limit, acceptable biological catch, annual catch limit (ACL), optimum yield, domestic harvest and processing, U.S. at-sea processing, border transfer, and the sub-ACL for each management area. The 2012 Domestic Annual Harvest was set as 91,200 metric tons (mt); the sub-ACL allocated to Area 3 for the 2012 fishing year (FY) was 38,146 mt, and 0 mt of the sub-ACL was set aside for research in the 2010–2012 specifications (75 FR 48874, August 12, 2010).

Section 648.201 requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the herring fishery in each of the four management areas designated in the Fishery Management Plan for the herring fishery and, based on dealer reports, state data, and other available information, to determine when the harvest of herring is projected to reach 95 percent of the management area sub-ACL. When such a determination is made, NMFS must publish notification in the **Federal Register** and prohibit herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip or landing more than once per calendar day in or from the specified management area for the remainder of the closure period. Transiting Area 3 with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions described below.

The Regional Administrator has determined, based on dealer reports and other available information that 95 percent of the total herring sub-ACL allocated to Area 3 for 2012 is projected to be harvested on October 7, 2012. Therefore, effective 0001 hr local time, October 7, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring per trip (and landing herring no more than once per calendar day) in or from Area 3 through December 31, 2012. Vessels may transit through Area 3 with more than 2,000 lb (907.2 kg) of herring on board, provided such herring was not caught in Area 3 and provided all fishing gear aboard is stowed and not available for immediate use as stated in § 648.23(b). Effective 0001 hr, October 7, 2012, federally permitted dealers are also advised that they may not purchase herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 3 through 2400 hr local time, December 31, 2012.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This action closes the herring fishery for Management Area 3 until January 1, 2013, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2012 sub-ACL allocated to Area 3. The herring fishery opened for the 2012 fishing year on January 1, 2012. Data indicating the herring fleet will have landed at least 95 percent of the 2012 sub-ACL allocated to Area 3 have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 3 for this fishing year can be exceeded, thereby undermining the conservation objectives of the FMP and requiring any excess to be subtracted from the Area 3 sub-ACL for the fishing year following the total catch determination. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: October 3, 2012.

**Lindsay Fullenkamp,**

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

[FR Doc. 2012–24793 Filed 10–3–12; 4:15 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 111213751–2102–02]**

**RIN 0648–XC278**

### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of the 2012 Atka mackerel incidental catch allowance (ICA) for the Bering Sea subarea and Eastern Aleutian district (BS/EAI) of to the Amendment 80 cooperatives in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2012 total allowable catch of Atka mackerel to be fully harvested.

**DATES:** Effective October 3, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 Atka mackerel ICA for the BS/EAI is 1,000 metric tons (mt) and 2012 Atka mackerel total allowable catch allocated to the Amendment 80 cooperative is 29,892 mt as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

The Administrator, Alaska Region, NMFS, has determined that 570 mt of the Atka mackerel ICA for the BS/EAI will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 570 mt of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated Atka mackerel following the procedures set forth in § 679.91(f)(3).

The harvest specifications for Atka mackerel included in the harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) are revised as follows: 430 mt of Atka mackerel for the BS/EAI ICA and 30,463 mt of Atka mackerel for the Amendment 80 cooperatives in the BS/EAI. Table 4 is correctly revised and republished in its entirety as follows:

TABLE 4—FINAL 2012 AND 2013 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

| Sector [1] | Season [2,3,4] | 2012 allocation by area | | | 2013 allocation by area | | |
|---|---|---|---|---|---|---|---|
| | | Eastern Aleutian District/ Bering Sea | Central [5] Aleutian District | Western Aleutian District | Eastern Aleutian District/ Bering Sea | Central [5] Aleutian District | Western [5] Aleutian District |
| TAC | n/a | 38,500 | 10,763 | 1,500 | 31,700 | 8,883 | 1,500 |
| CDQ reserve | Total | 4,120 | 1,152 | 161 | 3,392 | 950 | 161 |
| | A | 2,060 | 576 | 80 | 1,696 | 475 | 80 |
| | Critical Habitat [5] | n/a | 58 | n/a | n/a | 48 | n/a |
| | B | 2,060 | 576 | 80 | 1,696 | 475 | 80 |
| | Critical Habitat [5] | n/a | 58 | n/a | n/a | 48 | n/a |
| ICA | Total | 430 | 100 | 40 | 1,000 | 100 | 40 |
| Jig [6] | Total | 167 | 0 | 0 | 137 | 0 | 0 |
| BSAI trawl limited access. | Total | 3,321 | 951 | 0 | 2,717 | 783 | 0 |
| | A | 1,661 | 476 | 0 | 1,359 | 392 | 0 |
| | B | 1,661 | 476 | 0 | 1,359 | 392 | 0 |
| Amendment 80 sectors. | Total | 30,463 | 8,560 | 1,300 | 24,454 | 7,049 | 1,300 |
| | A | 15,231 | 4,280 | 650 | 12,227 | 3,525 | 650 |
| | B | 15,231 | 4,280 | 650 | 12,227 | 3,525 | 650 |
| Alaska Groundfish Cooperative. | Total | 17,770 | 5,016 | 759 | n/a | n/a | n/a |
| | A | 8,885 | 2,508 | 380 | n/a | n/a | n/a |
| | Critical Habitat [5] | n/a | 251 | n/a | n/a | n/a | n/a |
| | B | 8,885 | 2,508 | 380 | n/a | n/a | n/a |
| | Critical Habitat [5] | n/a | 251 | n/a | n/a | n/a | n/a |
| Alaska Seafood Cooperative. | Total | 12,693 | 3,544 | 541 | n/a | n/a | n/a |
| | A | 6,347 | 1,772 | 271 | n/a | n/a | n/a |
| | Critical Habitat [5] | n/a | 177 | n/a | n/a | n/a | n/a |
| | B | 6,347 | 1,772 | 271 | n/a | n/a | n/a |
| | Critical Habitat [5] | n/a | 177 | n/a | n/a | n/a | n/a |

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to November 1.

[5] Section 679.20(a)(8)(ii)(C) requires the TAC in area 542 shall be no more than 47% of ABC, and Atka mackerel harvests for Amendment 80 cooperatives and CDQ groups within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described in Table 12 to part 679, in Area 542 are limited to no more than 10 percent of the Amendment 80 cooperative Atka mackerel allocation or 10 percent of the CDQ Atka mackerel allocation.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters dependent upon Atka mackerel in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Atka mackerel ICA in the BS/EAI, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperative that participates in this BS/EAI fishery.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 28, 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 § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: October 3, 2012.

**Lindsay Fullenkamp,**

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

[FR Doc. 2012–24794 Filed 10–3–12; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 77, No. 195
Tuesday, October 9, 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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–0940; Directorate Identifier 2012–NE–26–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Turbomeca S.A. Arriel 2D turboshaft engines. This proposed AD was prompted by a low fuel pressure event caused by a deterioration and a loss of the low-pressure drive function within the hydro-mechanical metering unit (HMU). This proposed AD would require replacing the HMU at a reduced life. We are proposing this AD to prevent an uncommanded in-flight shutdown of the engine, and possible loss of the helicopter.

**DATES:** We must receive comments on this proposed AD by December 10, 2012.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *frederick.zink@faa.gov;* phone: 781–238–7779; fax: 781–238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0940; Directorate Identifier 2012–NE–26–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2012–0141, dated July 31, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During an Arriel 2D endurance test, the illumination of the low fuel pressure warning light was observed. The investigation of the high pressure/low pressure (HP/LP) pump assembly within the hydro-mechanical metering unit (HMU), removed following this occurrence, revealed a deterioration and a loss of the LP pump drive function.
>
> This condition, if not detected and corrected, could lead to an uncommanded engine in-flight shut down.

We are issuing this proposed AD to prevent an uncommanded in-flight shutdown of the engine, and possible loss of the helicopter. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Turbomeca S.A. has issued Alert Mandatory Service Bulletin No. A292 73 2847, Version A, dated May 29, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would require replacing the HMU before the HMU exceeds 800 operating hours since new; or within 800 operating hours since last replacement of the low-pressure pump spindle wheel assembly, high-pressure

pump complete sleeve, bearings/pinions (matched assembly), and sleeve assembly.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 27 engines installed on helicopters of U.S. registry. We also estimate that it would take about 0.7 work-hour per engine to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $14,400 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $390,407.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Turbomeca S.A.:** Docket No. FAA–2012–0940; Directorate Identifier 2012–NE–26–AD.

**(a) Comments Due Date**

We must receive comments by December 10, 2012.

**(b) Affected Airworthiness Directives (ADs)**

None.

**(c) Applicability**

This AD applies to all Turbomeca S.A. Arriel 2D turboshaft engines.

**(d) Reason**

This AD was prompted by a low fuel pressure event caused by a deterioration and a loss of the low-pressure drive function within the hydro-mechanical metering unit (HMU). We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, and possible loss of the helicopter.

**(e) Actions and Compliance**

Unless already done, replace the HMU with an HMU eligible for installation:

(1) Before the HMU exceeds 800 operating hours since new; or

(2) Within 800 operating hours since last replacement of the low-pressure pump spindle wheel assembly, high-pressure pump complete sleeve, bearings/pinions (matched assembly), and sleeve assembly.

**(f) Installation Prohibition**

After the effective date of this AD, do not install any HMU onto any engine, or install any engine onto any helicopter, unless in compliance with the requirements of paragraph (e) of this AD.

**(g) Alternative Methods of Compliance (AMOCs)**

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(h) Related Information**

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *frederick.zink@faa.gov;* phone: 781–238–7779; fax: 781–238–7199.

(2) Refer to European Aviation Safety Agency AD No. 2012–0141, dated July 31, 2012, and Turbomeca S.A. Alert Mandatory Service Bulletin No. A292 73 2847, Version A, dated May 29, 2012, for related information.

(3) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

**(i) Material Incorporated by Reference**

None.

Issued in Burlington, Massachusetts, on October 1, 2012.

**Robert J. Ganley,**

*Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2012–24721 Filed 10–5–12; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–0323; Airspace Docket No. 12–AAL–4]**

## Proposed Amendment of Class E Airspace; Savoonga, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify Class E airspace at Savoonga Airport, AK, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Savoonga Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

**DATES:** Comments must be received on or before November 23, 2012.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0322; Airspace

Docket No. 12–AAL–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0323 and Airspace Docket No. 12–AAL–4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0323 and Airspace Docket No. 12–AAL–4''. The postcard will be date/time stamped and returned to the commenter.

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

## Availability of NPRMs

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

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

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

## The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Savoonga Airport, Savoonga, AK. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Savoonga Airport, and would enhance the safety and management of instrument flight rules operations at the airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace and Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

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

* * * * *

**AAL AK E5 Savoonga, AK [Modified]**

Savoonga Airport, AK
(Lat. 63°41′11″ N., long. 170°29′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Savoonga Airport, and within 4 miles each side of the 059° bearing of the

airport extending from the 6.4-mile radius to 11 miles northeast of the airport; that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of lat. 63°38′25″ N., long. 170°57′44″ W., starting at the 303° bearing of the airport counterclockwise to the 171° bearing of the airport then northeast to lat. 63°20′35″ N., long. 169°36′56″ W., and within a 30-mile radius of lat. 63°47′53″ N., long. 170°03′36″ W., starting at the 121° bearing of Savoonga Airport counterclockwise to the 352° bearing of the airport thence to the point of origin.

Issued in Seattle, Washington, on September 25, 2012.

**Vered Lovett,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2012–24669 Filed 10–5–12; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–0853; Airspace Docket No. 12–ANM–23]**

## Proposed Amendment of Class E Airspace; Astoria, OR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify Class E airspace at Astoria Regional Airport, Astoria, OR. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Astoria Regional Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

**DATES:** Comments must be received on or before November 23, 2012.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0853; Airspace Docket No. 12–ANM–23, at the beginning of your comments. You may also submit comments through the Internet at*http://www.regulations.gov.*

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0853 and Airspace Docket No. 12–ANM–23) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0853 and Airspace Docket No. 12–ANM–23''. The postcard will be date/time stamped and returned to the commenter.

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

### Availability of NPRMs

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

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

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

### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Astoria Regional Airport, Astoria, OR. Controlled airspace is necessary to accommodate aircraft using the RNAV (GPS) standard instrument approach procedures at Astoria Regional Airport and would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Astoria Regional Airport, Astoria, OR.

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

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

* * * * *

**ANM OR E5 Astoria, OR [Modified]**

Astoria Regional Airport, Astoria, OR
(Lat. 46°09′29″ N., long. 123°52′43″ W.)
Seaside Municipal Airport
(Lat. 46°00′54″ N., long. 123°54′28″ W.)

That airspace extending from 700 feet above the surface within a 7-mile radius of Astoria Regional Airport; and within 6 miles north and 8.3 miles south of the Astoria Regional Airport 268° bearing extending from the 7-mile radius to 17.5 miles west of Astoria Regional Airport, excluding the portion within a 1.8-mile radius of Seaside Municipal Airport; and within 4 miles northeast and 8.3 miles southwest of the Astoria Regional Airport 326° bearing extending from the 7-mile radius to 21.4 miles northwest of Astoria Regional Airport; and within 4 miles each side of the Astoria Regional Airport 096° bearing extending from the 7-mile radius to 12 miles east of Astoria Regional Airport; and within 8.3 miles north and 4 miles south of the Astoria Regional Airport 096° bearing from 12 miles east, to 28.3 miles east of Astoria Regional Airport; and within a 15.9-mile radius of Astoria Regional Airport extending clockwise from the 326° bearing to the 347° bearing of the airport; and within a 23.1-mile radius of Astoria Regional Airport extending clockwise from the 347° bearing to the 039° bearing of the airport extending from the 15.9-mile radius to a 23.1-mile radius of Astoria Regional Airport extending clockwise from the airport 039° bearing to the airport 185° bearing.

Issued in Seattle, Washington, on September 25, 2012.

**Vered Lovett,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2012–24674 Filed 10–5–12; 8:45 am]

BILLING CODE 4910–13–P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3001

**[Docket No. RM2012–8; Order No. 1488]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service petition to initiate an informal rulemaking proceeding to consider changes in analytical principles (Proposals Eight and Nine) used in periodic reporting. This notice provides an opportunity for the public to comment on the potential changes.

**DATES:** *Comments are due:* October 29, 2012. *Reply Comments are due:* November 8, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http:ww.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filings.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6824.

**SUPPLEMENTARY INFORMATION:** On September 28, 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] The Postal Service also requests that the Commission complete action on the petition by December 1, 2012, so that the proposed changes can be incorporated into the Annual Compliance Report (ACR) for FY 2012. Petition at 1.

*Proposal Eight: Transfer Mail Processing Cost Model for Machinable and Irregular Standard Mail Parcels to the Mail Processing Cost Model for Parcel Select/Parcel Return Service.* The Postal Service proposes to move the machinable and irregular cost worksheets contained in the Standard Mail parcel mail processing cost model to the Parcel Select/Parcel Return Service mail processing cost model and to relabel the worksheets as ''Lightweight Parcel Select.'' *Id.* at 3. The Commission, in Docket No. MC2010–36, conditionally approved the transfer of the commercial Standard machinable and irregular parcel price categories from the market dominant product list to the competitive product list as ''Lightweight Parcel Select,'' a subcategory of Parcel Select.[2] The transfer became effective with the implementation of new prices in January 2012.[3] The Postal Service states that costs reported for FY 2012 should reflect the incorporation of Lightweight Parcel Select into Parcel Select. Petition at 4.

The Postal Service states that the proposed changes are solely mechanical in nature because the number of machinable and irregular price categories, as well as the presort level and destination entry point for each price category, have not changed as a result of the commercial Standard Mail parcel price categories being moved to the competitive products list. *Id.* at 3. The Postal Service also proposes that the Parcel Select and Lightweight Parcel Select model cost estimates be used to

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals Eight and Nine), September 28, 2012 (Petition).

[2] Docket No. MC2010–36, Order Conditionally Granting Request to Transfer Commercial Standard Mail Parcels to the Competitive Product List, March 2, 2011 (Order No. 689). The Commission imposed ''the following conditions: (1) The Postal Service files a notice of competitive price adjustment for Parcel Select rates, including Lightweight Parcel Select parcels, that demonstrates such rates satisfy 39 U.S.C. 3633(a) and 39 CFR part 3015; (2) the Commission issues an order finding that the Parcel Select rates in (1) above satisfy 39 U.S.C. 3633(a) and 39 CFR part 3015; and (3) the Standard Mail Parcels transfer authorized by this Order is not effective until the effective date of prices authorized in (b), above.'' *Id.* at 19.

[3] In Docket No. CP2012–2, the Commission approved an 8.9 percent rate increase for Lightweight Parcel Select and found that the Postal Service had met the conditions set out in Order No. 689. Docket No. CP2012–2, Order No. 1062, Order Approving Changes in Rates of General Applicability for Competitive Products, at 4, 10–13, December 21, 2011.

de-average the mail processing cost by shape estimate for all Parcel Select in the FY 2012 ACR. *Id.*

*Proposal Nine: Modify First-Class Mail, Standard Mail, and Periodicals Flats Cost Models.* The Postal Service proposes to make eight modifications to the Periodicals Flats model. The Postal Service also proposes to apply four of the modifications to the First-Class Mail and Standard Mail Flats models. *Id.* at 5. The Postal Service states that the model for each class is contained in library reference USPS–LR–RM2012–8/1, with the proposed modifications incorporated (via toggle switches).[4] Some of the modifications are straightforward. Others, however, involve significant changes, particularly for Periodicals.

The first proposed modification removes the ability to isolate (via toggle switches) the effect of individual changes proposed in Docket No. RM2012–2. *Id.* Those changes were approved by the Commission. The Postal Service considers the switches to be superfluous. *Id.* This modification affects the models for all three classes.

The second modification corrects what the Postal Service describes as ''cell referencing errors'' in the Periodicals model. *Id.*

The third modification accounts for more sources of rejects and adjusts some reject rates to make them consistent with Management Operating Data System (MODS) estimates. *Id.* at 6–8. This modification affects the models for all three classes.

The fourth modification accounts for changes in allied operations resulting from the introduction of the AFSM 100 and FSS. The modifications only apply to the Periodicals model. *Id.* at 9–10.

The fifth modification creates class-specific FSS coverage factors. Each coverage factor is the ratio of MODS FSS total pieces fed (by class) to volume as reported in the Revenue, Pieces, and Weight report. *Id.* at 10–11. This modification affects the models for all three classes.

The sixth modification removes the costs of sorting mail to post office boxes from all three flats models and designates these costs as ''non-modeled.'' *Id.* at 11.

The seventh modification updates the estimates of the average number of cross-dock movements by container type by entry facility for Periodicals. The update relies on Mail.dat files by publication and a Postal Service database of individual transportation routes. The Postal Service states that the new estimates are generally similar to those provided in Docket No. R2006–1. *Id.* at 11–15.

The eighth modification uses the results of the seventh modification to simplify the development of costs by container type by entry facility for Periodicals. According to the Postal Service, simply having the number of facilities that a container passes through before it reaches the destination facility is sufficient to calculate the number of times the average container incurs each process. *Id.* at 15–18.

*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 Eight and Nine), filed September 28, 2012, is granted.

2. The Commission establishes Docket No. RM2012–8 to consider the matters raised by the Postal Service's Petition.

3. Interested persons may submit comments on Proposals Eight and Nine no later than October 29, 2012.

4. Reply comments are due no later than November 8, 2012.

5. Lawrence Fenster is appointed to serve as the Public Representative to represent the interests of the general public in this proceeding.

6. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2012–24706 Filed 10–5–12; 8:45 am]

**BILLING CODE 7710–FW–P**

[4] *Id.* According to the Postal Service, the impact of individual modifications can be estimated by manipulating the toggle switches. The Postal Service has not provided explicit estimates of the impact of individual modifications in Proposal Nine, nor has it provided an estimate of aggregate impact.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

**[OAR–2004–0091; FRL–9737–7]**

## Outer Continental Shelf Air Regulations; Consistency Update for California

**AGENCY:** Environmental Protection Agency (''EPA'').

**ACTION:** Proposed rule—Consistency Update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources by the Ventura County Air Pollution Control District (Ventura County APCD). The intended effect of approving the OCS requirements for the Ventura County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

**DATES:** Comments must be received on or before November 8, 2012.

**ADDRESSES:** Submit comments, identified by docket number OAR–2004–0091, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all

documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Allen, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, *allen.cynthia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Background Information

### *A. Why is EPA taking this action?*

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to requirements submitted by the Ventura County APCD. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

## II. EPA's Evaluation

### *A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?*

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State ambient air quality standards.

### *B. What requirements were submitted to update 40 CFR part 55?*

1. After review of the requirements submitted by the Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following District requirements applicable to OCS sources:

| Rule No. | Name | Adoption or amended date |
|---|---|---|
| 2 | Definitions | 04/12/11 |
| 23 | Exemptions from Permit | 04/12/11 |
| 33 | Part 70 Permits—General | 04/12/11 |
| 33.1 | Part 70 Permits—Definitions | 04/12/11 |
| 35 | Elective Emission Limits | 04/12/11 |
| 42 | Permit Fees | 04/12/11 |
| 74.2 | Architectural Coatings | 01/12/10 |
| 74.11 | Natural Gas-Fired Water Heaters | 05/11/10 |

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

The District submitted the following rule which is being repealed, for removal from Part 55. We are proposing to repeal this rule from part 55:

| | | |
|---|---|---|
| 26.10 | New Source Review—Prevention of Significant Deterioration (PSD) | 06/28/11 |

The District also submitted the following new rule which is not currently in effect on the OCS, for incorporation into Part 55. We are proposing to incorporate this rule into part 55:

| | | |
|---|---|---|
| 26.13 | New Source Review—Prevention of Significant Deterioration (PSD) | 6/28/11 |

## III. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (''OMB'') review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB Review. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

### *B. Paperwork Reduction Act*

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

These rules will not have a significant economic impact on a substantial number of small entities. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million of more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other

than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's proposed rules contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

*E. Executive Order 13132, Federalism*

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. These rules do not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), 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.'' This rule 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 and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed 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.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable laws or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, these rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act,

without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this proposed action. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements.

Although EPA lacks authority to modify today's regulatory decision on the basis of environmental justice considerations, EPA nevertheless explored this issue and found the following. This action, namely, updating the OCS rules to make them consistent with current COA requirements, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Environmental justice considerations may be appropriate to consider in the context of a specific OCS permit application.

**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 13, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

## PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Pub. L. 101–549.

2. Section 55.14 is amended by revising paragraphs (e)(3)(ii)(H) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by State.**

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to part 55 is amended by revising paragraphs (b)(8) under the heading ''California'' to read as follows:

**Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State**

* * * * *

California

* * * * *

(b) * * *

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 04/12/11)
Rule 5 Effective Date (Adopted 04/13/04)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 06/14/77)
Rule 10 Permits Required (Adopted 04/13/04)
Rule 11 Definition for Regulation II (Adopted 03/14/06)
Rule 12 Applications for Permits (Adopted 06/13/95)
Rule 13 Action on Applications for an Authority To Construct (Adopted 06/13/95)
Rule 14 Action on Applications for a Permit To Operate (Adopted 06/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 06/13/95)
Rule 19 Posting of Permits (Adopted 05/23/72)
Rule 20 Transfer of Permit (Adopted 05/23/72)
Rule 23 Exemptions From Permits (Adopted 04/12/11)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review—General (Adopted 03/14/06)
Rule 26.1 New Source Review—Definitions (Adopted 11/14/06)
Rule 26.2 New Source Review—Requirements (Adopted 05/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 03/14/06)
Rule 26.6 New Source Review—Calculations (Adopted 03/14/06)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—Prevention of Significant Deterioration (PSD)(Repealed 06/28/11)
Rule 26.11 New Source Review—ERC Evaluation at Time of Use (Adopted 05/14/02)
Rule 26.12 Federal Major Modifications (Adopted 06/27/06)
Rule 26.13 New Source Review—Prevention of Significant Deterioration (PSD) (Adopted 06/28/11)
Rule 28 Revocation of Permits (Adopted 07/18/72)
Rule 29 Conditions on Permits (Adopted 03/14/06)
Rule 30 Permit Renewal (Adopted 04/13/04)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 02/20/79)
Rule 33 Part 70 Permits—General (Adopted 04/12/11)
Rule 33.1 Part 70 Permits—Definitions (Adopted 04/12/11)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 04/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 09/12/06)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 04/10/01)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)

Rule 33.7 Part 70 Permits—Notification (Adopted 04/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 04/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 03/14/95)
Rule 35 Elective Emission Limits (Adopted 04/12/11)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/06/98)
Rule 42 Permit Fees (Adopted 04/12/11)
Rule 44 Exemption Evaluation Fee (Adopted 04/08/08)
Rule 45 Plan Fees (Adopted 06/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 08/04/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99)
Rule 50 Opacity (Adopted 04/13/04)
Rule 52 Particulate Matter-Concentration (Grain Loading) (Adopted 04/13/04)
Rule 53 Particulate Matter-Process Weight (Adopted 04/13/04)
Rule 54 Sulfur Compounds (Adopted 06/14/94)
Rule 56 Open Burning (Adopted 11/11/03)
Rule 57 Incinerators (Adopted 01/11/05)
Rule 57.1 Particulate Matter Emissions From Fuel Burning Equipment (Adopted 01/11/05)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 09/01/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 04/13/99)
Rule 67 Vacuum Producing Devices (Adopted 07/05/83)
Rule 68 Carbon Monoxide (Adopted 04/13/04)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 06/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 09/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 09/9/08)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS (Adopted 09/9/08)
Rule 74 Specific Source Standards (Adopted 07/06/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 01/12/10)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-Water Separators and Process Turnarounds (Adopted 07/05/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/08/05)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of $NO_X$ (Adopted 05/11/10)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 09/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 04/08/08)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/08/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 06/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 01/08/91)
Rule 74.20 Adhesives and Sealants (Adopted 01/11/05)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Adopted 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 05/10/94)
Rule 74.30 Wood Products Coatings (Adopted 06/27/06)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 101 Sampling and Testing Facilities (Adopted 05/23/72)
Rule 102 Source Tests (Adopted 04/13/04)
Rule 103 Continuous Monitoring Systems (Adopted 02/09/99)
Rule 154 Stage 1 Episode Actions (Adopted 09/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 09/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 09/17/91)
Rule 158 Source Abatement Plans (Adopted 09/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 09/17/91)
Rule 220 General Conformity (Adopted 05/09/95)
Rule 230 Notice To Comply (Adopted 9/9/08)

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[FR Doc. 2012–24786 Filed 10–5–12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

[EPA–HQ–OAR–2012–0223; FRL 9733–4 ]

## Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard and Diesel Sulfur Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the definition of heating oil in the Renewable Fuel Standard (RFS) program under section 211(o) of the Clean Air Act. This amendment would expand the scope of renewable fuels that can generate Renewable Identification Numbers (RINs) as heating oil to include fuel oil produced from qualifying renewable biomass that would be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. Fuel oils used to generate process heat, power, or other functions would not be included in the amended definition. Producers or importers of fuel oil that meets the amended definition of heating oil would be allowed to generate RINs, provided that the fuel oil meets the other requirements specified in the RFS regulations. This proposed amendment would not modify or limit fuel included in the current definition of heating oil. We are also proposing amendments to the diesel sulfur program to provide additional flexibility for transmix processors that produce locomotive and marine diesel fuel. Specifically, we are proposing to reinstate an allowance for transmix processors to produce 500 parts per million (ppm) sulfur diesel fuel for use in older technology locomotive and marine diesel outside of the Northeast Mid-Atlantic Area. We are also requesting comment on extending this allowance to outside of the Northeast Mid-Atlantic Area. These proposed amendments to the diesel transmix provisions are expected to result in reduced compliance costs for transmix processors and users of locomotive and marine diesel fuel while having a neutral or positive environmental impact. EPA is also proposing to amend the fuel marker requirements for 500 ppm sulfur locomotive and marine (LM) diesel fuel to address an oversight in the original rulemaking where the regulations failed to incorporate provisions described in the rulemaking preamble to allow for

solvent yellow 124 marker to transition out of the distribution system.

**DATES:** Written comments must be received on or before November 8, 2012, or 30 days from the date of the public hearing, if a public hearing is requested. A request for a public hearing must be received by October 24, 2012. If a public hearing is requested, we will publish a notice in the **Federal Register** announcing the date and location of the hearing at least 14 days prior to the hearing.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0223, by the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov,* Attention Air and Radiation Docket ID EPA–HQ–OAR–2012–0223.
- *Fax:* 731–214–4051.
- *Mail:* Air and Radiation Docket, Docket No. EPA–HQ–OAR–2012–0223, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, 20460, Attention Air and Radiation Docket, ID No. EPA–HQ–OAR–2012–0223. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0223. 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.*

*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 and Radiation Docket and Information Center, EPA, 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 Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Kristien Knapp, Office of Transportation and Air Quality, Mail Code: 6405J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., 20460; telephone number: (202) 343–9949; fax number: (202) 343–2800; email address: *knapp.kristien@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

### *A. Purpose*

EPA is proposing to amend provisions in the renewable fuel standard (RFS) and diesel sulfur fuel programs. The RFS amendment would change the definition of home heating oil, and the diesel sulfur amendments would provide additional flexibility for transmix processors who produce locomotive and marine diesel fuel, and allow solvent yellow 124 marker to transition out of the distribution system. EPA is proposing these amendments under section 211 of the Clean Air Act.

### *B. Summary of Today's Rule*

#### Amended Definition of Home Heating Oil

EPA proposes to amend the definition of heating oil in 40 CFR 80.1401 in the renewable fuel standard (''RFS'' or ''RFS2'') program promulgated under section 211(o) of the Clean Air Act (CAA). This amendment will expand the scope of renewable fuels that can generate Renewable Identification Numbers (''RINs'') as ''home heating oil'' to include fuel oil that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. This rule would allow producers or importers of fuel oil that meets the amended definition of heating oil to generate RINs, provided that other requirements specified in the regulations are met. Fuel oils used to generate process heat, power, or other functions would not be approved for RIN generation under the amended definition of heating oil. The proposed amendment would not modify, limit, or change fuel included in the current definition of heating oil at 40 CFR 80.2(ccc).

#### Diesel Transmix Amendments

The proposed diesel transmix amendments would reinstate an allowance for transmix processors to produce 500 ppm sulfur diesel fuel for use in older technology locomotive and marine diesel outside of the Northeast Mid-Atlantic Area after 2014. EPA's ocean-going vessels rule forbade this allowance beginning 2014, because a new stream of diesel fuel for ocean-going vessels, containing up to 1000 ppm sulfur, was introduced at that time, which we believed would provide a suitable outlet for transmix distillate product. Transmix processors stated that they were not aware of the changes to the 500-ppm LM transmix provisions until after they were finalized, and that the ocean-going vessels market would not be a viable outlet for their distillate product. Based on additional input that we received from transmix processors and other stakeholders in the fuel distribution system during our consideration of the petition, EPA believed that it would be appropriate to extend the 500-ppm diesel transmix flexibility beyond 2014. EPA finalized a settlement agreement and this DFR and NPRM are in accord with the settlement agreement. Our analysis indicates that extending this flexibility beyond 2014 will have a neutral or net beneficial effect on overall emissions.

#### Yellow Marker Amendments

The proposed yellow marker amendments address an oversight in EPA's original nonroad diesel rulemaking. In that rulemaking, the regulations failed to incorporate provisions described in the rulemaking

preamble. The preamble made clear that EPA intended to allow 500 ppm locomotive marine (LM) diesel fuel containing greater than 0.10 milligrams per liter of Solvent Yellow 124 (SY124) time to transition out of the fuel distribution system. However, the regulations are not consistent with the preamble and did not provide this same allowance.

Specifically, the regulations as currently written do not provide any transition time for unmarked LM fuel delivered from a truck loading rack beginning June 1, 2012 to work its way through the fuel distribution system downstream of the truck loading rack. The proposed yellow marker amendments will allow 500 ppm LM diesel fuel at any point in the fuel distribution and end use system to contain more than 0.10 milligrams per liter of SY 124 through November 30, 2012. This regulatory change would allow marked LM diesel fuel to transition normally through the LM fuel distribution and use system. Today's proposed rule would also amend the regulation to clarify the transition of the solvent yellow 124 marker out of heating oil beginning June 1, 2014. After December 1, 2014, EPA proposed to no longer have any requirements with respect to the use of the SY 124 marker.

*C. Costs and Benefits*

These three sets of proposed amendments attempt to provide new opportunities for RIN generation under the RFS program and necessary flexibilities and transition periods for those affected by EPA's transmix and marker requirements. Therefore, EPA believes that these amendments would impose no new direct costs or burdens on regulated entities beyond the minimal costs associated with reporting and recordkeeping requirements. At the same time, EPA does not believe that any of these amendments will adversely impact emissions.

## II. Why is EPA issuing a proposed rule?

This document proposes to amend the definition of heating oil in 40 CFR 80.1401 in the renewable fuel standard (RFS) program that was promulgated under section 211(o) of the Clean Air Act. This amendment would expand the scope of fuels that can generate RINs as home heating oil to include fuel oil that would be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. This document also proposes amendments to the diesel sulfur program to provide additional flexibility to transmix processors to produce locomotive and marine (LM) diesel fuel. Specifically, we are proposing to reinstate an allowance for transmix processors to produce 500 ppm sulfur diesel fuel for use in older technology locomotive and marine diesel outside of the Northeast Mid-Atlantic Area (''NEMA''). We are also requesting comment on extending this allowance to the NEMA. These proposed amendments to the diesel transmix provisions are expected to result in reduced compliance costs for transmix processors and users of LM diesel fuel while having a neutral or positive environmental impact. Lastly, this document proposes to amend the fuel marker requirements for 500 ppm sulfur locomotive and marine (LM) diesel fuel to address an oversight in the original rulemaking where the regulations failed to incorporate provisions described in the rulemaking preamble to allow for solvent yellow 124 marker to transition out of the distribution system.

We are publishing a separate document that will serve as a direct final rule in the ''Rules and Regulations'' section of this **Federal Register**. The direct final rule amends the definition of heating oil and allows transmix processors to produce locomotive and marine diesel fuel. The direct final rule does not attempt to extend the transmix allowance to the NEMA; we request comments on that issue only in this document. If we receive no adverse comment on the direct final rule, or any portion of the direct final rule, by the date provided in the **DATES** section above, the amendments to the definition of heating oil and the amendments to the diesel transmix provisions that apply outside the NEMA will become final. If EPA receives relevant adverse comment on the direct final rule, any portion of the direct final rule, or a hearing request, we will publish a timely withdrawal of the direct final rule or the portion receiving adverse comments in the **Federal Register**.

We will address all public comments in any subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

## III. Does this action apply to me?

Entities potentially affected by this action include those involved with the production, distribution and sale of transportation fuels, including gasoline and diesel fuel, or renewable fuels such as ethanol and biodiesel, as well as those involved with the production, distribution and sale of other fuel oils that are not transportation fuel. Regulated categories and entities affected by this action include:

| Category | NAICS codes [a] | SIC codes [b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 324110 | 2911 | Petroleum refiners, importers. |
| Industry | 325193 | 2869 | Ethyl alcohol manufacturers. |
| Industry | 325199 | 2869 | Other basic organic chemical manufacturers. |
| Industry | Various | Various | Transmix Processors |
| Industry | 424690 | 5169 | Chemical and allied products merchant wholesalers. |
| Industry | 424710 | 5171 | Petroleum bulk stations and terminals. |
| Industry | 424720 | 5172 | Petroleum and petroleum products merchant wholesalers. |
| Industry | 454319 | 5989 | Other fuel dealers. |

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

## IV. What should I consider as I prepare my comments for EPA?

A. *Submitting information claimed as CBI.* Do not submit this information to EPA through www.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.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

## V. Renewable Fuel Standard Program Amendments

### *A. Amended Definition of Heating Oil*

EPA is issuing this proposed rule to amend the definition of heating oil in 40 CFR 80.1401 in the renewable fuel standard (''RFS'' or ''RFS2'') program promulgated under section 211(o) of the Clean Air Act (CAA).[1] This amendment would expand the scope of renewable fuels that can generate Renewable Identification Numbers (RINs) as ''home heating oil'' to include fuel oil that would be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. This proposed rule would allow producers or importers of fuel oil that meets the amended definition of heating oil to generate RINs, provided that other requirements specified in the regulations are met. Fuel oils used to generate process heat, power, or other functions will not be approved for RIN generation under the amended definition of heating oil, as these fuels are not within the scope of ''home heating oil'' as that term is used in the Energy Independence and Security Act of 2007 (''EISA''), for the RFS program. The proposed amendment would not modify or limit fuel included in the current definition of heating oil at 40 CFR 80.2(ccc).

The RFS2 program requires the production and use of renewable fuel to replace or reduce the quantity of fossil fuel present in transportation fuel. Under EPA's RFS program this is accomplished by providing for the generation of RINs by producers or importers of qualified renewable fuel. RINs are transferred to the producers or importers of gasoline and diesel transportation fuel who then use the RINs to demonstrate compliance with their renewable fuel volume obligations. RINs also serve the function of credits under the RFS program.

Congress provided that EPA could also establish provisions for the generation of credits by producers of certain renewable fuel that was not used in transportation fuel, called ''additional renewable fuel.''[2] Additional renewable fuel is defined as fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel.[3] In essence, additional renewable fuel has to meet all of the requirements applicable to qualify it as renewable fuel under the regulations, with the only difference being that it is blended into or is home heating oil or jet fuel. This does not change the volume requirements of the statute itself, however this can provide an important additional avenue for parties to generate RINs for use by obligated parties, thus promoting the overall cost-effective production and use of renewable fuels.

EPA addressed the provision for additional renewable fuels in the RFS2 rulemaking, specifically addressing the category of ''home heating oil.'' EPA determined that this term was ambiguous, and defined it by incorporating the existing definition of heating oil at 40 CFR 80.2(ccc). EPA stated that:

> EISA uses the term ''home heating oil'' in the definition of ''additional renewable fuel.'' The statute does not clarify whether the term should be interpreted to refer only to heating oil actually used in homes, or to all fuel of a type that can be used in homes. We note that the term 'home heating oil' is typically used in industry in the latter manner, to refer to a type of fuel, rather than a particular use of it, and the term is typically used interchangeably in industry with heating oil, heating fuel, home heating fuel, and other terms depending on the region and market. We believe this broad interpretation based on typical industry usage best serves the goals and purposes of the statute. If EPA interpreted the term to apply only to heating oil actually used in homes, we would necessarily require tracking of individual gallons from production through ultimate [use] in homes in order to determine eligibility of the fuel for RINs. Given the fungible nature of the oil delivery market, this would likely be sufficiently difficult and potentially expensive so as to discourage the generation of RINs for renewable fuels used as home heating oil. This problem would be similar to that which arose under RFS1 for certain renewable fuels (in particular biodiesel) that were produced for the highway diesel market but were also suitable for other markets such as heating oil and non-road applications where it was unclear at the time of fuel production (when RINs are typically generated under the RFS program) whether the fuel would ultimately be eligible to generate RINs. Congress eliminated the complexity with regards to non-road applications in RFS2 by making all fuels used in both motor vehicle and nonroad applications subject to the renewable fuel standard program. We believe it best to interpret the Act so as to also avoid this type of complexity in the heating oil context. Thus, under today's regulations, RINs may be generated for renewable fuel used as 'heating oil,' as defined in existing EPA regulations at § 80.2(ccc). In addition to simplifying implementation and administration of the Act, this interpretation will best realize the intent of EISA to reduce or replace the use of fossil fuels.[4]

The existing definition of heating oil at 40 CFR § 80.2(ccc) means ''any #1, #2,

[1] The Energy Independence and Security Act (EISA) of 2007 amended section 211(o) of the Clean Air Act (CAA), which was originally added by the Energy Policy Act (EPAct) of 2005.

[2] ''EISA changed the definition of 'renewable fuel' to require that it be made from feedstocks that qualify as 'renewable biomass.' EISA's definition of the term 'renewable biomass' limits the types of biomass as well as the types of land from which the biomass may be harvested.'' Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 FR 14670, 14681 (March 26, 2010).

[3] *See* CAA sections 211(o)(1)(A) and (o)(5)(E).

[4] 75 FR 14670, 14687 (March 26, 2010).

or non-petroleum diesel blend that is sold for use in furnaces, boilers, stationary diesel engines, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, or similar trade names, and that is not jet fuel, kerosene, or [Motor Vehicle, Nonroad, Locomotive, and Marine (MVNRLM)] diesel fuel.'' The existing definition of non-petroleum diesel at 40 CFR 80.2(sss) means a diesel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats. Thus, in order to generate RINs for home heating oil that is a non-petroleum diesel blend, the fuel must contain at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, as well as meeting all other requirements of the RFS2 regulations. Since the promulgation of the RFS2 final rule, we have received a number of requests from producers to consider expanding the scope of the home heating oil provision to include additional fuel oils that are produced from qualifying renewable biomass but do not meet the regulatory definition of heating oil because they are not #1 or #2 diesel and do not contain at least 80 percent mono-alkyl esters. Parties raising this issue have suggested that limiting ''home heating oil'' to the fuel types defined in 40 CFR 80.2(ccc) disqualifies certain types of renewable fuel oils that could be used for home heating and that this limitation does not align with our reasoning in the preamble to take a broad interpretation of the term ''home heating oil'' in CAA section 211(o).

EPA has considered this issue further and is proposing to revise the definition of heating oil in the RFS program to expand the scope of fuels that can generate RINs as heating oil. EPA is proposing to revise the definition such that RINs also may be generated by renewable fuel that is fuel oil and is used to heat interior spaces of homes or buildings to control ambient climate for human comfort. This would not include fuel oils used to generate process heat, power, or other functions. The fuel oil would be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. The fuel oil would only be used in heating applications, where the sole purpose of the fuel's use is for heating and not for any other combined use such as process energy use. We are proposing to amend the existing definition of heating oil in 40 CFR § 80.1401 to include fuel oils that are used in this way. This is in addition to the fuel oils currently included in the definition of heating oil at 40 CFR § 80.2(ccc), and would not modify or limit the fuel included in the current definition.

EPA believes this expansion of the scope of the home heating oil provision is appropriate and authorized under CAA section 211(o). As EPA described in the RFS2 final rule, Congress did not define the term ''home heating oil,'' and it does not have a fixed or definite commercial meaning. In the RFS2 final rulemaking, EPA focused on whether the provision was limited to heating oil actually used in homes. EPA noted that the term home heating oil is usually used in the industry to refer to a type of fuel, and not to one specific use for the fuel. Given this more specific usage of the term, and the practical barriers that would arise if the term was defined as fuel actually used to heat homes, EPA defined the scope of home heating oil by identifying those types of fuel oils that are typically used to heat homes. EPA determined this was a reasonable interpretation of an ambiguous statutory provision that simplified implementation and administration of the Act and promoted achievement of the goals of the RFS program.

In the RFS2 rulemaking, EPA focused on the kinds of fuel oils that can be used to heat homes. The expansion of the definition proposed in this rulemaking would address two types of fuel oils not included in the current definition of heating oil. First, the proposed definition would include additional fuel oils that are actually used to heat homes, even if they do not meet the current definition of heating oil. This is clearly within the scope of the statutory provision for home heating oil.

Second, the proposed definition would include fuel oils that are used to heat facilities other than homes to control ambient climate for human comfort. Under the current definition of heating oil, a fuel oil meets the definition based on its physical properties and its use in furnaces, boilers, stationary diesel engines, and similar applications, not whether it is actually used to heat a home. The basic decision made in the RFS2 final rulemaking was to allow RIN generation for the group of fuel oils that are typically used for home heating purposes. Under the current definition the relationship of the fuel oil to heating homes is that the fuel oil is of the type that is typically used for and can be used for that purpose.[5]

In the proposed amended definition, qualifying fuel oils would be used for heating places where people live, work, or recreate, and not just their homes. It focuses more on what is getting heated—people—and not where the people are located. EPA believes this is a reasonable interpretation of the phrase ''home heating oil,'' while recognizing that it is not an obvious interpretation. This interpretation recognizes the ambiguity of the phrase used by Congress, which is not defined and does not have a clear and definite commercial meaning. It gives reasonable meaning to the term home heating oil, by limiting the additional fuel oils to fuel oils when used for heating of facilities that people will occupy, and excluding fuel oils when used for other purposes such as generation of energy used in the manufacture of products. It also focuses on the aspect of home that is important here—the heating of people—recognizing that EPA has already determined that fuel oil can be included in the scope of home heating oil even if it is not actually used to heat a home. This interpretation will also promote the purposes of the EISA and the RFS program. It will promote the purposes of the EISA in that it will increase the production and use of renewable fuels by introducing new sources of fuel producers to the RFS program. It will specifically promote the RFS programmatic goals by facilitating the generation of RINs for renewable fuels that reduce emissions of greenhouse gases compared to fossil fuels. For example, EPA has received information from Envergent Technologies (an alliance of Ensyn and Honeywell) that such an expanded definition of heating oil would result in nearly immediate production of 3.5 million gallons from their existing facilities, with an additional projected production of up to 45 million gallons per year within 24 months following regulatory action. Based on this information from Envergent Technologies, application of the expanded definition of heating oil to the entire industry would result in the production of many more million additional gallons of renewable fuel. Although EPA believes the expanded definition in the regulations of ''heating oil'' would be a reasonable interpretation of the intent of Congress to allow additional renewable fuel to count towards the volume mandates if it is produced from renewable biomass and is used to replace or reduce the quantity of fossil fuel present in home heating oil, EPA invites comment on this interpretation.

[5] This is different from other renewable fuels in the RFS program, which are defined in terms of their use as transportation fuel or jet fuel. *See* 40 CFR 80.1401, definitions of ''renewable fuel'' and ''transportation fuel.''

For the text of the proposed regulatory changes please see the direct final rule, located in the ''Rules and Regulations'' section of this **Federal Register**.

*B. Lifecycle Greenhouse Gas Assessment of the Amended Definition of Heating Oil*

EPA has also evaluated whether any revisions would need to be made to Table 1 to 40 CFR 80.1426 that lists the applicable D codes for each fuel pathway for use in generating RINs in the RFS2 regulations in light of the additional fuel oils included in the expanded definition of heating oil. As discussed below, EPA has determined that the applicable D code entries for heating oil in Table 1 to 40 CFR 80.1426 would continue to be appropriate and would not need to be revised in light of the expanded definition of heating oil.

Under the RFS program, EPA must assess lifecycle greenhouse gas (GHG) emissions to determine which fuel pathways meet the GHG reduction thresholds for the four required renewable fuel categories. The RFS program requires a 20% reduction in lifecycle GHG emissions for conventional renewable fuel (except for grandfathered facilities and volumes), a 50% reduction for biomass-based diesel or advanced biofuel, and a 60% reduction for cellulosic biofuel. For the final RFS2 rule, EPA assessed the lifecycle greenhouse gas emissions of multiple renewable fuel pathways and classified pathways based on these GHG thresholds, as compared to the EISA statutory baseline.[6] In addition, EPA has added several pathways since the final rule was published. Expanding the definition of heating oil does not affect these prior analyses.

The fuel pathways consist of fuel type, feedstock, and production process requirements. GHG emissions are assessed at all points throughout the lifecycle pathway. For instance, emissions associated with sowing and harvesting of feedstocks and in the production, distribution and use of the renewable fuel are examples of what are accounted for in the GHG assessment. A full accounting of emissions is then compared with the petroleum baseline emissions for the transportation fuel being replaced. The lifecycle GHG emissions determination is one factor used to determine compliance with the regulations.

There are currently several fuel pathways that list heating oil as a fuel type with various types of feedstock and production processes used, qualifying the heating oil pathways as either biomass-based diesel, advanced, or cellulosic. The determinations for these different pathways were based on the current definition of heating oil. The pathways also include several types of distillate product including diesel fuel, jet fuel and heating oil.

The lifecycle calculations and threshold determinations are based on the GHG emissions associated with production of the fuel and processing of the feedstock. Converting biomass feedstocks such as triglycerides (if oils are used as feedstock) or hemi-cellulose, cellulose, lignin, starches, etc. (if solid biomass feedstock is used) into heating oil products and can be accomplished through either a biochemical or thermochemical process converting those molecules into a fuel product. The existing heating oil pathways were based on the current definition of the fuel, and were based on a certain level of processing to produce #1, #2, or a non-petroleum diesel blend and the related energy use and GHG emissions that were part of the lifecycle determination for those fuel pathways.

The main difference between the current definition of heating oil, which refers to #1, #2, or a non-petroleum diesel blend, and the expanded definition that is proposed in this rulemaking is that the expanded definition would include heavier types of fuel oil with larger molecules. Based on the type of conversion process, producing these heavier fuel oil products versus the #1, #2, or a non-petroleum diesel blend would affect the amount of energy used and therefore the GHG emissions from the process. There are two main paths for producing a fuel oil product from biomass. In one the biomass is converted into a biocrude which is further refined into lighter products. In this case producing a heavier fuel oil product would require less processing energy and have lower GHG emissions than converting the same feedstock into a #1, #2, or non-petroleum diesel blend.

In the other type of process the compounds in the biomass are changed into a set of intermediary products, such as hydrogen (H) and carbon monoxide (CO).[7] These compounds are then either catalytically or biochemically converted into the fuel product. In this case, the vast majority of the energy is associated with breaking down the feedstock into the set of intermediary compounds. The process used and the energy needed for it does not vary based on the type of fuel that is then produced from these intermediary compounds. The type of fuel could affect the type of catalyst or biological process used to change the intermediary compounds into the fuel product, but based on EPA calculations and assessments developed as part of the RFS2 rulemaking,[8] this will have no real impact on the energy used or the GHG emissions associated with converting the biomass into a different fuel product.

Based on these considerations, EPA believes the GHG emissions associated with producing the fuel oil included in the expanded definition would be the same or lower than the GHG emissions associated with producing #1, #2, or non-petroleum diesel blend. Therefore, EPA believes the prior life cycle analysis for heating oil would support applying the existing pathways for fuel oil in the RFS2 regulations to the expanded definition of heating oil. All of the pathways currently applicable to heating oil under Table 1 to 40 CFR 80.1426 would apply to the expanded definition of heating oil. EPA invites comments whether there are any other factors to consider in addition to the reasons discussed above for extending the lifecycle analysis already conducted for heating oil in the final rulemaking for fuel oils under the expanded definition of heating oil.

For the text of the proposed regulatory changes please see the direct final rule, located in the ''Rules and Regulations'' section of this **Federal Register**.

*C. Additional Registration, Reporting, Product Transfer Document and Recordkeeping Requirements*

1. Additional Requirements for the Amended Definition of Heating Oil

An important issue to address is how to implement such an expanded definition. As EPA recognized in the RFS2 rulemaking, fuel oils end up being used in a variety of different uses, where the fuel producer may have little knowledge at the time of production as to eventual use of the fuel. This is especially the case where the fuel oil is distributed in a fungible distribution system. EPA addressed this in the RSF2 rulemaking by defining home heating oil as a type of fuel with certain characteristics, irrespective of where it was used. This approach avoided the need to track the fuel to its actual use,

[6] *See* Table 1 to 40 CFR 80.1426.

[7] This describes the Fischer-Tropsch process. Other processes rely on forming different sets of compounds from the biomass, and then producing the fuel product from the set of compounds.

[8] ''Regulation of Fuel and Fuel Additives; Changes to Renewable Fuel Standard Program,'' 75 FR 14670, *available at http://www.gpo.gov/fdsys/pkg/FR-2010-03-26/pdf/2010-3851.pdf. See also,* EPA's summary factsheet, ''EPA Lifecycle Analysis of Greenhouse Gas Emissions from Renewable Fuels,'' *available at http://www.epa.gov/otaq/renewablefuels/420f10006.pdf.*

and including the characteristics of the fuel in its definition in 40 CFR 80.1401 was adequate to retain a close tie to the concept underlying home heating oil.

The proposed expansion of the definition raises this same issue but in a more significant way. While the proposed expansion of the definition includes some limited physical characteristics that fuel oils would need to meet in order to qualify for generating RINs, it does not provide sufficient specificity to differentiate between those fuels oils used to heat buildings for climate control for human comfort and those used to generate process heat or other purposes. Therefore, for eligible fuel oils other than those qualifying under the existing definition in 40 CFR 80.2(ccc), EPA is proposing that the renewable fuel producer or importer have adequate documentation to demonstrate that the fuel oil volume for which RINs were generated was used to heat buildings for climate control for human comfort and meets the expanded definition of heating oil in order to generate RINs.

EPA recognizes that under the current definition of heating oil no tracking or other documentation of end use is required, and some heating oils that meet the current definition could end up being used for other purposes. However, in all cases the heating oil under the current definition has to have the physical or other characteristics that tie it to the type of fuel oil used to heat homes. In addition, because these fuel oils would qualify to generate RINs under the RFS program, it will likely lead to their use for heating of buildings, and not for generation of process heat. For the fuel oils included in the expanded definition, the tie to home heating oil would not be the physical characteristics of the fuel oil but instead its actual usage for heating for the purposes of climate control for human comfort.

In order to verify that the fuel oils are actually used to generate heat for climate control purposes, EPA is proposing the following registration, recordkeeping, product transfer document (PTD) and reporting requirements. These proposed requirements would not apply to fuels qualifying under existing 40 CFR 80.2(ccc) of the regulations. We are also proposing that if RINs are generated for fuel oils under the expansion of the scope of home heating oil in today's rule, and those fuel oils are designated for but not actually used to generate heat for climate control purposes, but for some other purpose, all parties involved in either the generation, assignment, transfer or use of that RIN, including the end user of that fuel oil, are subject to and liable for violations of the RFS2 regulations and the CAA.

For the text of the proposed regulatory changes please see the direct final rule, located in the ''Rules and Regulations'' section of this **Federal Register**.

a. Registration

For the purpose of registration, EPA is proposing to allow the producer of the expanded fuel oil types to establish their facility's baseline volume in the same manner as all other producers under the RFS program, e.g., based on the facility's permitted capacity or actual peak capacity. Additionally though, we are proposing to require producers of the expanded fuel oil types to submit affidavits in support of their registration, including a statement that the fuel will be used for the purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose. We also propose to require that producers submit secondary affidavits from the existing end users to verify that the fuel is actually being used for a qualifying purpose. We are also proposing new reporting, product transfer documents (PTD), and recordkeeping requirements discussed below that will be used as a means for verification that the qualifying fuel is being used in an approved application. We believe these requirements are necessary to assure confidence that the fuel used to generate RINs is actually used for a qualifying purpose because these types of fuel have not previously been used as heating oil, and are not readily identifiable by their physical characteristics. Without such safeguards, EPA could not be confident that the fuel is used as heating oil, and end users might not have adequate notice that the fuel must be used as heating oil. EPA believes these requirements will place a small burden on producers and end users, and greatly benefit the integrity of the program.

The proposed registration requirements are detailed in the registration section in 40 CFR 80.1450(b)(1)(ix) in the direct final rule located in the ''Rules and Regulations'' section of this **Federal Register**.

b. Reporting, Product Transfer Documents and Recordkeeping Requirements

For the purpose of continued verification after registration, EPA is proposing additional requirements for reporting in § 80.1451(b)(1)(ii)(T), PTDs in § 80.1453(d), and recordkeeping in 40 CFR 80.1454(b), for the expanded fuel oil types.

The proposed reporting, PTD, and recordkeeping requirements will help ensure that the expanded fuel oil types that are used to generate RINs are actually used in a qualifying application. For reporting, producers would be required to file quarterly reports with EPA that identify certain information about the volume of fuel oil produced and used as heating oil. The additional reporting requirements would stipulate that the producer of fuel oils submit affidavits to EPA reporting the total quantity of the fuel oils produced, the total quantity of the fuel oils sold to end users, and the total quantity of fuel oils sold to end users for which RINs were generated. Additionally, affidavits from each end user would need to be obtained by the producer and reported to EPA, describing the total quantity of fuel oils received from the producer, the total amount of fuel oil used for qualifying purposes, the date the fuel oil was received from the producer, the blend level of the fuel oil, quantity of assigned RINs received with the renewable fuel, and quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.[9] The additional product transfer document requirement associated with the expanded definition of heating oil would require that a PTD must be prepared and maintained between the fuel oil producer and the final end user for the legal transfer of title or custody of a specific volume of fuel oil that is designated for use, and is actually used, only for the purpose of heating interior spaces of buildings to control ambient climate for human comfort. This additional PTD requirement would require that the PTD used to transfer ownership or custody of the renewable fuel must contain the statement: ''This volume of renewable fuel is designated and intended to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or any other purpose, pursuant to 40 CFR 80.1460(g).'' EPA believes that this PTD requirement will help to ensure that each gallon of fuel oil that is transferred from the producer to the end user is used for qualifying purposes under the expanded definition of heating oil. If the fuel oil is sent to the end user, but the fuel oil is not actually

[9] EPA does not expect that the expanded definition of home heating oil will result in an obligation on home owners or small businesses. Based on our analysis of the market, qualifying fuel oil is expected to be used in large industrial settings or apartment buildings, not in individual homes. Therefore, EPA anticipates that the information it is requiring would be readily available and producible by these entities.

used to generate heat for climate control purposes, but for some other non-qualifying purpose, then the RINs that were generated for that fuel oil would need to be immediately retired and reported under 40 CFR 80.1451. The additional recordkeeping requirement we are proposing would require that producers keep copies of the contracts which describe the fuel oil under contract with each end user. Consistent with existing regulations, producers are required to maintain all documents and records submitted for registration, reporting, and PTDs as part of the producer's recordkeeping requirements. EPA believes the producer's maintenance of these records will allow for continued tracking and verification that the end use of the fuel oil is in compliance with the expanded definition of heating oil.

The proposed reporting, PTD, and recordkeeping requirements are detailed in the direct final rule located in the ''Rules and Regulations'' section of this **Federal Register**. EPA invites comments for any other factors to consider regarding these additional requirements for registration, reporting, PTDs, and recordkeeping.

*D. Additional Requirement for RIN Generation*

We are also proposing to amend the regulatory text that describes the general requirements for how RINs are generated and assigned to batches of renewable fuel by renewable fuel producers and importers. This would explicitly clarify a requirement that always existed: That producers and importer of renewable fuel who generate RINs must comply with the registration requirements of 40 CFR § 80.1450, the reporting requirements of 40 CFR 80.1451, the recordkeeping requirements of 40 CFR 80.1454, and all other applicable regulations of this subpart M. This is a generally applicable requirement—not specific to fuel meeting the definition of home heating oil. *See* amended section 80.1426(a)(1)(iii).

## VI. Amendments Related to Transmix

The final regulations for the nonroad diesel program were published in the **Federal Register** on June 24, 2004 (69 FR 38958). The provisions in the nonroad diesel rule related to transmix processors were modified by the Category 3 Marine diesel final rule that was published on April 30, 2010 (75 FR 22896). This action proposes additional amendments to the requirements for diesel fuel produced by transmix processors. Below is a table listing the provisions that we are proposing to amend. The following sections provide a discussion of these proposed amendments and of additional potential changes to the diesel transmix provisions that we are considering.

| Proposed amendments to the diesel program section | Description |
|---|---|
| 80.511(b)(4) | Amended to allow for the production and sale of 500-ppm locomotive and marine (LM) diesel fuel produced from transmix past 2014. |
| 80.513 (entire section) | Amended to allow for the production and sale of 500-ppm LM diesel fuel produced from transmix past 2014. |
| 80.572(d) | Amended to extend 500ppm LM diesel fuel label past 2012. |
| 80.597(d)(3)(ii) | Amended to include 500-ppm LM diesel fuel in the list of fuels that an entity may deliver or receive custody of past June 1, 2014. |

*A. Consideration of Extending the Diesel Transmix Provisions Outside of the Northeast Mid-Atlantic Area and Alaska Beyond 2014*

Batches of different fuel products commonly abut each other as they are shipped in sequence by pipeline. When the mixture between two adjacent products is not compatible with either product, it is removed from the pipeline and segregated as transmix. Transmix typically is gathered for reprocessing at the end of the fuel distribution system far from a refinery. In addition to the long transportation distances to return transmix to a refinery for reprocessing, incorporating transmix into a refinery's feed also presents technical and logistical refining process challenges that typically make refinery reprocessing an unattractive option. Thus, transmix processers provide a valuable service in maintaining an efficient fuel distribution system. Transmix processing facilities handle very low volumes of fuel compared to a refinery and hence are limited to the use of a simple distillation tower and additional blendstocks to manufacture finished fuels. There is currently no desulfurization equipment which has been demonstrated to be suitable for application at a transmix processor facility. The cost of installing and operating a currently available desulfurization unit is too high in relation to the small volume of distillate fuel produced at transmix processing facilities. Some products shipped by pipeline such as jet fuel and heating oil are subject to relatively high sulfur specifications (e.g., maximum 3,000 ppm for jet fuel). The presence of such high sulfur products in multi product pipelines and consequently in transmix constrains the ability of transmix processors to produce a low sulfur distillate product.

The engine emissions standards finalized in the nonroad diesel rulemaking for new nonroad, locomotive, and Category 1 & 2 (C1 & C2) marine engines necessitates the use of sulfur-sensitive emissions control equipment which requires 15-ppm sulfur diesel fuel to function properly.[10] Accordingly, the nonroad rule required that nonroad, locomotive and marine (NRLM) diesel fuel must meet a 15-ppm sulfur standard in parallel with the introduction of new sulfur-sensitive emissions control technology to NRLM equipment. Beginning June 1, 2014, the nonroad diesel rule required that all NRLM diesel fuel produced by refiners and importers must meet a 15-ppm sulfur standard. The nonroad diesel rule included special provisions to allow the continued use of 500-ppm sulfur locomotive and marine (LM) diesel fuel produced from transmix beyond 2014 in older technology engines as long as such engines remained in the in-use fleet. These provisions along with other now expired flexibilities in the diesel program were designed to minimize and postpone the impacts on transmix processors of transitioning to a condition where all highway, nonroad, locomotive, and marine diesel engines can only operate on 15-ppm diesel fuel.[11] The 500-ppm LM diesel transmix

[10] Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, Final Rule, 69 FR 38958 (June 24, 2004).

[11] As discussed in the original nonroad diesel rulemaking, as LM equipment is retired from service, the market for 500 ppm LM will gradually diminish and eventually disappear. Given the long lifetime of LM equipment (in many cases 40 years or more), we anticipate that a market for 500 ppm LM will remain for a significant amount of time. This phase-out time will also allow transmix processors to transition to their >15ppm sulfur

provisions were limited to areas outside of the Northeast Mid-Atlantic Area (NEMA) and Alaska because it was judged that the heating oil market in these areas would provide a sufficient outlet for transmix distillate in these areas.[12] Excluding the NEMA area and Alaska also allowed us to exempt the NEMA area and Alaska from the fuel marker provisions that are a part of the compliance assurance regime. The continuation of the 500-ppm LM diesel transmix provisions beyond 2014 (finalized in the nonroad rule) was supported by ongoing recordkeeping, reporting, and fuel marker provisions that were established to facilitate enforcement during the phase in of the diesel sulfur program.[13]

In the development of the proposed requirements for Category 3 (C3) marine engines, EPA worked with industry to evaluate how the enforcement provisions for the new 1,000-ppm C3 marine diesel fuel to be introduced in June of 2014 could be incorporated into existing diesel program provisions.[14] Our assessment based on input from industry at the time indicated that incorporating the new C3 marine fuel into the diesel program enforcement mechanisms while preserving the 500-ppm diesel transmix flexibility could not be accomplished without retaining significant existing burdens and introducing new burdens on a broad number of regulated parties. We also concluded that the new C3 marine diesel market would provide a sufficient outlet for transmix processors distillate product in place of the 500-ppm LM diesel market. Thus, we believed the 500-ppm LM diesel transmix flexibility would no longer be needed after 2014. Hence, we requested comment on whether we should eliminate the 500-ppm LM transmix provisions in parallel with the implementation of the C3 marine diesel sulfur requirement. This approach allowed for a significant reduction in the regulatory burden on a large number of industry stakeholders through the retirement of the diesel program's designate-and-track and fuel marker requirements. All of the comments that we received on the proposed rule were supportive of the approach. Consequently, we finalized the approach in the C3 marine final rule that was published on April 30, 2010.[15]

EPA received a petition from a group of transmix processors on June 29, 2010, requesting that the Agency reconsider and reverse the 2014 sunset date for the 500-ppm LM transmix flexibility.[16] A parallel petition for regulatory review was filed with the U.S. Court of Appeals, DC Circuit.[17] The transmix processors stated that they were not aware of the changes to the 500-ppm LM transmix provisions until after they were finalized. The petitioners also stated that they believe that the C3 marine market would not be a viable outlet for their distillate product given the increased distribution costs compared to the 500-ppm LM market. Based on the additional input that we received from transmix processors and other stakeholders in the fuel distribution system during our consideration of the petition, EPA believes that while the increased costs for transportation of transmix distillate product could be accommodated, there is no compelling reason not to extend the 500 ppm diesel transmix flexibility beyond 2014 if such costs can be avoided or deferred without affecting the benefits from the diesel sulfur program. A settlement agreement has been finalized between EPA and the petitioners under which EPA would propose regulatory changes to reintroduce the 500-ppm LM transmix diesel flexibility for legacy LM equipment.[18] The proposed amendments to the diesel transmix provisions contained in today's action are in accord with the settlement agreement.

Our analysis indicates that extending the 500-ppm LM flexibility beyond 2014 would have a neutral or net beneficial effect on overall emissions. The use of 500-ppm LM from transmix would be limited to older technology engines that do not possess sulfur-sensitive emission control technology. We believe that the proposed 500-ppm LM segregation and other associated requirements would prevent misfueling of sulfur-sensitive engines.

To evaluate the environmental consequences of extending the diesel transmix provisions, we compared the potential increase in sulfate particulate matter (PM) from the use of 500 ppm LM from transmix in older engines to the additional transportation emissions associated with shipment to the Category 3 (C3) marine market which might be deferred by allowing continued access to the 500 ppm LM market. Markets for locomotive and marine diesel tend to be nearer to transmix processing facilities than markets for C3 marine diesel. Therefore, extending the diesel transmix provisions would result in a reduction in nitrogen oxides ($NO_X$), volatile organic compounds (VOCs), carbon monoxide (CO), as well as PM emissions that would otherwise be associated with transporting transmix distillate product to the more distant C3 market.

Although some batches of transmix distillate product may approach the 500 ppm sulfur limit, we estimate that the average sulfur content of transmix distillate product would be no more than 300 ppm.[19] We estimate that approximately 500 million gallons of distillate fuel per year is produced from transmix.[20] Assuming that all of the transmix distillate product would be used as 500 ppm LM in older engines, we estimate that an additional 70 tons of sulfate PM would be produced annually compared to the use of 15 ppm

distillate product to other markets (C3 marine, heating oil, process heat). It may also allow sufficient time for the introduction of desulfurization equipment that is suitable for use at transmix processing facilities.

[12] The NEMA area is defined in 40 CFR 80.510(g)(1) as follows: (1) Northeast/Mid-Atlantic Area, which includes the following States and counties, through May 31, 2014: North Carolina, Virginia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Washington DC, New York (except for the counties of Chautauqua, Cattaraugus, and Allegany), Pennsylvania (except for the counties of Erie, Warren, McKean, Potter, Cameron, Elk, Jefferson, Clarion, Forest, Venango, Mercer, Crawford, Lawrence, Beaver, Washington, and Greene), and the eight eastern-most counties of West Virginia (Jefferson, Berkeley, Morgan, Hampshire, Mineral, Hardy, Grant, and Pendleton).

[13] This included the now-completed phase-in of 15 ppm highway diesel fuel and 15 ppm nonroad diesel fuel as well as the phase-out of the small refiner and credits provisions for LM diesel fuel that will be completed in 2014.

[14] Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Proposed Rule, 74 FR 44442 (August 28, 2009).

[15] Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Final Rule, April 30, 2010, 75 FR 22896.

[16] Petition to Reconsider Final Rule: Control of Emissions from New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder; Final Rule, 75 FR 22,896 (April 30, 2010), Letter to EPA Administrator Lisa Jackson dated June 29, 2010, from Chet Thompson of Crowell and Moring LLP, on behalf of Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, Liquid Titan, LLC, and Seaport Refining and Environmental, LLC.

[17] Petition for Review, *Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, LiquidTitan, LLC, and Seaport Refining and Environmental LLC,* v. *Respondent; U.S. Environmental Protection Agency,* United States Court of Appeals for the District of Columbia Circuit, Case 10–1146, Document 1252640, Filed 06/29/2010.

[18] Notice of Proposed Settlement Agreement, Request for Public Comment, 76 FR 56194 (September 12, 2011).

[19] This is based on our review of data on the sulfur levels of transmix distillate product from various transmix processors.

[20] Based on information provided by transmix processors, we estimate that approximately 750 million gallons per year of transmix is produced annually and that ⅔ of the transmix-derived product is distillate fuel and ⅓ is gasoline.

diesel fuel.[21] We believe that a substantial fraction of transmix distillate product would be used as heating oil and C3 diesel fuel regardless of whether the diesel transmix provisions are extended. Also, as the older LM engines are retired from service, the size of the potential 500 ppm LM market will diminish until all LM engines must use 15 ppm diesel fuel. Therefore, assuming that all transmix distillate product would be used as 500 ppm LM provides an upper bound estimate of the potential impact on PM emissions.

We estimate on average that transmix processors would need to ship their transmix distillate product an additional 150 miles by tank truck to reach the C3 Emission Control Area (ECA) marine market as compared to the 500 ppm LM market.[22] This would result in an additional 80 tons of PM emissions annually. Thus, the PM emissions associated with transport to the C3 marine market are roughly equal to the increased sulfate PM emissions associated with the continued use of 500 ppm LM. We estimate that the increased transport distances could also result in an additional 2,200 tons of $NO_X$, 220 tons of VOC, and 650 tons of CO annually. Based on the above discussion, we believe that the proposed extension of the 500 ppm LM provisions beyond 2014 outside the NEMA area and Alaska would have a neutral or positive environmental impact.

The extension of the 500-ppm LM transmix flexibility would defer additional transportation costs and provide a lower-cost fuel for use in older LM engines for many years to come given that the useful life of LM engines can exceed 40 years.[23] Therefore, extending this flexibility would reduce the overall burden on industry of compliance with EPA's diesel sulfur program. Providing additional time for transmix processors to evaluate how the C3 ECA marine market will develop after 2014 would also facilitate a smoother transition for transmix processors from the 500-ppm LM market as it gradually disappears due to fleet turnover.

*B. Proposed Diesel Transmix Provisions*

Industry stakeholders suggested alternative enforcement mechanisms to support the extended flexibility which would not necessitate reinstating and expanding the designate-and-track and fuel marker provisions that were retired by the C3 marine final rule. Reinstatement and expansion of these provisions would likely place an unacceptable burden on a large number of stakeholders, most of whom would not handle 500-ppm LM. The suggested alternative enforcement mechanism would impose minimal additional reporting and recordkeeping burdens only on the parties that produce, handle, and use 500-ppm LM. We believe that this alternative enforcement approach would meet the Agency's goals of ensuring that the pool of 500-ppm LM is limited to transmix distillate and that 500-ppm LM is not used in sulfur-sensitive emissions control equipment.

The compliance assurance provisions that we are proposing to support the extension of the diesel transmix flexibility are similar to those that were used to support the small refiner flexibilities in Alaska during the phase-in of EPA's diesel sulfur program.[24] In addition to registering as a refiner and certifying that each batch of fuel complies with the fuel quality requirements for 500-ppm LM diesel fuel, producers of 500-ppm transmix distillate product would be required to submit a compliance plan for approval by EPA. This compliance plan would provide details on how the 500-ppm LM would be segregated through to the ultimate consumer and its use limited to the legacy LM fleet. The plan would be required to identify the entities that would handle the fuel and the means of segregation. We believe that it is appropriate to limit the number of entities that would be allowed to handle the fuel between the producer and the ultimate consumer in order to facilitate EPA's compliance assurance activities.[25] Based on conversations with transmix processors, we believe that specifying that no more than 4 separate entities handle the fuel between the producer and the ultimate consumer would not hinder the ability to distribute the fuel.[26] The plan would need to identify the ultimate consumers and include information on how the product would be prevented from being used in sulfur-sensitive equipment.

We understand that some transmix processors currently rely on shipment by pipeline to reach the 500-ppm locomotive diesel market.[27] We are proposing that 500-ppm LM could be shipped by pipeline provided that it does not come into contact with distillate products that have a sulfur content greater than 15 ppm. The compliance plan would need to include information from the pipeline operator regarding how this segregation would be maintained. Discussions with transmix processors indicate that this requirement would not limit their ability to ship 500-ppm LM by pipeline. If 500-ppm LM was shipped by pipeline abutting 15-ppm diesel, the volume of 500-ppm LM delivered would likely be slightly greater than that which was introduced into the pipeline as a consequence of cutting the pipeline interface between the two fuel batches into the 500-ppm LM batch. This small increase in 500-ppm LM volume would be acceptable.

To provide an additional safeguard to ensure that volume of 500 ppm LM diesel fuel does not swell inappropriately, the volume increase during any single pipeline shipment must be limited to 2 volume percent or less. This limitation on volume swell to 2 volume percent or less is consistent with the limitation in 40 CFR 80.599(b)(5) regarding the allowed swell in volume during the shipment of highway diesel fuel for the purposes of the determination of compliance with the now expired volume balance requirements under 40 CFR 80.598(b)(9)(vii)(B). Industry did not object to this requirement, and therefore, we believe that limiting the volume swell of 500 ppm LM diesel fuel during shipment by pipeline to 2 volume percent or less should provide sufficient flexibility.

Product transfer documents (PTDs) for 500-ppm LM diesel would be required to indicate that the fuel must be distributed in compliance with the approved compliance assurance plan. Entities in the distribution chain for 500-ppm LM diesel fuel would be required to keep records on the volumes of the 500-ppm that they receive from and deliver to each other entity. Based on input from fuel distributors, keeping

[21] Sulfate PM was converted to $PM_{2.5}$ to allow a comparison with $PM_{2.5}$ from increased fuel transport emissions.

[22] There is no ability to ship transmix distillate product to the C3 marine diesel market by pipeline.

[23] In the 2011 edition of ''Railroad Facts,'' the Association of American Railroads reported that in 2010 approximately 35% of the locomotive fleet was at least 21 years old.

[24] *See* 40 CFR 80.554(a)(4).

[25] An entity is defined as any company that takes custody of 500-ppm LM diesel fuel.

[26] In most cases, fewer entities would take custody of the product. In many cases, only a single entity (a tank truck operator) would be in the distribution chain between the transmix processor and the ultimate consumer. However, we understand that as many as 4 separate entities may handle the product between the producer and ultimate consumer if it is shipped by pipeline: the tank truck operator to ship the product from the producer to the pipeline, the pipeline operator, the product terminal that receives the fuel from the pipeline, and another tank truck operator to ship the product to the ultimate consumer from the terminal.

[27] 500 ppm LM diesel fuel is shipped by a short dedicated pipeline from a product terminal to a locomotive refueling facility.

these records will be a minimal additional burden, as discussed in section X.B. Such entities would also be required to keep records on how the fuel was transported and segregated. We would typically expect that the volumes of 500-ppm LM delivered would be equal to or less than those received unless shipment by pipeline occurred. Some minimal increase in 500-ppm LM volume would be acceptable due to differences in temperature between when the shipped and received volumes were measured and interface cuts during shipment by pipeline. Entities that handle 500-ppm LM would be required to calculate a balance of 500-ppm LM received versus delivered/used on an annual basis. If the volume of fuel delivered/dispensed is greater than that received, EPA would expect that the records would indicate the cause. EPA requests comment on whether it is appropriate to set an upper limit on the potential volume increase due to pipeline shipment and temperature swell, and if 2 percent would be an appropriate upper limit. If an entity's evaluation of their receipts and deliveries of 500-ppm LM fuel indicated noncompliance with the product segregation requirements, the custodian would be required to notify EPA. All entities in the 500-ppm LM distribution chain would be required to maintain the specified records for 5 years and provide them to EPA upon request.

*C. Consideration of Extending the Diesel Transmix Provisions To Include the Northeast Mid-Atlantic Area*

The nonroad diesel rule specified that the small diesel refiner, credit, and transmix provisions would not apply in the Northeast Mid-Atlantic (NEMA) area. Hence, all LM diesel fuel shipped from refineries, transmix processors, and importers for use in the NEMA Area must meet a 15-ppm sulfur standard beginning June 1, 2012 when the 15-ppm standard becomes effective for large refiners and importers.[28] This approach allowed the NEMA area to be exempted from fuel marker provisions that are a component of the compliance assurance provisions associated with the small diesel refiner, credit, and transmix provisions. As discussed previously a significant factor in the decision made in the nonroad diesel rule to exclude the NEMA from the diesel transmix provisions was our assessment that the heating oil market would provide a sufficient outlet for transmix distillate product in this area. Since the publication of the nonroad diesel rule in 2004, a number of states in the NEMA area have moved towards implementing a 15-ppm sulfur standard for heating oil. A significant fraction of heating oil in the area will be subject to a 15-ppm sulfur standard beginning in 2012, and it is likely that other states will adopt a 15-ppm sulfur standard for heating oil in the following years.

Transmix processors and other fuel distributors in the NEMA area stated that they were concerned that the changing state heating oil specifications would impact their ability to market transmix distillate product beginning in 2012 and increasingly over time. They requested that EPA extend the 500-ppm LM flexibility to the NEMA area by 2012 to lessen the impact on the fuel distribution system of complying with more stringent federal and state distillate sulfur standards. They stated that the enforcement mechanisms proposed above for use outside of the NEMA area after 2014 could apply equally well within the NEMA area beginning in 2012. They also stated that extending the proposed flexibility to inside the NEMA would not have an adverse environmental impact because of the potential to defer significant additional transportation emissions to the more distant C3 marine market.

The proposed provisions that would allow 500-ppm LM from transmix to be used outside of the NEMA area after 2014 would reinstate a flexibility that was withdrawn by the C3 marine final rule. Allowing 500-ppm LM to be used inside the NEMA area would provide more flexibility than was previously included in EPA's diesel program. We believe that extending the 500-ppm transmix flexibility to include the NEMA area will reduce distribution costs for their distillate product from transmix processors. Consequently, we are requesting comment on applying the proposed 500-ppm LM transmix provisions discussed above to the NEMA area beginning June 2012.[29] Given the current transition in the NEMA area to the use of 15-ppm sulfur heating oil, it would be most useful to industry if the proposed flexibility could become effective as soon as possible.

Similar to our analysis for outside of the NEMA area, our analysis of the potential environmental consequences of extending the diesel transmix flexibility to include the NEMA area indicates the effect on emissions would be neutral or positive. We also agree that the compliance assurance requirements that we are proposing for outside of the NEMA area could be applied within the NEMA area. A substantial fraction of the transmix processing industry markets fuel within the NEMA area. Thus, the potential cost reduction to industry and additional time to prepare for a transition to other markets for transmix distillate product that would be afforded by an extension of the proposed provisions to the NEMA would be significant.

The implementation of the 1,000-ppm sulfur C3 marine fuel requirements in 2014 would provide another outlet for transmix distillate product in the NEMA area to replace the disappearing above-15-ppm sulfur heating oil market. We request comment on whether, if we were to extend the 500-ppm LM transmix flexibility to inside the NEMA area, such an extension should be limited to the time period until the C3 marine fuel requirements becomes effective.

## VII. Amendments Related to the Marker Requirements for Locomotive and Marine Fuel

We also propose to amend the regulatory provisions regarding the transition in the fuel marker requirements for 500-ppm LM diesel fuel in 2012 to address an oversight in the original rulemaking where the regulations failed to incorporate provisions described in the rulemaking preamble. Today's proposed rule would amend the regulatory provisions regarding the transition in the fuel marker requirements for heating oil in 2014 to provide improved clarity.

The preamble in the nonroad diesel final rule stated that EPA intended to allow 500-ppm LM diesel fuel containing greater than 0.10 milligrams per liter of solvent yellow 124 (SY124) to be present at any location in the fuel distribution system (up to and including retail and wholesale-purchaser-consumer storage tanks) until September 30, 2012.[30] Although it was not explicitly stated in the preamble, it was implied that additional time would be allowed for marked 500-ppm LM to transition from the fuel tanks connected to locomotive and marine engines, consistent with the approach taken regarding the implementation of more stringent diesel fuel sulfur standards. However, the nonroad diesel regulations are not consistent with the preamble

[28] LM diesel fuel in terminals located in the NEMA area is subject to a 15-ppm sulfur standard beginning August 1, 2012. LM diesel fuel at retailers and wholesale purchaser consumers must meet a 15-ppm sulfur standard beginning October 1, 2012.

[29] Prior to 2014, parties outside of the NEMA area who distribute 500-ppm LM would be covered by the existing compliance assurance requirements.

[30] ''Control of Emissions for Air Pollution From Nonroad Diesel Engines and Fuel; Final Rule,'' Section V.C.1.c., The Period From June 1, 2012 Through May 31, 2014, 69 FR 39083, 39084 (June 29, 2004).

and do not provide the allowance for marked 500-ppm LM diesel fuel to transition from fuel distribution and end-user tanks. 40 CFR 80.510(e) requires that all 500-ppm LM diesel fuel delivered from a truck loading rack located outside of the Northeast Mid-Atlantic (NEMA) area and Alaska must contain at least 6 mg/liter of SY124 through May 31, 2012. However, the regulatory text at 40 CFR 80.510(f) requires that beginning June 1, 2012, any diesel fuel that contains 0.10 mg/liter of SY124 must be designated as heating oil. Thus, the regulations as currently written do not provide any transition time for marked LM fuel that is present the distribution system as of May 31, 2012 to work its way through the fuel distribution system downstream of the truck loading rack and through the tanks connected to locomotive and marine engines.

A number of locomotive and marine wholesale purchaser-consumers have taken custody of marked 500-ppm LM diesel fuel that they will not be able to consume prior to June 1, 2012. A number of fuel suppliers also have inventories of 500-ppm LM diesel fuel on hand that they may not be able to sell to LM diesel fuel users because such users are concerned about clearing their tanks of marked LM diesel fuel by June 1, 2012. We are proposing to allow marked 500-ppm LM diesel fuel to transition normally through the fuel distribution and use system, consistent with the original intent of the nonroad diesel rule preamble. Today's proposed rule would allow 500-ppm LM diesel fuel at any point in the fuel distribution and end use system to contain more than 0.10 milligrams per liter of SY 124 through November 30, 2012.

We are proposing to implement a single transition date applicable at all points in the fuel distribution and use system rather than a separate date applicable through retail and wholesale-purchaser-consumer (WPC) facilities and another date applicable at all locations including the tanks attached to locomotive and marine equipment because we believe that a stepped compliance schedule is not necessary and a single transition date provides the most flexibility for regulated parties. We expect that the marker will typically transition out of retailer and WPC LM diesel storage tanks well in advance of November 30, 2012. We further expect that users of LM diesel fuel can coordinate with retail and WPC facilities regarding deliveries of marked 500-ppm LM diesel fuel to ensure that the fuel in storage tanks attached to LM equipment is in compliance by November 30, 2012.

Today's proposed rule would also amend the regulation to clarify the transition of the solvent yellow 124 marker out of heating oil beginning June 1, 2014. Specifically, today's proposal would amend the regulations to clarify that after December 1, 2014, EPA will no longer have any requirements with respect to the use of the solvent yellow 124 marker. This is consistent with the intent expressed in our original nonroad diesel fuel rulemaking. We do not believe these proposed changes will adversely impact emissions.

## VIII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

Under Executive Order 12866 (58 CFR 51735 (October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821 (January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

### *B. Paperwork Reduction Act*

The information collection requirements in this notice of proposed rulemaking and direct final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA related to the amended heating oil definition has been assigned EPA ICR number 2462.01 and the ICR document prepared by EPA for diesel fuel produced by transmix producers has been assigned EPA ICR number 2463.01. Supporting statements for these proposed ICRs have been placed in the docket. The proposed information collections are described in the following paragraphs.

This action contains recordkeeping and reporting (registration and product transfer documentation) that may affect parties who produce or import renewable fuels subject to the proposed revised definition of heating oil. EPA expects that very few parties will be subject to additional recordkeeping and reporting. We estimate that up to 11 parties (i.e., RIN generators, consisting of up to 10 producers and one importer) may be subject to the proposed information collection over the next several years.[31] We estimate an annual reporting burden of 21 hours per respondent and an annual recordkeeping burden of 24 hours, yielding a total per respondent burden of 45 hours.[32] Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review the instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information. Burden is as defined at 5 CFR 1320.3(b).

This action also contains provisions related to diesel fuel that is produced by transmix processors. We have proposed reporting requirements that would apply to transmix processors (all of whom are refiners) and other parties (such as carriers or distributors) in the distribution chain who handle diesel fuel produced by transmix producers. The collected data will permit EPA to: (1) Process compliance plans from transmix producers; and (2) Ensure that diesel fuel made from transmix meets the standards required under the regulations at 40 CFR part 80, and that the associated benefits to human health and the environment are realized. We estimate that 25 transmix processors and 150 other parties may be subject to the proposed information collection.[33] We estimate an annual reporting burden of 28 hours per transmix processor (respondent) and 8 hours per other party (respondent); considering all respondents (transmix producers and other parties) who would be subject to the proposed information collection, the annual reporting burden, per respondent, would be 11 hours. Burden

[31] We project that the number of effected parties will remain essentially constant over time.

[32] This includes the time to train staff, formulate and transmit responses, and other miscellaneous compliance related activities.

[33] This is based on current transmix production. Although the total volume of transmix produced in the fuel distribution system may decline in parallel with the projected decrease in overall petroleum-based fuel use, we anticipate that the number of transmix processors will remain essentially constant since their number is dependent on the configuration of the petroleum-based fuel distribution system.

means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review the instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information. Burden is as defined at 5 CFR 1320.3(b).

The proposed amendments to the fuel marker requirements for locomotive and marine diesel fuel in today's proposed rule do not contain any new recordkeeping and reporting requirements.

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes the ICRs described above, under Docket ID number EPA–HQ–OAR–2012–0223. Submit any comments related to the ICR to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 9, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by November 8, 2012.

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

After considering the economic impacts of this action on small entities, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. The relatively minor corrections and modifications this proposed rule makes to the final RFS2 regulations do not impact small entities. The proposed amendments to the diesel transmix provisions would lessen the regulatory burden on all affected tranmix processors and provide a source of lower cost locomotive and marine diesel fuel to consumers. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule 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. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 and diesel sulfur regulations.

*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. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 and diesel sulfur regulations. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

*F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249 (November 9, 2000)). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS and diesel sulfur regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. Nonetheless, EPA specifically solicits additional comment on this proposed action from tribal officials.

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

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

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this rule is not likely to have adverse energy effects because we do not anticipate adverse energy effects related to the additional

generation of RINs for home heating oil or the reduced regulatory burden for transmix processors. This proposed rule would facilitate the use of 500-ppm sulfur locomotive and marine (LM) diesel fuel, which contains the SY 124 marker that is already in the fuel distribution and use system consistent with EPA's original intent. Today's action will avoid the potential need to remove marked 500-ppm LM diesel fuel from the system for reprocessing, and the associated increased costs and potential disruption to the supply of LM diesel fuel.

*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 to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This 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 proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These amendments would not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources. We have determined that proposed amendments to the diesel transmix provisions and marker provisions for locomotive and marine diesel fuel under the diesel sulfur program would have a neutral or positive impact on diesel vehicle emissions.[34]

## IX. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from Sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

## List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel fuel, Transmix, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: September 17, 2012.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. 2012–23714 Filed 10–5–12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[EPA–R05–RCRA–2012–0377; FRL–9739–6]**

## Indiana: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Indiana has applied to EPA for Final Authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Indiana's application with regards to federal requirements, and is proposing to authorize the state's changes.

**DATES:** Comments must be received on or before November 8, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2012–0377 by one of the following methods:

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

*Email: westefer.gary@epa.gov.*

*Mail:* Gary Westefer, Indiana Regulatory Specialist, LR–8J, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Instructions:* Direct your comments to Docket ID Number EPA–R05–RCRA–2012–0377. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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 or 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.epagov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some of the information is not publicly available; e.g., CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://*

[34] *See* section VI and VII of today's notice for details of this analysis.

*www.regulations.gov* or in hard copy. You may view and copy Indiana's application from 9:00 a.m. to 4:00 p.m. at the following addresses: U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Gary Westefer (312) 886–7450; or Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, contact: Steve Mojonnier (317) 233–1655.

**FOR FURTHER INFORMATION CONTACT:** Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450, email westefer.gary@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### A. Why are revisions to state programs necessary?

States which have received final authorization from 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 program. As the federal program changes, states must change their programs and request EPA to authorize the changes. Changes to state 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 EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. What decisions have we made in this rule?

We have made a tentative decision that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, 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, EPA will implement those requirements and prohibitions in Indiana, 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 tentative decision, once finalized, is that a facility in Indiana subject to RCRA would have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Indiana has enforcement responsibilities under its state hazardous waste program for RCRA violations, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include among others, authority to:

1. Do inspections, and require monitoring, tests, analyses or reports;
1. enforce RCRA requirements and suspend or revoke permits; and
3. take enforcement actions regardless of whether the state has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which Indiana will be authorized are already effective, and will not be changed by EPA's final action.

### D. What happens if EPA receives adverse comments on this action?

If EPA receives adverse comments on this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

### E. What has Indiana previously been authorized for?

Indiana initially received Final Authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692); January 4, 2001 effective January 4, 2001 (66 FR 733); December 6, 2001 effective December 6, 2001 (66 FR 63331); October 29, 2004 (69 FR 63100) effective October 29, 2004; and November 23, 2005 (70 FR 70740) effective November 23, 2005.

### F. What changes are we proposing with today's action?

On March 5, 2007, May 1, 2009, and October 25, 2011, Indiana submitted final program revision applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We have determined that Indiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final Authorization. We are now proposing to authorize, subject to receipt of written comments that oppose this action, Indiana's hazardous waste program revision. We propose to grant Indiana Final Authorization for the following program changes:

| Description of federal requirement (include checklist #, if relevant) | **Federal Register** date and page (and/or RCRA statutory authority) | Analogous state authority |
|---|---|---|
| Burning of Hazardous Wastes in Boilers and Industrial Furnaces Checklist 85. | February 21, 1991; 56 FR 7134. | 329 IAC 3.1–1–7; 3.1–4–1; 3.1–6–1; 3.1–6–2(2); 3.1–9–1; 3.1–10–1; 3.1–10–2(13); 3.1–11–1; 3.1–11–2(2); 3.1–13–1; 3.1–13–2(15) Effective November 22, 1992. |
| Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Corrections and Technical Amendments I Checklist 94. | July 17, 1991; 56 FR 32688 | 329 IAC 3.1–6–1; 3.1–10–1; 3.1–11–1; 3.1–11–2(2); 3.1–13–1; 3.1–13–2(15) Effective November 22, 1992. |
| Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendments II Checklist 96. | August 27, 1991; 56 FR 42504. | 329 IAC 3.1–6–1; 3.1–6–2(2); 3.1–10–1; 3.1–10–2(13); 3.1–11–1; 3.1–11–2(2) Effective November 22, 1992. |
| Coke Ovens Administrative Stay Checklist 98 ..... | September 5, 1991; 56 FR 43874. | 329 IAC 3.1–11–1 Effective November 22, 1992. |

| Description of federal requirement (include checklist #, if relevant) | **Federal Register** date and page (and/or RCRA statutory authority) | Analogous state authority |
|---|---|---|
| Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendments III Checklist 111. | August 25, 1992; 57 FR 38558. | 329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–5–2; 3.1–6–1; 3.1–6–2(2); 3.1–9–1; 3.1–9–2(1); 3.1–10–1; 3.1–10–2(1–3); 3.1–11–1 Effective August 17, 1996. |
| Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendment IV Checklist 114. | September 30, 1992; 57 FR 44999. | 329 IAC 3.1–11–1 Effective August 17,1996. |
| Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations. Checklist 125 | July 20, 1993; 58 FR 38816 | 329 IAC 3.1–1–7; 3.1–11–1 Effective August 17, 1996. |
| Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues Checklist 127. | November 9, 1993; 58 FR 59598. | 329 IAC 3.1–11–1 Effective August 17, 1996. |
| Hazardous Air Pollutant Standards; Technical Corrections Checklist 188.2. | July 3, 2001; 66 FR 42292 | 329 IAC 3.1–6–1; 3.1–9–1; 3.1–13–1 Effective February 13, 2004. |
| ZincFertilizers Made From Recycled Hazardous Secondary Materials Checklist 200. | July 24, 2002; 67 FR 48393 | 329 IAC 3.1–6–1; 3.1–6–2(17); 3.1–11–1; 3.1–12–1 Effective May 13, 2005. |
| Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium, Mercury, and Silver Containing Batteries Checklist 201. | October 7, 2002; 67 FR 62617. | 329 IAC 3.1–12–1 Effective May 13, 2005. |
| NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections Checklist 202. | December 19, 2002; 67 FR 77687. | 329 IAC 3.1–13–1 Effective May 13, 2005. |
| Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards Checklist 203. | July 30, 2003; 68 FR 44659 | 329 IAC 3.1–6–2(16); 13–1–1; 13–1–2; 13–3–1; 13–3–(b)(2) Effective May 13, 2005. |
| National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks Checklist 205. | April 26, 2004; 69 FR 22601. | 329 IAC 3.1–9–1; 3.1–10–1 Effective September 5, 2006. |
| Hazardous Waste—Nonwastewaters From Production of Dyes, Pigments, and Food, Drug and Cosmetic Colorants; Mass Loadings-Based Listing Checklist 206 as amended Checklist 206.1. | February 24, 2005; 70 FR 9138; June 16, 2005; 70 FR 35032. | 329 IAC 3.1–6–1; 3.1–6–2(17); 3.1–6–2(19),(20); 3.1–12–1 Effective September 5, 2006. |
| Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System Checklist 207 as Amended Checklist 207.1. | March 4, 2005; 70 FR 10776; June 16, 2005; 70 FR 35034. | 329 IAC 3.1–4–1; 3,1–4–1(b); 3.1–6–1; 3.1–7–1; 3.1–7–2(2); 3.1–7–2(7); 3.1–8–1; 3.1–8–2(1),(2); 3.1–9–1; 3.1–9–2(6); 3.1–9–2(8); 3.1–10–1; 3.1–10–2(8); 3.1–10–2(11) Effective September 5, 2006. |
| Waste Management System; Testing and Monitoring Activities; Methods Innovation Rule and SW–846 Final Update IIIB Checklist 208 as amended Checklist 208.1. | June 14, 2005; 70 FR 34537; August 1, 2005; 70 FR 44151. | 329 IAC 3.1–1–7; 3.1–5–2; 3.1–5–3; 3.1–6–1; 3.1–6–2(7); 3.1–9–1; 3.1–9–2(10); 3.1–10–1; 3.1–10–2(21); 3.1–11–1; 3.1–11–2(2); 3.1–12–2; 3.1–12–2(1)(D),(2)(D), (3); 3.1–13–1; 13–1–1; 13–1–2; 13–3–1; 13–3–1(b)(2); 13–6–5; 13–7–4; 13–8–4 Effective September 5, 2006. |
| Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment Checklist 209. | August 5, 2005; 70 FR 45507. | 329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–6–1; 3.1–9–1; 3.1–9–2(1); 3.1–10–1; 3.1–10–2 (1),(2),(3); 3.1–12–1; 3.1–12–2(4); 3.1–13–1; 3.1–16–1; 3.1–16–2(a)(3); 3.1–16–2(a)(7) Effective September 5, 2006. |
| Standardized Permit for RCRA Hazardous Waste Management Facilities Checklist 210. | September 8, 2005; 70 FR 53420. | 329 IAC 3.1–1–7; 3.1–4–1; 3.1–4–1(b); 3.1–6–1; 3.1–11.5–1; 3.1–11.5–2(1–7); 3.1–13–1; 3.1–13–2(1–3); 3.1–13–2(5); 3.1–13–2(13); 3.1–13–3; 3.1–13–4; 3.1–13–5; 3.1–13–6; 3.1–13–7; 3.1–13–8; 3.1–13–9; 3.1–13–10; 3.1–13–11; 3.1–13–12; 3.1–13–13; 3.1–13–14; 1.3–13–15; 3.1–13–16; 3.1–13–17; 3.1–13–18; 3.1–13–19; 3.1–13–21; 3.1–15 Effective September 20, 2010. |
| Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures. Checklist 211 | October 4, 2005; 70 FR 57769. | 329 IAC 3.1–6–1 Effective January 25, 2008. |
| NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Checklist 212. | October 12, 2005; 70 FR 59402. | 329 IAC 3.1–1–7; 3.1–9–1; 3.1–10–1; 3.1–11–1; 3.1–13–1; 3.1–13–2(5); 3.1–13–2(9–11); 3.1–13–3 Effective January 25, 2008. |
| Burden Reduction Initiative Checklist 213 | April 4, 2006; 71 FR 16862 | 329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–6–1; 3.1–9–1; 3.1–9–2(9); 3.1–9–2(13),(14),(15); 3.1–9–3(a),(b),(c); 3.1–10–1; 3.1–10–2(5),(6); 3.1–10–2(11), (12), (13); 3.1–10–2(15–21); 3.1–11–1; 3.1–11–2(2); 3.1–12–1; 3.1–12–2(6); 3.1–13–1; 3.1–13–2(7),(8); 3.1–15–8; 3.1–15–9; 3.1–15–10 Effective January 25, 2008. |

| Description of federal requirement (include checklist #, if relevant) | Federal Register date and page (and/or RCRA statutory authority) | Analogous state authority |
|---|---|---|
| Corrections to Errors in the Code of Federal Regulations Checklist 214. | July 14, 2006; 71 FR 40254 | 329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–5–3; 3.1–5–5; 3.1–6–1; 3.1–6–2(2); 3.1–6–2(4); 3.1–6–2(8),(9); 3.1–6–2(17–20); 3.1–7–1; 3.1–7–2(7); 3.1–7–2(9); 3.1–7–12; 3.1–7–16; 3.1–9–1; 3.1–9–2(1), (2); 3.1–9–2(9); 3.1–9–2(14); 3.1–9–2(16); 3.1–9–2(17); 3.1–9–2(21); 3.1–9–3(c); 3.1–10–1; 3.1–10–2(1), (2), (3); 3.1–10–2(5), (6); 3.1–10–2 (13); 3.1–10–2(14); 3.1–10–2(18–23); 3.1–11–1; 3.1–11–2 (2), (3); 3.1–11.5–2(6); 3.1–12–1; 3.1–12–2(1); 3.1–12–2(5); 3.1–12–2(7); 3.1–13–1; 3.1–13–2(1), (2), (3); 3.1–13–2(5); 3.1–13–2(7), (8); 3.1–13–3; 3.1–13–4; 3.1–13–5; 3.1–13–6; 3.1–13–7; 3.1–13–8; 3.1–13–9; 3.1–13–10; 3.1–13–11; 3.1–13–12; 3.1–13–13; 3.1–13–14; 3.1–13–15; 3.1–13–16; 3.1–13–17; 3.1–14–26; 3.1–14–27; 3.1–14–28; 3.1–14–29; 3.1–14–30; 3.1–14–31; 3.1–14–32; 3.1–14–33; 3.1–14–34; 3.1–14–35; 3.1–14–36; 3.1–14–37; 3.1–14–38; 3.1–14–39; 3.1–14–40; 3.1–15–1; 3.1–15–3; 3.1–15–4; 3.1–15–8; 3.1–15–9; 3.1–15–10; 3.1–16–1; 3.1–16–2(a)(1–4); 3.1–16–2(a)(6), (7), (8); 13–2; 13–1–1; 13–1–2; 13–3–1; 13–3–2; 13–6–4; 13–6–5; 13–6–6; 13–7–3; 13–7–6; 13–7–8; 13–7–10; 13–8–4; 13–8–5; 13–9–1 Effective September 20, 2010. |
| Cathode Ray Tube Exclusion Checklist 215 ..... | July 28, 2006; 71 FR 42928 | 329 IAC 3.1–4–1; 3.1–4.1–(b); 3.1–6–1 Effective January 25, 2008. |
| Exclusion of Oil Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas Checklist 216. | January 2, 2008; 73 FR 57 | 329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–6–1 Effective October 11, 2009. |
| NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments Checklist 217. | April 8, 2008; 73 FR 18970 | 329 IAC 3.1–9–1; 3.1–11–1 Effective October 11, 2009. |
| F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes Checklist 218. | June 4, 2008; 73 FR 31756 | 329 IAC 3.1–6–1 Effective October 11, 2009. |
| Academic Laboratories Generator Standards Checklist 220. | December 1, 2008; 73 FR 72912. | 329 IAC 3.1–1–7; 3.1–6–1; 3.1–7–1 Effective September 26, 2010. |

### G. Which revised State rules are different from the Federal rules?

Indiana has excluded the non-delegable federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements. In 329 IAC 3.1–6–3 Indiana is more stringent in adding six hazardous wastes to the acute hazardous waste list that are not acute hazardous wastes in 40 CFR part 261. In section 3.1–9–2, Indiana maintains more stringent levels for groundwater protection for several of the constituents listed in Table 1 of 40 CFR 264.94. There are no Broader in Scope or more stringent provisions in Indiana's rules analogous to this application.

### H. Who handles permits after the final authorization takes effect?

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issues prior to the effective date of the proposed authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

### I. How does today's action affect Indian country (18 U.S.C. 1151) in Indiana?

Indiana is not authorized to carry out its hazardous waste program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Indiana;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, this action has no effect on Indian Country. EPA retains the authority to implement and administer the RCRA program on these lands.

### J. What is codification and is EPA codifying Indiana's hazardous waste program as authorized in this rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Indiana's authorized rules, up to and including those revised January 4, 2001, have previously been codified through the incorporation-by-reference effective December 24, 2001 (66 FR 53728, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart P for the codification of Indiana's program changes until a later date.

### K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (see **SUPPLEMENTARY INFORMATION,** Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with

applicable executive orders and statutory provisions as follows:

*1. Executive Order 18266: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review*

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).

*2. Paperwork Reduction Act*

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.).

*3. Regulatory Flexibility Act*

This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I certify that this rule 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.).

*4. Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, 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).

*5. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (i.e., 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).

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

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (i.e., substantial direct effects on one or more Indian tribes, or 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).

*7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule 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 EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

*9. National Technology Transfer Advancement Act*

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. 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 to this rule.

*10. Executive Order 12988*

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

*11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings*

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 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.

*12. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*

Because this rule proposes authorization of pre-existing state rules and imposes no additional requirements beyond those imposed by state law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

**List of Subjects in 40 CFR Part 271**

Environmental Protection; Administrative Practice and Procedure; Confidential business information; Hazardous materials transportation; Hazardous waste; Indians—lands; Intergovernmental relations; Penalties; Reporting, and Recordkeeping requirements.

**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: September 19, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2012–24779 Filed 10–5–12; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 20

**[WT Docket No. 12–269; FCC 12–119]**

## Policies Regarding Mobile Spectrum Holdings

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on whether to retain or modify the current case-by-case analysis used to evaluate mobile spectrum holdings in the context of transactions and auctions, as well as whether to adopt bright-line limits advocated by some providers and public interest groups. In addition, the Commission seeks comment on updating the spectrum bands that should be included in any evaluation of mobile spectrum holdings and whether to make distinctions between different bands. Further, the Commission seeks comment on the appropriate product and geographic markets and other implementation issues such as attribution rules, remedies, and possible transition issues.

**DATES:** Interested parties may file comments on or before November 23, 2012, and reply comments on or before December 24, 2012.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 12–269, by any of the following methods:

▪ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

▪ *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

▪ *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Christina Clearwater, Wireless Telecommunications Bureau, Spectrum and Competition Policy Division, (202) 418–1893, email at *Christina.Clearwater@fcc.gov,* or Nicole McGinnis, Wireless Telecommunications Bureau, Spectrum and Competition Policy Division, (202) 418–2877, email at *Nicole.McGinnis@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WT Docket No. 12–269, adopted September 28, 2012, and released September 28, 2012. The full text of the NPRM is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the NPRM also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 12–269. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

## I. Introduction

1. With this Notice of Proposed Rulemaking, the Commission initiates a review of its policies governing mobile spectrum holdings in order to ensure that they fulfill its statutory objectives given changes in technology, spectrum availability, and the marketplace since the Commission's last comprehensive review more than a decade ago. In the last few years, large, medium, and small providers as well as public interest groups have raised concerns about the current approach, and sought review. In addition, the Commission adopts, in a separate proceeding, a Notice of Proposed Rulemaking in GN Docket No. 12–268 soliciting comment on the framework for an incentive auction of the broadcast television spectrum, which will represent a major addition of new spectrum available for mobile broadband. The Commission initiates this proceeding to provide rules of the road that are clear and predictable, and that promote the competition needed to ensure a vibrant, world-leading, innovation-based mobile economy.

2. Since the Commission's last comprehensive review of these issues, the number of spectrum bands used for mobile wireless services has expanded; new, innovative service offerings have been rolled out; increasingly sophisticated devices have been introduced into the marketplace; and consumers have adopted these devices to access a wide array of bandwidth-intensive applications. In light of the surge in consumer demand for mobile broadband services that require greater bandwidth, spectrum—a key input in the provision of mobile wireless services—is becoming increasingly critical for all providers. In this proceeding, the Commission seeks comment on retaining or modifying the current case-by-case analysis used to evaluate mobile spectrum holdings in the context of transactions and auctions, as well as on bright-line limits advocated by some providers and public interest groups. In addition, the Commission seeks comment on updating the spectrum bands that should be included in any evaluation of mobile spectrum holdings and whether it should make distinctions between different bands. The Commission also takes a fresh look at geographic market analysis and other implementation issues such as attribution rules, remedies, and possible transition issues. This proceeding affords the Commission the opportunity to receive valuable input from a broad range of active participants in the mobile broadband industry, as well as trade associations and consumer groups, that have requested that its policies be revised to keep pace with market changes.

## II. Background

### *A. Statutory Framework*

3. Section 309(j)(3)(B) of the Communications Act provides that, in designing systems of competitive bidding, the Commission shall ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses.'' [1] Additionally, under the Communications Act, when reviewing a proposed license assignment or transfer application, the Commission must determine whether the applicant has demonstrated that the proposed assignment or transfer of control of licenses will serve the public interest, convenience, and necessity.[2] Moreover, Congress has established the promotion of competition as a fundamental goal of the nation's mobile wireless policy.[3] More recently, Congress enacted Section 6404 of the *Spectrum Act,* which modifies Section 309(j) to prohibit the Commission from preventing an otherwise qualified entity from participating in an auction, but reaffirms the Commission's authority ''to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.'' [4]

### *B. The Commission's Policies Regarding Mobile Spectrum Holdings*

4. Access to spectrum is a precondition to the provision of mobile wireless services. Ensuring the availability of sufficient spectrum is critical for promoting the competition that drives innovation and investment. Over time, the Commission has increased the amount of spectrum available for the provision of mobile wireless services, making this additional spectrum available in different frequency bands, bandwidths, and licensing areas. As discussed below, in order to address its statutory mandate, the Commission has implemented a variety of mobile spectrum aggregation policies and rules, including the cellular cross interest rule, the Personal Communications Service (PCS) cross-ownership rule, the Commercial Mobile Radio Services (CMRS) spectrum cap, and the current case-by-case spectrum aggregation analysis.

5. *Cellular Services.* In 1981, in establishing the rules for the licensing of

[1] 47 U.S.C. 309(j)(3)(B).

[2] 47 U.S.C. 310(d).

[3] *See* 47 U.S.C. 332(a)(3), (c)(1)(C).

[4] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Section 6404 (*Spectrum Act*).

cellular service, the Commission decided to award two cellular services licenses per market—a separate allocation of 20 megahertz for incumbent wireline carriers and an allocation of 20 megahertz for other applicants.[5] With two licensees per market, the Commission reasoned it would be more difficult for a single entity to dominate the cellular market nationwide.[6] The Commission adopted the cellular cross-interest rule in 1991 ''to guarantee the competitive nature of the cellular industry and to foster the development of competing systems.'' [7] The rule was adopted when only two cellular licensees provided mobile voice services in each geographic area of the U.S.[8] At that time, a party with a controlling interest in one of the cellular licensees was prohibited from having more than a five percent direct or indirect ownership interest in the other licensee in the same cellular geographic service area (CGSA).[9] In the *Second Biennial Review Order* in 2001, the Commission eliminated the cellular cross-interest rule in Metropolitan Statistical Areas (MSAs) after finding numerous competitive choices for consumers in urban markets.[10] Later, in 2004, the Commission eliminated the cellular cross-interest rule in favor of a case-by-case review for all markets, finding that the continued application of the cellular cross-interest rule in Rural Service Areas (RSAs) could impede the development of new services in rural and underserved areas.[11]

6. *Cellular/PCS Cross-Ownership Rule.* In 1993, in establishing the initial PCS service rules, the Commission imposed service-specific limitations on the aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership.[12] The Commission limited broadband PCS licensees to 40 megahertz of total spectrum allocated to broadband PCS,[13] and limited cellular licensees to 10 megahertz of broadband PCS spectrum in their cellular service areas.[14] In 1996, the Commission eliminated the service-specific limitations on the aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership, and decided to rely solely on the 45 megahertz CMRS spectrum cap, implemented in 1994, ''to ensure that multiple service providers would be able to obtain broadband PCS spectrum and thereby facilitate the development of competitive markets for wireless services.'' [15]

7. *CMRS Spectrum Cap.* In 1994, the Commission implemented a spectrum cap on Cellular, broadband PCS, and Specialized Mobile Radio (SMR) spectrum to promote diversity and competition in mobile services,[16] ''recognizing the possibility that mobile service licensees might exert undue market power or inhibit market entry by other service providers if permitted to aggregate large amounts of spectrum.'' [17] The Commission found that a spectrum cap provided a ''minimally intrusive means'' to ensure that the mobile communications marketplace remained competitive and preserved incentives for efficiency and innovation.[18] Under former Section 20.6 of the Commission's rules, no licensee in the broadband PCS, Cellular, or SMR services regulated as CMRS could have an attributable interest in more than 45 megahertz of licensed spectrum (broadband PCS, cellular, and SMR spectrum regulated as CMRS) that has significant overlap in any geographic area.[19] A few years later, the Commission increased the cap to 55 megahertz in the RSAs.[20] Subsequently, in the *Second Biennial Review Order,* the Commission eliminated the spectrum cap effective January 1, 2003,[21] in favor of case-by-case review of mobile spectrum holdings.[22]

8. *Case-by-Case Analysis.* Since 2003, the Commission has examined the competitive effects of proposed wireless transactions involving the transfer, assignment, or lease of Commission licenses by employing a case-by-case review. In 2008, the Commission determined that it would apply the case-by-case analysis to spectrum acquired via auction.[23] Beginning in 2004, the Commission has used a two-part screen to help identify markets where the acquisition of spectrum provides particular reason for further competitive analysis.[24] The Commission does not,

[5] Inquiry Into the Use of the Bands 825–845 MHz and 870–890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, CC Docket No. 79–318, *Report and Order,* 86 FCC 2d 469, 488–92 paras. 38–43 (1981) (*Cellular Report and Order*).

[6] *See Cellular Report and Order,* 86 FCC 2d at 491 para. 43.

[7] Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90–6, *First Report and Order and Memorandum Opinion and Order on Reconsideration,* 6 FCC Rcd 6185, 6628 para. 104 (1991) (*Cellular First Report and Order*).

[8] *See Cellular First Report and Order,* 6 FCC Rcd at 6228 para. 103.

[9] *See Cellular First Report and Order,* 6 FCC Rcd at 6228 paras. 104–105.

[10] 2000 Biennial Regulatory Review—Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01–14, *Report and Order,* 16 FCC Rcd 22668, 22671 para. 7, 22707 para. 84 (2001) (*Second Biennial Review Order*).

[11] *See* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02–381, *Report and Order and Further Notice of Proposed Rule Making,* 19 FCC Rcd 19078, 19113–115 paras. 63–67 (2004) (*Rural Report and Order*).

[12] *See* Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order,* 8 FCC Rcd 7700, 7728 para. 61, 7745 para. 106 (1993) (*PCS Second Report and Order*).

[13] *See PCS Second Report and Order,* 8 FCC Rcd at 7728 para. 61.

[14] *See PCS Second Report and Order,* 8 FCC Rcd at 7745 para. 106. *See also* Amendment of the Commission's Rules to Establish New Personal Communications Services, *Memorandum Opinion and Order,* 9 FCC Rcd 4957, 4984 paras. 66–67 (1994).

[15] *See Second Biennial Review Order,* 16 FCC Rcd at 22673 para. 13 (citing Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, WT Docket No. 96–59, *Report and Order,* 11 FCC Rcd 7824, 7869 para. 94 (1996), *aff'd,* 12 FCC Rcd 14031 (1997), *aff'd sub nom. BellSouth Corp.* v. *FCC,* 162 F.3d 1215 (D.C. Cir. 1999)).

[16] Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Third Report and Order,* 9 FCC Rcd 7988, 8100 para. 238, 8109 para. 263 (1994) (*CMRS Third Report and Order*).

[17] *CMRS Third Report and Order,* 9 FCC Rcd at 8100 para. 239.

[18] *See CMRS Third Report and Order,* 9 FCC Rcd at 7999 para. 16.

[19] *See* 1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98–205, *Report and Order,* 15 FCC Rcd 9219, 9224 para. 8 (1999) (*First Biennial Review Order*) (quoting former 47 CFR 20.6(a)). A ''significant overlap'' of a PSC licensed service area, CGSA, and SMR service area occurred when at least ten percent of the population of the PCS licensed service area was within the cellular geographic service area and/or SMR service area. *See id.* (citing former Section 20.6(c)). The spectrum cap sunset on January 1, 2003. 47 CFR 20.6(f).

[20] *See First Biennial Review Order,* 15 FCC Rcd at 9254–57 paras. 80–84.

[21] *See* 47 CFR 20.6(f); *Second Biennial Review Order,* 16 FCC Rcd at 22669 para. 1, 22696 para. 55. The Commission also raised the spectrum cap to 55 MHz in all markets during the sunset period. *See* 47 CFR 20.6(a); *Second Biennial Review Order,* 16 FCC Rcd at 22671 para. 6, 22693 para. 47.

[22] *See Second Biennial Review Order,* 16 FCC Rcd at 22670–71 para. 6.

[23] *See* Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless, Applications for 700 MHz Band Licenses, Auction No. 73, *Memorandum Opinion and Order,* 23 FCC Rcd 16787, 16791 para. 9 (2008) (*Verizon Wireless-Union Tel. Order*).

[24] *See, e.g.,* Applications of Cellco Partnership *d/b/a* Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS–1 Licenses, *et al,.* WT Docket No. 12–4, *Memorandum Opinion and Order and Declaratory Ruling,* FCC 12–95 (rel. Aug. 23, 2012) at para. 48 (*Verizon Wireless-SpectrumCo Order*); Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations, WT Docket No. 11–18, *Order,* 26 FCC Rcd 17589, 17602 para. 31 (2011) (*AT&T-Qualcomm Order*); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer

however, limit its consideration of potential competitive harms in proposed transactions solely to markets identified by its initial screen.[25] The first part of the screen considers changes in market concentration as a result of the transaction and is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI)[26] and the change in the HHI.[27] The second part examines the amount of spectrum that is suitable and available on a market-by-market basis for the provision of mobile telephony/broadband service.[28] For those markets highlighted by one or both steps in the analysis, the Commission routinely conducts detailed, market-by-market reviews to determine whether the transaction would result in an increased likelihood or ability in those markets for the combined entity to behave in an anticompetitive manner.[29] The case-by-case analysis considers variables that are important in predicting the incentives and ability of service providers to successfully reduce competition on price or non-price terms, and transaction-specific public interest benefits that may mitigate or outweigh any harms arising from the transaction.[30]

*C. Criticisms of Current Case-by-Case Analysis Approach*

9. In its consideration of transactions, the Commission generally has reviewed and, when necessary, adjusted its case-by-case analysis to reflect changing industry and consumer needs. In recent years, large and small wireless providers, as well as trade associations and public interest groups, have requested that the Commission undertake an examination of its current policies regarding mobile spectrum holdings. For example, Verizon Wireless has contended that the Commission should reconsider the particular spectrum to be examined in a competitive analysis and has urged that the Commission include additional spectrum bands. AT&T has expressed concerns that the current case-by case evaluation is not clear and predictable and the spectrum screen changes from one transaction to the next. AT&T has argued that there is ''more regulatory uncertainty on top of an industry that is a foundation for a lot of today's innovation, making it difficult for all of us to allocate and commit capital,'' and that ''we don't know how much spectrum we're allowed to hold.'' Sprint Nextel has argued that the current method of evaluating spectrum holdings values spectrum equally, ''regardless of whether it lies within more valuable 'beachfront' bands or in higher-frequency bands of limited commercial use.'' T-Mobile has argued that to further the goal of a robust marketplace, the Commission should modify its case-by-case evaluation to recognize the difference in value of spectrum above and below 1 GHz.

10. The Rural Cellular Association (RCA) has urged the Commission to ''take a fresh approach to its competitive analysis'' instead of ''recycl[ing] the outdated spectrum screen.'' RTG has urged the Commission to conduct a more in-depth competitive review of large-scale transactions, in part by adopting a lower spectrum screen that will trigger a heightened level of review and allow consideration of certain factors other than the amount of spectrum held by licensees, in order to determine whether further spectrum concentration will threaten market competition. Both RTG and Leap Wireless have contended that the case-by-case approach creates uncertainty and/or suggest that an alternative approach would provide greater clarity.[31] Free Press has urged the use of a spectrum screen based on spectrum value, contending that the current spectrum screen, a ''simple old analytical tool,'' is insufficient to reveal changes in market power. Similarly, Public Knowledge has argued that the assumptions underlying the method used to calculate the spectrum screen have proven to be unreliable, and that the Commission should consider the long-term implications of spectrum holdings among carriers.

*D. The Current Wireless Landscape*

11. During the past decade, the use of wireless services has surged as the number of spectrum bands used to provide mobile wireless services has expanded, an array of increasingly sophisticated devices has been introduced in the marketplace, and new service offerings have been rolled out. As discussed below, some of these changes could have implications for its policies regarding mobile spectrum holdings. The industry is undergoing a transformation, from an industry providing predominantly voice services to one that is increasingly focused on providing data services, particularly mobile broadband services. This transition has led to the need of competitors for more spectrum to meet the increasing demand for mobile broadband, which consumes greater amounts of bandwidth. In order to ensure that its policies continue to serve the public interest and keep pace with changing technologies and consumer needs, the Commission must consider these and other industry changes.

12. Facilitating access by all providers to valuable spectrum resources they need to serve their customers is essential given the current mobile wireless landscape. The rapid adoption of smartphones, as well as tablet computers and the wide-spread use of mobile applications, combined with deployment of high-speed 3G and 4G technologies, is driving more intensive use of mobile networks. A single smartphone can generate as much traffic as 35 basic-feature phones; a tablet as

Control of Licenses and Authorizations, WT Docket No. 04–70, *Memorandum Opinion and Order,* 19 FCC Rcd 21522, 21552 para. 58 (2004) (*Cingular-AT&T Wireless Order*).

[25] *See, e.g., Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 48; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17609–10 paras. 49–50; Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08–246, *Memorandum Opinion and Order,* 24 FCC Rcd 13915, 13946–48 paras. 71–74, 13952 para. 85 (2009) (*AT&T-Centennial Order*); Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska Digitel, L.L.C. and the Transfer of Control of Interests in Alaska Digitel, L.L.C. to General Communication, Inc., WT Docket 06–114, *Memorandum Opinion and Order,* 21 FCC Rcd 14863, 14898 para. 85 (2006).

[26] The Herfindahl-Hirschman Index (HHI), which is calculated by summing the squares of all provider subscriber market shares in any given market, is a commonly used measure of market concentration in competition analysis.

[27] The HHI screen identifies for further case-by-case market analysis those markets in which, post-transaction, the HHI would be greater than 2800 and the change in the HHI would be 100 or greater, or the change in the HHI would be 250 or greater, regardless of the level of the HHI. The HHI screen has remained the same since the Commission adopted the case-by-case review process.

[28] *See, e.g., Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 59; *see also infra* discussion on determining spectrum that is suitable and available for the relevant product market at para. 26.

[29] This Notice of Proposed Rulemaking does not address the part of our review that considers changes in market concentration based on HHI, but considers only our review of mobile spectrum holdings.

[30] *See* Applications of Cellco Partnership *d/b/a* Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08–95, *Memorandum Opinion and Order and Declaratory Ruling,* 23 FCC Rcd 17444, 17460 para. 26 (2008) (''*Verizon Wireless-ALLTEL Order*'').

[31] *See, e.g.,* RTG Reply Comments, RM No. 11498, at 1–3 (urging the Commission to consider instituting a spectrum cap); Leap Comments, RM No. 11498, at 8–9. (advocating bright-line rules). Because this Notice of Proposed Rulemaking addresses policies regarding mobile spectrum holdings from a broad perspective, we decline to initiate the more narrowly-tailored requests made in RTG's petition for rulemaking. *See* RTG Petition for Rulemaking, RM No. 11498, at 5 (proposing that the FCC impose, on a county level, a 110 MHz aggregation limit below 2.3 GHz).

much traffic as 121 basic-feature phones; and a single laptop can generate as much traffic as 498 basic-feature phones.[32] The adoption of smartphones alone increased at a 50 percent annual growth rate in 2011, from 27 percent of U.S. mobile subscribers in December 2010 to nearly 42 percent in December 2011.[33] Moreover, global mobile data traffic is anticipated to grow eighteen-fold between 2011 and 2016.[34] Indeed, a study by the Council of Economic Advisors (CEA) found that ''the spectrum currently allocated to wireless is not sufficient to handle the projected growth in demand, even with technological improvements allowing for more efficient use of existing spectrum and significant investment in new facilities.'' [35]

13. Given the limited spectrum resources, the Commission must consider how its policies regarding mobile spectrum holdings can accommodate the increasing demand for spectrum by all providers. While there are numerous ways in which wireless service providers can increase network capacity to satisfy increasing demand, acquiring more spectrum has been the least costly way for all providers to address capacity constraints. In light of these circumstances, ensuring that the Commission's policies regarding mobile spectrum holdings promote access to spectrum is critical.[36]

14. Since the sunset of the spectrum cap, there also have been other changes in the wireless industry that warrant reexamination of the Commission's policies. In 2003, when the Commission eliminated the spectrum cap, there were six mobile telephone operators that analysts then described as nationwide: AT&T Wireless, Sprint PCS, Verizon Wireless, T-Mobile, Cingular Wireless (''Cingular''), and Nextel.[37] Today, as a result of mergers and other transactions, there are four nationwide providers: Verizon Wireless, AT&T, T-Mobile, and Sprint Nextel.[38] As of December 2003, the top six facilities-based nationwide providers served approximately 78 percent of total mobile wireless subscribers in the country.[39] By December of 2009, the top four facilities-based nationwide providers had increased their combined market share to 88 percent.[40] Moreover, since 2003, a number of regional and rural facilities-based providers have exited the marketplace through mergers and acquisitions, including Dobson Communications, SunCom Wireless, Rural Cellular Corporation, ALLTEL, and Centennial Communications.[41] In addition, there have been significant spectrum-only transactions, such as the transaction at the end of 2011 in which AT&T acquired Qualcomm's nationwide Lower 700 MHz downlink spectrum [42] and the more recent transaction in which Verizon Wireless acquired AWS–1 licenses from SpectrumCo, LLC, and Cox TMI.[43]

## III. Discussion

15. In the sections below, the Commission seeks comment on whether and how to revise its policies and rules regarding mobile spectrum holdings. In particular, the Commission asks that comments address how to ensure that its policies and rules afford all interested parties greater certainty, transparency and predictability to make investment and transactional decisions, while also promoting the competition needed to ensure a vibrant, increasingly mobile economy driven by innovation. First, the Commission discusses general approaches to address competitive harm resulting from foreclosing access to spectrum, including a case-by-case analysis, bright-line limits, and other methodologies, and how they might apply not only to secondary market transactions but also to initial spectrum licensing after auctions. The Commission then takes a fresh look at implementation issues under various approaches, such as which spectrum should be considered, relevant product and geographic markets, and issues relating to attribution rules, appropriate remedies and transition concerns.

16. The Commission also seeks comment on the costs and benefits of any proposals or proposed changes to policies and rules. The Commission asks that commenters take into account only those costs and benefits that directly result from the implementation of the particular approach or rule that could be adopted. Further, to the extent possible, commenters should provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained, and any supporting

[32] *See* Cisco White Paper, Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011–2016, at 7, February 14, 2012, available at *http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11–520862.pdf* (last visited Sept. 6, 2012).

[33] comScore 2012 Mobile Future in Focus (2012), available at *http://www.comscore.com/Press_Events/Presentations_Whitepapers/2012/2012_Mobile_Future_in_Focus* (last visited Sept. 6, 2012). For consumers ages 25–34, eight of ten recent new phone purchases were smartphones. *See* Survey: New U.S. Smartphone Growth by Age and Income, NIELSENWIRE, Feb. 20, 2012, available at *http://blog.nielsen.com/nielsenwire/online_mobile/survey-new-u-s-smartphone-growth-by-age-and-income/* (last visited Sept. 6, 2012).

[34] *See* Cisco White Paper, Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011–2016, Executive Summary, February 14, 2012, available at *http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11–520862.html* (last visited Sept. 6, 2012).

[35] Council of Economic Advisors, The Economic Benefits of New Spectrum for Wireless Broadband at 5 (Feb. 2012), available at *http://www.whitehouse.gov/sites/default/files/cea_spectrum_report_2-21-2012.pd*f (last visited Sept. 6, 2012).

[36] We note that Congress, as well as the Commission and NTIA, has taken innovative steps to bring additional spectrum suitable for mobile broadband to the commercial marketplace. For instance, Congress recently passed the *Spectrum Act,* which authorizes the auction and repurposing of television broadband spectrum for the provision of wireless services. *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112–96, Subtitle D—Spectrum Auction Authority, Section 6401 *et seq.* As another example, the Commission has opened a proceeding to increase the supply of spectrum for mobile broadband by providing for flexible use of 40 megahertz of spectrum assigned to the Mobile Satellite Service (MSS) in the 2 GHz Band. *See, e.g.,* Service Rules for Advanced Wireless Services in the 2000–2020 MHz and 2180–2200 MHz Bands, WT Docket No. 12–70, *Notice of Proposed Rulemaking and Notice of Inquiry,* 27 FCC Rcd 3561 (2012) (*AWS–4 NPRM*). NTIA undertook a ''fast-track'' review of several bands that could be reallocated to mobile use. *See* U.S. Department of Commerce, *An Assessment of the Near-Term Viability of Accommodating Wireless Broadband Systems in the 1675–1710 MHz, 1755–1780 MHz, 3500–3650 MHz, and 4200–4220 MHz, 4380–4400 MHz Bands* (Oct. 2010), available at *http://www.ntia.doc.gov/reports/2010/FastTrackEvaluation_11152010.pdf* (*NTIA Fast Track Report*) (last visited Sept. 6, 2012). Additionally, on August 13, 2012, the Commission granted T-Mobile's application for experimental special temporary authority to begin testing possible use of the 1755 MHz to 1780 MHz band on a shared basis for providing commercial mobile broadband services. *See FCC Experimental Special Temporary Authorization,* Call Sign No. WF9XQW, File No. 0373–EX–ST–2012, available at https://apps.fcc.gov/els/GetAtt.html?id=128554 (last visited Sept. 6, 2012).

[37] *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 04–111, *Ninth Report,* 19 FCC Rcd 20597, 20613 para. 36 (2004) (*Ninth Annual CMRS Competition Report*).

[38] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17604 para. 35; *AT&T-Centennial Order,* 24 FCC Rcd 13915; *Verizon Wireless-ALLTEL Order,* 23 FCC Rcd 17444; Applications of Nextel Communications, Inc. and Sprint Corporation For Consent To Transfer Control of Licenses and Authorizations, WT Docket No. 05–63, *Memorandum Opinion and Order,* 20 FCC Rcd. 13967 (2005) (*Sprint-Nextel Order*).

[39] *See Ninth Annual CMRS Competition Report,* 19 FCC Rcd at para. 174, A–8, Table 4.

[40] *See Fifteenth Mobile Wireless Competition Report,* 26 FCC Rcd at 9760, Table 14, and John C. Hodulik *et al., US Wireless 411 Report for 4Q2010,* UBS Investment Research, UBS, at 13, Table 8.

[41] *See Fifteenth Mobile Wireless Competition Report,* 26 FCC Rcd at 9722, Table 10.

[42] *See generally AT&T-Qualcomm Order,* 26 FCC Rcd 17589.

[43] *See generally Verizon Wireless-SpectrumCo Order,* FCC 12–95.

documentation or other evidentiary support.[44]

*A. General Approaches to Mobile Spectrum Holdings*

1. Case-by-Case Analysis

17. The Commission seeks comment on its current policies regarding mobile spectrum holdings. In general, the Commission currently examines the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum on a case-by-case basis, after establishing the relevant product and geographic markets in each case.[45] The Commission has applied this approach to wireless transactions, using an initial spectrum screen, since 2004,[46] and to mobile spectrum acquired through competitive bidding since 2008.[47] In reviewing a proposed wireless transaction, the Commission evaluates the current spectrum holdings of the acquiring firm that are ''suitable'' and ''available'' in the near term for the provision of mobile telephony/broadband services.[48] The current screen identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.[49] The Commission does not, however, limit its consideration of potential competitive harms in proposed transactions solely to markets identified by its initial screen.[50] The Commission balances a number of factors in its analysis, considering the totality of the circumstances in each market.[51] The Commission also has considered whether harms in numerous local markets may result in nationwide harms.[52]

18. The Commission recognizes that a case-by-case approach affords flexibility to consider different circumstances, permits a variety of factors to be considered, and allows it to better tailor any remedies to the specific harm and circumstances, particularly in its review of wireless transactions. In addition to recognizing factors unique to each licensee, a case-by-case approach allows the Commission to consider the changing needs of the mobile wireless marketplace more generally. On the other hand, a case-by-case approach is time- and resource-intensive, and has been criticized for creating uncertainty as to whether a particular transaction will be approved.[53] One commenter, however, has suggested generally that a case-by-case approach can provide sufficiently clear guidance to enable providers to make their transactional and investment decisions.[54] The Commission seeks comment on the costs and benefits of a case-by-case analysis to consumers, wireless service providers, and others, as well as the overall effectiveness of such an approach in achieving its public policy objectives. Should the Commission change its current case-by-case analysis process? For instance, should the Commission continue to use a screen that includes a measure of spectrum holdings? Could the Commission take measures to make the process more transparent, predictable, or better tailored to promote its goals? For example, should the Commission consider a regular review of its policies and guidelines to keep pace with changing marketplace conditions? Should the Commission adopt guidelines setting forth the factors that will be considered during any review of a licensee's mobile spectrum holdings or delegate authority to the Wireless Telecommunications Bureau to do so?

19. Finally, the Commission seeks comment on the specific costs and benefits of applying a case-by-case approach to initial licenses acquired through competitive bidding. Does a case-by-case analysis afford auction participants sufficient certainty to determine whether they would be allowed to hold a given license post-auction? Does the lack of a bright-line spectrum limit deter auction participation? Further, does the lack of a bright-line rule provide an opportunity for licensees to bid on spectrum, regardless of whether they believe they ultimately would be allowed to hold the licenses, in order to raise bidding costs or foreclose other competitors from acquiring certain licenses? A case-by-case approach could result in an inefficient auction process if the Commission ultimately denies the winning bidder's application to hold a license. In addition to imposing costs on competitors, the expenditure of public or private resources and resulting delay in awarding the spectrum to another bidder impose costs on the public. The Commission seeks comment on whether there are additional measures it would need to adopt to promote an effective and efficient auction process while discouraging the potential for anticompetitive behavior. If the Commission continues its case-by-case analysis for secondary market transactions, should the Commission adopt another approach for initial licensing rather than a case-by-case analysis, such as band-specific limits adopted prior to an auction?

2. Bright-Line Limits

20. As discussed above, the Commission employed a CMRS spectrum cap to prevent excessive spectrum concentration, but eliminated that cap in 2003 and then started using the current case-by-case approach. Before employing a CMRS spectrum cap, the Commission used other bright-line limits on spectrum holdings.[55] There have been many changes in the mobile wireless industry since the Commission first started using a case-by-case approach to assess spectrum concentration, as noted above, and the Commission believes that these changes warrant reevaluating that approach.[56] The Commission seeks comment on whether adoption of bright-line limits would serve the public interest now, and also on the specific costs and benefits of adopting such an approach. Bright-line limits could offer providers greater certainty, clarity, and predictability regarding which licenses they could acquire. Bright-line limits might encourage auction participation

[44] During the pendency of this proceeding, the Commission will continue to apply its current case-by-case approach to evaluate mobile spectrum holdings during our consideration of secondary market transactions and initial spectrum licensing after auctions.

[45] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17602 paras. 31–32.

[46] *See Cingular-AT&T Wireless Order,* 19 FCC Rcd at 21568–69 paras. 107–12. *See also AT&T-Qualcomm Order,* 26 FCC Rcd at 17602 para. 31; AT&T Inc. and Cellco Partnership *d/b/a* Verizon Wireless Seek FCC Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09–104, *Memorandum Opinion and Order,* 25 FCC Rcd 8704, 8720–21 para. 32 (2010) (*AT&T-Verizon Wireless Order*).

[47] *See Verizon Wireless-Union Tel. Order,* 23 FCC Rcd at 16791–92 para. 9.

[48] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 59; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17605–06 para. 38; *AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8723–24 para. 39; *AT&T-Centennial Order,* 24 FCC Rcd at 13934 para. 43. *See infra* discussion of determining spectrum suitable and available for the relevant product market at para. 26.

[49] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 59; *Verizon Wireless-ALLTEL Order,* 23 FCC Rcd at 17473 para. 54.

[50] *See, e.g., Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 48; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17609–10 paras. 49–50; *AT&T-Centennial Order,* 24 FCC Rcd 13915, 13946–48 paras. 71–74, 13952 para. 85.

[51] *See, e.g., Verizon Wireless-ALLTEL Order,* 23 FCC Rcd at 17487–88 para. 91.

[52] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 76.

[53] *See, e.g.,* ''Stephenson: Verizon/Cable Deals Could Offer Guidance From FCC,'' TR Daily (June 12, 2012).

[54] *See* Union Tel. Co. Comments, RM No. 11498, at i.

[55] *See PCS Second Report and Order,* 8 FCC Rcd 7700, 7728 para. 61, 7745 para. 106.

[56] *See Second Biennial Review Order,* 16 FCC Rcd at 22694 para. 50. *See supra* section II.D.: The Current Wireless Landscape.

or more secondary market transactions by affording parties greater certainty and predictability to develop their business plans and obtain necessary financing. On the other hand, a bright-line approach would limit the Commission's flexibility to consider individualized circumstances and to respond swiftly to the changing needs of the mobile wireless industry and consumers. If the Commission were to adopt bright-line limits, how could the Commission do so in a manner that preserves its flexibility?

21. The Commission seeks comment on related implementation issues with respect to applying bright-line limits to initial licenses acquired through competitive bidding as well as to licenses acquired through the secondary market. The Commission further seeks comment on whether it should consider applying a band-specific spectrum limit in the context of any band-specific service rules that are adopted prior to an auction. Such an approach would be consistent with the Commission's practice of seeking comment on spectrum aggregation issues with respect to particular spectrum bands prior to an auction, would afford auction participants greater certainty, and would allow the Commission to re-evaluate its spectrum aggregation policies in the context of newly available spectrum bands and changing industry and consumer needs.[57] Further, adopting band-specific spectrum limits generally applicable to all licensees would be consistent with Section 6404 of the *Spectrum Act,* which recognizes the Commission's authority ''to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.'' [58] For instance, should the Commission consider adopting limits on the amount of spectrum that entities could acquire in the context of spectrum auctions mandated by the *Spectrum Act*? The Commission seeks comment on these approaches.

3. Alternative Approaches

22. The Commission seeks comment on any alternative approaches to evaluate the competitive effect of spectrum aggregation. Are there other mechanisms for evaluating spectrum aggregation that would better serve the public interest and meet the Commission's statutory objectives? In this regard, the Commission seeks comment on whether there are different ways in which it could conduct a case-by-case analysis, such as adopting a case-by-case analysis that does not include an initial spectrum screen. Another approach would be to combine some elements of a bright-line limit with a case-by-case analysis. One hybrid approach would be to adopt a bright-line threshold that, if exceeded, would trigger a heightened burden on the applicants to demonstrate that approval of the proposed transaction would be in the public interest. The Commission seeks comment on these approaches and how they could be implemented, and on any other alternatives.

*B. Implementation Issues*

23. Certain threshold issues would need to be considered if the Commission were to adopt any new or modified approach to reviewing mobile spectrum holdings, including establishing initial definitions such as the relevant product and geographic markets, assessing the spectrum bands that should be included, and deciding how to treat different spectrum bands. Finally, the Commission discusses attribution and remedies, and explores whether there are other factors for it to consider in this area.

1. Relevant Product Market

24. In order to assess competition in a given market, the Commission has initiated its analysis of a proposed transaction by establishing definitions for the relevant product market. In recent wireless transactions, the Commission has determined that the relevant product market is a combined ''mobile telephony/broadband services'' product market,[59] comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[60] In *AT&T-Qualcomm* and *Verizon Wireless-SpectrumCo,* while the Commission evaluated the transaction using a combined mobile telephony/broadband market, it recognized the growing importance of mobile broadband services and focused its analysis to an increasing degree on mobile broadband services.[61]

25. The Commission seeks comment on whether the current approach to the product market definition continues to be appropriate. Given the transition to data-centric services and the development of more spectrum-efficient technologies that will transmit voice as data,[62] the Commission seeks comment on whether the relevant product market has changed and, if so, whether these changes warrant any modifications to the Commission's product market definition. For example, should the Commission modify the relevant product market definition to reflect differentiated service offerings, devices, and contract features? [63] The Commission also seeks comment on whether it should separately define smaller product markets that may be nested within a larger defined product market and, if so, how it would analyze such smaller defined product markets vis-à-vis the larger defined product market. What are the costs and benefits if the Commission were to modify its product market definition versus keeping the current combined ''mobile telephony/broadband services'' product market or focusing the analysis on mobile broadband services? Commenters also should discuss how their particular approach for the relevant product market definition is supported by economic or antitrust theory.

2. Suitable and Available Spectrum

26. In order to assess whether any particular spectrum acquisition exceeds a certain threshold of available spectrum, the Commission first must determine what spectrum it will include in its overall evaluation. Currently, the Commission includes spectrum in its case-by-case analysis if it determines that it is suitable and available for the

[57] *See, e.g.,* Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band, WT Docket No. 07–195, *Notice of Proposed Rulemaking,* 22 FCC Rcd 17035, 17079–80 paras. 101–03 (2007).

[58] *Spectrum Act* at Section 6404.

[59] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 53; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17603 para. 33; *AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8721 para. 35; *AT&T-Centennial Order,* 24 FCC Rcd at 13932 para. 37. The Commission has previously determined that there are separate relevant product markets for interconnected mobile voice and data services, and also for residential and enterprise services, but found it reasonable to analyze all of these services under a combined mobile telephony/broadband services product market. *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17603 para. 33; *AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8721 at para. 35; *AT&T-Centennial Order,* 24 FCC Rcd at 13932 para. 37.

[60] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 53; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17602–03 paras. 32–33; *AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8721 para. 35; *AT&T-Centennial Order,* 24 FCC Rcd at 13932 para. 37.

[61] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at paras. 53, 70; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17602–03 para. 32, 17605 para. 38.

[62] One example of changing technology is the development of ''Voice Over LTE'' (or ''VoLTE''). *See* ''MetroPCS Unveils First U.S. Voice Over LTE Service, Phone,'' by Chloe Albanesius, PCMag.com, Aug. 8, 2012, available at *http://www.pcmag.com/article2/0,2817,2408216,00.asp* (last visited Sept. 6, 2012).

[63] *See* American Antitrust Institute Comments, WT Docket No. 11–65, at 6; Sprint Petition To Deny, WT Docket No. 11–65, at 11–15; Free Press Petition to Deny, WT Docket No. 11–65, at 9–12; Greenlining Institute Petition To Deny, WT Docket No. 11–65, at 4, 12–13.

relevant product market.[64] ''Suitability'' is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its use for the relevant mobile service.[65] Particular spectrum is considered to be ''available'' if it is fairly certain that it will meet the criteria for suitable spectrum in the near term.[66] In recent applications of the spectrum screen, the Commission has included cellular, PCS, SMR, and 700 MHz spectrum, as well as AWS–1 and certain BRS spectrum, where available.[67]

27. Should the Commission continue to consider spectrum based on its suitability and availability for a given product market? Are there other factors that the Commission should consider in determining whether particular spectrum bands are suitable and available for the relevant product market? The Commission seeks comment on any measures that might increase the transparency with which it determines what spectrum it would include in a case-by-case spectrum analysis or in implementing bright-line limits. For example, should the Commission adopt a regular process to add or remove existing or newly allocated spectrum bands for purposes of assessing spectrum concentration? The Commission also seeks comment on the costs and benefits of implementing a new process for identifying the spectrum to include in a case-by-case spectrum analysis. The Commission seeks comment on the legal, economic, and engineering justifications to support the existing or any modified criteria for determining the suitability and availability of spectrum.

28. While mobile wireless operators primarily have used licenses associated with three different frequency bands to provide mobile voice and, in most cases, mobile data services—cellular (in the 850 MHz band), SMR (in the 800/900 MHz band), and broadband PCS (in the 1.9 GHz band)—providers are now incorporating additional spectrum bands into their networks, such as BRS and EBS in the 2.5 GHz band, AWS in the 1.7/2.1 GHz band, and the 700 MHz band. These bands enable the provision of additional competitive mobile voice and data services.[68] In several recent transactions, some parties have suggested modifying the Commission's spectrum analysis to include additional spectrum bands, such as the BRS spectrum that is not currently included in the screen, EBS, or MSS.[69] Others also have argued in favor of including WCS spectrum, citing certain changes the Commission made to the WCS technical service rules that enable licensees to provide mobile broadband service in a portion of the WCS band.[70] Aside from general factors the Commission should consider in determining whether spectrum is suitable and available, the Commission also seeks comment on the application of these factors to particular spectrum bands. Which spectrum bands should be included in the Commission's spectrum analysis? In particular, at what point should television broadcast spectrum that is repurposed in the incentive auction be included in the analysis?[71] Commenters also should discuss at what point other spectrum bands, such as WCS and the frequencies the Commission is required to auction under the *Spectrum Act,*[72] should be included in the analysis. Are there any band-specific factors the Commission may want to consider in determining suitability and availability of a particular band? Further, the Commission seeks comment on whether there are any economic or technical justifications that would warrant modifying the criteria used to determine the suitability and availability of spectrum. For example, should the Commission consider factors such as channel size, potential interference issues, or conditions that may develop after the allocation and licensing of spectrum (such as technological developments that affect the timely deployment of services)? If the Commission were to modify the criteria it uses to determine the suitability and availability of spectrum, how could it do so in a manner that promotes clarity and predictability?[73]

29. Further, the Commission seeks comment on whether it should remove any spectrum bands from its consideration. For instance, the Commission recently indicated that, as the provision of mobile broadband services becomes increasingly central to wireless transactions, it may be appropriate to reduce the amount of suitable SMR spectrum from 26.5 megahertz to 14 megahertz to reflect the portion of SMR spectrum through which mobile broadband service can be provided.[74] The Commission seeks comment on how much SMR spectrum is suitable and available in the near term for mobile broadband services.[75] The Commission notes that the Upper 700 MHz D Block is to be reallocated for public safety service rather than commercial service. The Commission seeks comment, however, on whether and how, pursuant to Section 6101 of the *Spectrum Act,*[76] this spectrum and the existing public safety broadband spectrum may be relevant to its spectrum analysis in the event such spectrum is leased to a commercial licensee pursuant to this section of the *Spectrum Act.*[77] The Commission seeks comment on these considerations, and whether there are any additional spectrum bands that should be reduced or removed from its analysis.

3. Relevant Geographic Market Area

30. Defining the relevant geographic market is important in accurately assessing the competitive effects that may result from a potential transaction. This can be a difficult process in some instances, as the licensed areas of different spectrum bands, and even within the same band, may not be the same. Under the case-by-case analysis, the Commission has found that relevant geographic markets are local, larger than

[64] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 59; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17605–06 para. 38; *AT&T-Centennial Order,* 24 FCC Rcd at 13935 para. 43.

[65] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17605–06 para. 38; *AT&T-Centennial Order,* 24 FCC Rcd at 13935 para. 43; *Verizon Wireless-ALLTEL Order,* 23 FCC Rcd at 17473 para. 53.

[66] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17606 para.38.

[67] *See, e.g., Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 59; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17605–06 para. 39; *AT&T-Centennial Order,* 24 FCC Rcd at 13935 para. 43.

[68] *See Fifteenth Mobile Wireless Competition Report,* 26 FCC Rcd at 9822–23 para. 269.

[69] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17606–07 para. 40; AT&T-Qualcomm Application, Public Interest Statement, WT Docket No. 11–18, at 22–27.

[70] *See, e.g.,* RCA Petition To Deny, WT Docket No. 11–18, at 10–11. *See also* Amendment of Part 27 of the Commission's Rules To Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, *Report and Order*, 25 FCC Rcd 11710, 11711 para. 1 (2010) (*WCS Report and Order*), *recon. pending.*

[71] *See* Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12–268, *Notice of Proposed Rulemaking,* FCC 12–118 (adopted Sept.28, 2012).

[72] *See* Spectrum Act at Section 6401 (identifying the following bands 1915–1920 MHz, 1995–2000 MHz, and 2155–2180 MHz).

[73] We also seek comment below on whether such factors should be reflected in any valuation approach. *See infra* at para. 38.

[74] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17607 para. 42.

[75] *See* Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-Based 800 MHz Specialized Mobile Radio Licensees, WT Docket No. 12–64, *Report and Order,* 27 FCC Rcd 6489 (2012).

[76] *See Spectrum Act* at Section 6101.

[77] *See Spectrum Act* at Section 6101.

counties, may encompass multiple counties, and, depending on the consumer's location, may even include parts of more than one state.[78] The Commission has primarily used Cellular Market Areas (CMAs)[79] as the local geographic markets in which to analyze the potential competitive harms arising from spectrum concentration as a result of the transaction.[80]

31. In the recent *Verizon Wireless-SpectrumCo Order,* the Commission found that it was appropriate to analyze the local markets in which consumers purchase mobile wireless services where they live, work, and shop.[81] The Commission also considered the potential nationwide competitive impacts of the transaction because the proposed acquisition would be in the majority of markets across the country and harms that may occur at the local level collectively could have nationwide competitive effects.[82] The Commission noted that although there are local geographic markets for retail wireless services, prices and service plan offerings do not vary for most providers across most geographic markets.[83] Moreover, the four nationwide providers, as well as other providers of retail mobile telephony/broadband services, set the same rates for a given plan everywhere and advertise nationally.[84] Also, mobile broadband equipment and devices are developed and deployed primarily on a national scale.[85]

32. In light of the above, the Commission seeks comment on the appropriate geographic market definition to use when evaluating a licensee's mobile spectrum holdings. If the Commission were to adopt bright-line limits or continue to use a case-by case analysis, what should be the applicable geographic market? Should the Commission adopt a two-tiered approach under which there is a spectrum threshold at the local level and a separate threshold that applies on a nationwide basis?[86] Is there another approach that would allow the Commission to consider both local and national competitive effects in establishing a spectrum threshold for bright-line limits or case-by-case analysis? Commenters should discuss any other issues with respect to geographic market definition that might be relevant to adopting a bright-line limit, case-by-case analysis, or any other approach that would promote competition and prevent excessive concentration of spectrum in any given area.

4. Applicable Spectrum Threshold

33. As part of the current case-by-case review process, the Commission examines the amount of spectrum suitable and available on a market-by-market basis for the provision of mobile telephony/broadband service. The Commission uses a spectrum screen, which is approximately one-third of the total spectrum suitable and available for mobile telephony/broadband services, to help identify markets where the acquisition of spectrum provides particular reason for further competitive analysis. The Commission conducts the further competitive analysis to determine whether the transaction would result in an increased likelihood or ability in those markets for the combined entity to behave in an anticompetitive manner.[87]

34. The spectrum threshold can affect the number of competitors in a geographic market. The one-third threshold currently used in the Commission's case-by-case review envisions at least three competitors having access to approximately the same amount of suitable spectrum for providing mobile wireless broadband service. Whether the Commission uses the threshold in a case-by-case review or as a bright-line limit, is one-third the appropriate threshold level, or should the threshold be higher in rural areas? Given that the licensed geographic areas of different spectrum bands, and even within the same band, may not be the same, commenters should address any issue that may arise in calculating mobile spectrum holdings at the local level. Finally, for transactions that involve a large geographic area with national characteristics, the Commission seeks comment on how to calculate mobile spectrum holdings at the national level.[88] For example, should the Commission use an approach similar to the one used in *AT&T-Qualcomm,* in which the Commission calculated providers' spectrum holdings on a ''MHz*POPs'' basis?[89] Would it be better to use population-weighted average megahertz, which the Commission reported in the *Verizon Wireless-SpectrumCo Order,*[90] and/or a nationwide-weighted average market share? Are there are other methods to compute spectrum holdings at the national level?

5. Making Distinctions Among Bands

35. The Commission also seeks comment on whether it should adopt an approach to evaluating a licensee's mobile spectrum holdings that accounts for differing characteristics of spectrum bands. The Commission has recognized that spectrum resources in different frequency bands can have disparate technical characteristics that affect how the bands can be used to deliver mobile services.[91] In particular, the Commission has noted that the more favorable propagation characteristics of lower frequency spectrum, *i.e.,* spectrum below 1 GHz, allow for better

[78] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17604 para. 34; *Cingular-AT&T Wireless Order,* 19 FCC Rcd at 21562–63 paras. 89–90; 21561 para. 82 (citing the Supreme Court's definition of a relevant geographic market in *Tampa Electric Co.* v. *Nashville Coal Co.,* 365 U.S. 320, 327 (1961) as ''the area of effective competition to which purchasers can practicably turn for services''). The Commission based its findings on the ''hypothetical monopolist test.'' Under the DOJ/FTC Horizontal Merger Guidelines, the hypothetical monopolist test ensures that markets are not defined too narrowly, but it does not lead to a single relevant market. The Guidelines also provide that ''the Agencies may evaluate a merger in any relevant market satisfying the test, guided by the overarching principle that the purpose of defining the market and measuring market shares is to illuminate the evaluation of competitive effects.'' *See* DOJ/FTC Horizontal Merger Guidelines Section 4.1.1.

[79] CMAs are standard geographic areas used for the licensing of cellular systems and are comprised of Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). *See* 47 CFR 22.909; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17603 para. 32 n.96.

[80] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17604 para. 34.

[81] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 58.

[82] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 58; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17603–05 paras. 32, 34.

[83] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17604 para. 35.

[84] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 57; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17604 para. 35.

[85] *See Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 57; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17605 para. 35.

[86] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17603 para. 32 (finding that it was appropriate to analyze competitive effects on both a national and local level).

[87] *See* Section III.A.1, *supra.*

[88] *See also* the discussion regarding evaluating competitive effects at the national level in Section III.B.3, *supra.*

[89] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17608 para. 45. The Commission noted that it calculated MHz*POPs by multiplying the megahertz of spectrum held in an area by the population in that area. *See id.* n.128.

[90] *Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 77. Population-weighted average megahertz is calculated by adding the provider's MHz*POPs and dividing by the U.S. population. *See Fifteenth Mobile Wireless Competition Report,* 26 FCC Rcd at 9830 para. 288, 9831, Table 28.

[91] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17609–11 para. 49. *See also Fifteenth Mobile Wireless Competition Report,* 26 FCC Rcd at 9832–37 paras. 289–97. In its consideration of mobile wireless competition issues, the DOJ has noted the differences between the use of lower and higher frequency bands. *See, e.g., United States of America et al.* v. *Verizon Communications Inc. and ALLTEL Corporation,* Competitive Impact Statement, Case No. 08–cv–1878, at 5–6 (filed Oct. 30, 2008), available at *http://www.justice.gov/atr/cases/f238900/238947.pdf* (last visited Sept. 6, 2012).

coverage across larger geographic areas and inside buildings,[92] while higher frequency spectrum may be well-suited for providing capacity, such as in high-traffic urban areas.[93] Because the properties of lower and higher frequency spectrum are complementary, the Commission has recognized that both types of spectrum may be helpful for the development of an effective nationwide competitor that can address both coverage and capacity needs.[94] The Commission also has noted that there currently is significantly more spectrum above 1 GHz potentially available for mobile broadband services than spectrum below 1 GHz.[95] The Commission seeks comment on whether its policies regarding mobile spectrum holdings should include separate consideration of spectrum in different frequency bands, e.g., below or above 1 GHz. Would a separate spectrum threshold limit for spectrum holdings below 1 GHz, as some countries have adopted, advance the goals of promoting wireless competition, innovation, investments and broadband deployment in rural areas?[96]

36. If the Commission were to adopt differential treatment for different spectrum bands, what mechanism should the Commission use to evaluate the aggregation of below 1 GHz spectrum? Should the Commission add a threshold limit for below 1 GHz spectrum as part of its current case-by-case review? For example, the Commission could establish a trigger under which an entity that would hold, post-transaction, more than one third of the relevant spectrum below 1 GHz in a geographic market would be subject to a more detailed competitive review in that market. Or, alternatively, the Commission could establish bright-line limits for spectrum holdings below 1 GHz. If so, what should those limits be? Should the Commission consider adopting limits on the amount of below 1 GHz spectrum that entities could acquire in the context of spectrum auctions? The Commission also could adopt a hybrid approach, for instance, in which it establishes a bright-line limit for below 1 GHz spectrum and conduct a case-by-case analysis of total mobile spectrum holdings. Under such an approach, no licensees could aggregate more than the specified percentage of spectrum below 1 GHz in the market, but the Commission would conduct a case-by-case review on total mobile spectrum holdings, with a particular focus on markets where an applicant's post-transaction spectrum holdings would exceed a spectrum screen threshold. What are the costs and benefits of these various approaches? Is 1 GHz an appropriate demarcation line for a separate competitive analysis and associated threshold? Consistent with the Commission's intention regarding the applicability of any revised policies for overall spectrum holdings,[97] the Commission would not anticipate revisiting licensees' current spectrum holdings under any revised policy for below 1 GHz spectrum, but instead would grandfather those holdings.

37. Are there other ways the Commission should distinguish among spectrum bands, such as taking into account the value of spectrum held by each licensee rather than the amount of spectrum held, as some parties have proposed?[98] For example, Sprint Nextel has proposed that an analysis of the book values of spectrum holdings as reflected in providers' SEC filings would be helpful in the Commission's analysis.[99] To address what it contends is a growing ''spectrum gap'' between the largest spectrum providers and other competing providers, Public Knowledge suggested, among other things, that spectrum be weighted by its suitability for mobile data use and, further, that spectrum held by providers with substantial existing spectrum holdings or spectrum that has not yet been built out be weighted more heavily.[100] Free Press similarly argued that the Commission should use ''inputs that determine value'' and suggested that these inputs should primarily be ''wavelength, contiguous block size, block pairing, market density and demographics, and interference issues.''[101] T-Mobile has asked the Commission to recognize the difference in value of spectrum above and below 1 GHz by assigning different value weights to each of the spectrum bands.[102] The value weights would be derived from analysts' reports, which in turn are based on prices paid at auction and publicly available information about spectrum transactions.[103] T-Mobile proposed the following specific value weights: cellular, 1.7; 700 MHz, 1.5; SMR, 1.5; AWS/PCS, .75; and BRS, .2.[104] AT&T argued that the Commission should not adopt such an approach for several reasons, including because the Commission already considers propagation and other physical characteristics in determining whether to count spectrum in the case-by case analysis, the marketplace already accounts for cost differences between different spectrum bands, and there are many factors other than propagation characteristics that determine the relative value of spectrum.[105] The Commission seeks comment on these suggested approaches.

38. If the Commission were to assign value to spectrum for purposes of its policy on mobile spectrum holdings,

[92] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17609–11 para. 49. *See also, e.g.,* Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Second Report and Order,* 22 FCC Rcd 15289, 15349 para. 158, 15354–55 para. 176, 15400–401 para. 304 (2007); Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04–186, *Second Report and Order and Memorandum Opinion and Order,* 23 FCC Rcd 16807, 16820–21 para. 32 (2008); Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04–186, *Second Memorandum Opinion and Order,* 25 FCC Rcd 18661, 18662 para. 1 (2010).

[93] *See Fifteenth Mobile Wireless Competition Report,* 26 FCC Rcd at 9832 para. 289, 9836 para. 296; *see also AT&T-Qualcomm Order,* 26 FCC Rcd at 17609–11 para. 49.

[94] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17609–11 para. 49, n.140; *Fifteenth Mobile Wireless Competition Report,* 26 FCC Rcd at 9837 para. 297.

[95] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17611 para. 49; *Fifteenth Mobile Wireless Competition Report,* 26 FCC Rcd at 9836 para. 296.

[96] Some countries conducting or planning auctions of spectrum reclaimed as part of the transition from analog to digital television have adopted various measures that recognize the differences between lower-frequency and higher-frequency spectrum in the context of spectrum aggregation limits. *See, e.g.,* Federal Network Agency, Decisions of the President's Chamber of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway of 12 October 2009 on Combining the Award of Spectrum in the Bands 790 to 862 MHz, 1710 to 1725 MHz and 1805 to 1820 MHz with Proceedings to Award Spectrum in the Bands 1.8 GHz, 2 GHz and 2.6 GHz for Wireless Access for the Provision of Telecommunications Services, at 6 (2009), available at *http://www.bundesnetzagentur.de/cae/servlet/contentblob/138364/publicationFile/3682/DecisionPresidentChamberTenor_ID17495pdf.pdf* (adopting limits on sub-1 GHz spectrum in Germany's 4G auction) (last visited Sept. 6, 2012); Office of Communications (Ofcom), *Statement on Assessment of Future Mobile Competition and Award of 800 MHz and 2.6 GHz,* at Executive Summary, page 3, (2012), available at *http://stakeholders.ofcom.org.uk/binaries/consultations/award-800mhz/statement/Statement-summary.pdf* (adopting limits on sub-1 GHz spectrum in United Kingdom's upcoming 4G auction) (last visited Sept. 6, 2012).

[97] *See infra* at para 49.

[98] *See* Free Press Reply To Opposition, WT Docket No. 12–4, at 23; Free Press Petition to Deny, WT Docket No. 12–4, at 12; Public Knowledge *et al.* Petition to Deny, WT Docket No. 12–4, at 47; RCA Petition to Condition or Deny, WT Docket No. 12–4, at 52; T-Mobile Comments, WT Docket No. 11–186, at 6–7.

[99] *See* Sprint Nextel Comments, WT Docket No. 12–4, at 18 n. 45.

[100] *See* Letter from Harold Feld, Legal Director, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12–4 (Apr. 30, 2012) at 3.

[101] *See* Free Press Petition to Deny, WT Docket No. 12–4, at 16.

[102] *See* T-Mobile Comments, WT Docket No. 11–186, at 6–8.

[103] *See* T-Mobile Comments, WT Docket No. 11–186, at 7.

[104] *See* T-Mobile Comments, WT Docket No. 11–186, at 7.

[105] *See* AT&T Supplemental Reply Comments, WT Docket No. 11–186, at 6–13.

what variables should it consider? The Commission recognizes, for example, that license values tend to vary with geographic location.[106] Moreover, in recent auctions, licenses in densely populated markets generally were sold at higher winning bids than those in less populated areas.[107] The value of a license can also depend on its location within the spectrum band.[108] For instance, spectrum blocks at the edge of a band can be less valuable due to the increased risk of interference to and from operations on neighboring bands.[109] Should the Commission take these factors into account in assigning value to licenses? Should the Commission consider changes in the value of spectrum as technology evolves? [110] As a practical matter, how should the Commission quantify differences in value? How would the Commission use spectrum valuation in applying bright-line limits, as opposed to a case-by-case analysis? What are the costs and benefits of attaching a value to spectrum?

39. The Commission seeks comment on other methods or considerations that might be relevant in reviewing its policies regarding mobile spectrum holdings. In its current case-by-case approach, the Commission considers factors such as the number of rival service providers, firms' network coverage, rival firms' and the licensee's market shares, the applicant's post-transaction spectrum holdings, and the spectrum holdings of each of the rival service providers.[111] Should the Commission modify the factors it considers or include other marketplace conditions that may affect competition? For example, in order to be considered a meaningful competitor for purposes of a market-by-market analysis, should a licensee have a particular weighted average market share or hold a particular amount of spectrum in the geographic market at issue? The Commission also seeks comment on how to take into account special circumstances, such as how efficiently the licensee is using its existing spectrum resources and whether it has alternatives to meet its competitive needs aside from acquiring more spectrum. Would imposing some level of spectral efficiency and/or a spectrum utilization requirement, perhaps coupled with a higher level bright-line limit or a higher case-by-case spectrum threshold, help prevent spectrum warehousing and encourage more efficient spectrum use? Some parties have suggested that as part of a case-by-case analysis, the Commission should calculate the spectrum HHI, or the increase in concentration of spectrum shares post-transaction.[112] What would be the benefits and costs of such measures?

## 6. Attribution Rules

40. No matter which approach the Commission decides to take, it needs attribution rules to determine which of a licensee's spectrum interests counts toward that licensee's total mobile spectrum holdings. Under the spectrum cap, the Commission's attribution rules were designed to protect competition in the wireless services marketplace by making certain equity and non-equity interests attributable. Some non-equity interests in spectrum, as well as equity interests in spectrum that are less than controlling, can potentially confer the ability to significantly influence wireless service offerings and prices to one or a few parties, and the Commission seeks to make these interests cognizable under its attribution rules.[113]

41. Over time, while the Commission's policies regarding mobile spectrum holdings have changed, its attribution rules consistently have focused on a licensee's controlling interests, as well as non-controlling and other interests above a certain percentage threshold or that result in *de facto* influence or control. Today, when reviewing transactions on a case-by-case basis, the Commission generally considers all equity ownership interests of ten percent or more to be attributable to those interest holders, but it has the flexibility to examine equity and non-equity ownership and other interests that do not meet the ten percent equity interest threshold, as the Commission deems those interests relevant.[114] In the past, the Commission had attribution rules for counting controlling and some non-controlling interests toward the CMRS spectrum cap that were generally consistent with current practice.[115] Under those rules, the Commission attributed to a licensee's total spectrum holdings both controlling interests and a number of non-controlling interests, including in most cases equity interests of twenty percent or more.[116] For

[106] *See* Kimberly M. Randolph, *Spectrum Licenses: Valuation Intricacies,* available at *http://www.srr.com/article/spectrum-licenses-valuation-intricacies* (last visited Sept. 6, 2012).

[107] For example, in the 700 MHz band auction (Auction No. 73), the winning bid for the lower 700 MHz B-Block license in New York City ($4.57 per MHz*POP, or $884 million) was much higher, both in dollars per MHz per person and in total dollars, than the winning bid for the lower 700 MHz B Block license in Binghamton, NY ($.04 per MHz*POP, or $186,000). *See* more information about the 700 MHz band auction, available at *http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73* (last visited on Sept. 6, 2012).

[108] *See* Kimberly M. Randolph, *Spectrum Licenses: Valuation Intricacies,* available at *http://www.srr.com/article/spectrum-licenses-valuation-intricacies* (last visited Sept. 6, 2012).

[109] For example, the average auction price for A-Block licenses was much lower than the average price for B-Block licenses in the lower 700 MHz band. *See* Auction 73 results, available at *http://wireless.fcc.gov/auctions/default.htm?job=releases_auction&id=73&page=P* (last visited Sept. 6, 2012). *See also* ITU Broadband Series, *Exploring the Value and Economic Valuation of Spectrum,* April 2012, page 1, available at *http://www.itu.int/ITU-D/treg/broadband/ITU-BB-Reports_SpectrumValue.pdf* (last visited Sept. 6, 2012).

[110] Spectrum values can be affected by technologies adopted by licensees. For example, spectrum aggregation technologies might affect spectrum value. *See* Mohammed Alotaibi, and Marvin A. Sirbu, Spectrum Aggregation Technology: Benefit-Cost Analysis and its Impact on Spectrum Value, at 12–13, 39th Research Conference on Communication, Information, and Internet Policy, 2011, available at *http://papers.ssrn.com/so13/papers.cfm?abstract_id=1985738* (last visited Sept. 6, 2012). Similarly, for those service providers that hold spectrum in high frequency bands, Wi-Fi off-load may mitigate the disadvantage of inferior indoor coverage. *See* J.P. Morgan, *The Economics of Wireless Data—Part 3,* at 50, March 26, 2012, available at *https://mm.jpmorgan.com/stp/t/c.do?i=83100–F7&u=a_p*d_814984.pdf*h_-177n7l2* (last visited Sept. 6, 2012).

[111] *See, e.g., AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8732 para. 63; *Verizon Wireless-ALLTEL Order,* 23 FCC Rcd at 17487–88 para. 91.

[112] For example, U.S. Cellular has argued that the Commission should apply HHI measurements to ''greenfield'' spectrum acquired at auction. *See* U.S. Cellular (USCC) Comments, RM No. 11498, at 8; USCC Reply Comments (RM No. 11498) at 2; *see also* Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12–4 (March 27, 2012) at 4; Sprint Nextel Comments, WT Docket No. 12–4, at 19–20; Free Press Reply to Opposition, WT Docket No. 12–4, at 24.

[113] *See, e.g.,* Implementation of Sections 3(n) and 332, Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Fourth Report and Order,* 9 FCC Rcd 7123, 7124 paras. 5–6 (1994).

[114] *See, e.g.,* Sprint Nextel Corporation and Clearwire Corporation Applications for Consent To Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08–94, *Memorandum Opinion and Order,* 23 FCC Rcd 17570, 17601–02 para. 78 (2008) (*Sprint Nextel-Clearwire Order*) (declining to attribute interests below ten percent). *See also AT&T-Centennial Order,* 24 FCC Rcd at 13917 para. 7, 13946–47 paras. 71–74.

[115] *See* 47 CFR 20.6(d)(1)-(10). The relevant rules governing divestiture of interests are in subsection (e) of the same rule. *See* 47 CFR 20.6(e). Section 20.6 ceased to be effective on January 1, 2003. *See* 47 CFR 20.6(f). *See also* 47 CFR 1.2110 (attribution rules for competitive bidding purposes).

[116] These non-controlling interests included partnership and other ownership interests; interests of investment companies, insurance companies, and banks holding stock through their trust departments; non-voting stock interests; debt interests and instruments such as warrants, convertible debentures, and options; limited partnership interests; officers and directors; ownership interests held indirectly through an intervening corporation; managing interests; and

purposes of its cellular cross-interest rule described above, the Commission generally included as attributable interests, in addition to any controlling interest, partnership and other ownership interests of twenty percent or more.[117]

42. In light of these past and present approaches, the Commission seeks comment on whether and how the attribution rules that are used to implement its policies regarding mobile spectrum holdings should be amended if it decides to continue the existing case-by-case review of transactions or in the event that it alters its transaction review mechanism. Regardless of which approach taken, what interests should be attributable for purposes of reviewing mobile spectrum holdings? The attached draft rules generally follow the attribution standards the Commission currently applies,[118] but the Commission seeks comment on whether it should make any changes in those standards. For instance, the Commission seeks comment on what level of non-controlling interest should be attributable, and whether that level should be different whether it adopts a case-by-case approach or a bright-line limit. The Commission seeks comment on the types of interests that should be of primary importance when it reviews proposed transactions, and whether and how the importance of any attributable interests may have changed over time. Should the Commission define as attributable any interests that have not been attributed in the past or exclude any non-controlling interests that have been attributed in the past? If the Commission makes any changes to its spectrum holdings review process, how, if at all, should the Commission attribute leased mobile spectrum holdings? Finally, the Commission notes that the draft attribution rules include a waiver provision. The Commission seeks comment on this provision.

7. Remedies

43. In considering applications for initial licenses and applications for the assignment or transfer of control of licenses, including spectrum leasing, the Commission must determine whether the applicants have demonstrated that the application will serve the public interest, convenience, and necessity.[119] The Commission reviews the competitive effects of a transaction under the broad public interest standard,[120] and may impose remedies, such as requiring divestitures of certain licenses, to address potential harms likely to result from a transaction or to help ensure the realization of potential benefits promised for the transaction.[121]

44. The Commission seeks comment on what remedies, including divestitures, would be appropriate for it to require in order to prevent competitive harm. The Commission seeks comment on the value of divestures as a remedy to redress particular competitive harms, and whether different approaches or types of divestures would best serve the Commission's goals, including providing clarity and certainty to parties while promoting competition. If granting a license application or an assignment or transfer of control of licenses to a licensee would result in competitive harm, should that licensee be required to divest spectrum only in markets where it would exceed the spectrum aggregation threshold, or should it be required to divest more broadly across its licensed markets, and under what, if any, conditions? The Commission notes that there are a number of approaches to divestitures, including a clustered approach that would require divestitures of population centers to allow a prospective purchaser to offer a viable service and to minimize or prevent piecemeal divestiture.[122] Other approaches could include full business unit divestures, spectrum-only divestures, divestitures with a ''right of first refusal'' to a particular set of licensees, particular limits on parties that have licenses divested to them (such as requiring divestiture to rural or midsize carriers that may be in a position to offer roaming),[123] or divestiture of spectrum by sale on the secondary market. The Commission seeks comment on these or other approaches, including remedies that could provide greater predictability to allow the industry to better make needed investment decisions. The Commission also seeks comment on measures it can adopt to facilitate spectrum being divested expeditiously to licensees that will put it to use quickly and efficiently.[124] If the Commission decides to permit divestiture of spectrum by sale on the secondary market, what conditions, limits, or other rules should apply?

45. Many licensees hold spectrum in multiple frequency bands with different propagation or other characteristics, and some spectrum holdings may be more valuable than others. Some parties have proposed that the Commission should adopt different criteria for divestiture based on whether the spectrum to be divested is from lower or upper frequency bands[125] or is immediately ''useable'' by another licensee, perhaps for a particular technology.[126] The Commission seeks comment on these proposals and any other factors it should consider when determining which and how much spectrum should be divested to prevent competitive harms. The Commission also seeks comment on any other approach to spectrum divestiture that would meet its goals of promoting competition yet make its policies regarding mobile spectrum holdings more clear, transparent, and predictable.

46. As an alternative or supplement to divestiture, the Commission has also placed conditions on transactions to remedy certain aspects that may be contrary to the public interest, convenience, and necessity, including any potential anti-competitive effects of the transaction. For example, in the *Verizon Wireless-ALLTEL Order,* in addition to requiring divestiture, the Commission conditioned its approval on Verizon Wireless's commitments regarding roaming availability and rates, a phase down of competitive ETC high cost support, and using counties for measuring compliance with the Commission's E911 location accuracy rules governing handset-based technologies.[127] In the *AT&T-*

parties with joint marketing arrangements. *See* 47 CFR 20.6(d)(1)–(10). Section 20.6 ceased to be effective on January 1, 2003. *See* 47 CFR 20.6(f). *See also* 47 CFR 1.2110 (attribution rules for competitive bidding purposes).

[117] *See* 47 CFR 22.942 (repealed 2004), available at *http://www.gpo.gov/fdsys/pkg/CFR-2002-title47-vol2/pdf/CFR-2002-title47-vol2-sec22-942.pdf* (last visited Sept. 6, 2012).

[118] *See* Appendix A: Proposed Rules.

[119] 47 U.S.C. 310(d).

[120] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17599–600 para. 25.

[121] *See, e.g., AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8718 para. 25; *AT&T-Centennial Order,* 24 FCC Rcd at 13929 para. 30; *Verizon Wireless-ALLTEL Order,* 23 FCC Rcd at 17463 para. 29; *Sprint Nextel-Clearwire Order,* 23 FCC Rcd at 17582 para. 22; *Cingular-AT&T Wireless Order,* 19 FCC Rcd at 21546 para. 43.

[122] *See Verizon Wireless-ALLTEL Order,* 23 FCC Rcd at 17517 para. 160.

[123] *See id.*

[124] *Verizon Wireless-SpectrumCo Order,* FCC 12–95, Statement of Commissioner Ajit Pai, approving in part and concurring in part, at 1, available at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0823/FCC-12-95A6.pdf* (last visited Sept. 6, 2012).

[125] *See* Letter from Carl W. Northrop, Counsel for MetroPCS, to Marlene Dortch, Secretary, FCC, WT Docket No. 12–4, (Apr. 26, 2012) at 3; *see also* RCA Reply to Opposition to Petition to Condition or Otherwise Deny Transactions, WT Docket No. 12–4, at 35.

[126] *See, e.g.,* RCA Reply Comments, WT Docket No. 12–4, at 35; RCA Petition To Condition or Deny, WT Docket No. 12–4, at 55.

[127] *See Verizon Wireless-ALLTEL Order,* 23 FCC Rcd at 17546–47 para. 233.

*Qualcomm Order,* as another example, the Commission required AT&T to make roaming commitments and imposed additional conditions designed to protect against interference with competitors using neighboring 700 MHz spectrum.[128] In the *Verizon Wireless-SpectrumCo Order,* the Commission required Verizon Wireless to make roaming commitments and imposed accelerated buildout requirements on the AWS–1 spectrum Verizon Wireless acquired.[129] The Commission seeks comment on the extent to which it should remedy the potential harms posed by a transaction by placing other conditions, such as, for example, requirements to offer leasing, roaming or collocation, in conjunction with, or in lieu of, requiring divestitures. Would application of such remedies be appropriate if the Commission adopts bright-line limits? How can the Commission provide clarity and guidance on such remedies and the circumstances under which such remedies may be appropriate?

47. The Commission also seeks comment on whether there are other remedial approaches it could require and how it might apply them. Commenters should discuss and, to the extent possible, quantify any associated costs or benefits of implementing any remedial approaches or any other proposals. Commenters should address the particular benefits associated with these remedies, and the cost savings, if any, that may be available from requiring certain conditioned spectrum access.

48. With regard to spectrum acquired through competitive bidding, the Commission prospectively applies a competitive analysis of spectrum to be acquired through auctions in order to determine whether granting a winning bidder's license application is in the public interest and whether requiring divestiture prior to granting such application is necessary to protect the public interest.[130] The Commission seeks comment on what changes and clarifications might be needed in using divestiture as a remedy to cure competitive harm resulting from spectrum acquired in an auction in the context of a case-by case analysis. Are there any differences or additional considerations among remedies that are applicable to spectrum acquired through auctions and those applicable to licenses acquired through secondary market transactions? What else should the Commission take into account when determining and applying remedies in the event it adopts bright-line limits that apply in an auction?

8. Transition Issues

49. If the Commission were to change its current case-by-case approach or adopt new rules or policies, the Commission seeks comment on transition issues to consider as new rules or policies are implemented. For example, the Commission would not anticipate revisiting licensees' current spectrum holdings under any revised policy, but instead it would anticipate grandfathering those holdings. The Commission seeks comment on that issue, as well as on any other transition issues that may arise in implementing the new rules or policies.

## IV. Procedural Matters

### *A. Initial Regulatory Flexibility Analysis*

50. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact of the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM) on a substantial number of small entities. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments as listed on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

51. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on a substantial number of small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of the NPRM, including spectrum in the 746–806 MHz Band.

1. Need for, and Objectives of, the Proposed Rules

52. With this NPRM, the Commission initiates a review of its policies governing mobile spectrum holdings in order to ensure that they fulfill its statutory objectives given changes in technology, spectrum availability, and the marketplace since the Commission's last comprehensive review. Specifically, the Commission seeks comment on retaining or modifying the current case-by-case analysis used to evaluate mobile spectrum holdings in the context of transactions and auctions, as well as on bright-line limits advocated by some providers and public interest groups. In addition, the Commission seeks comment on updating the spectrum bands that should be included in any evaluation of mobile spectrum holdings, and whether the Commission should make distinctions between different bands. The Commission also takes a fresh look at the relevant product market, geographic market, and other implementation issues such as attribution rules, remedies, and transition issues. The Commission initiates this proceeding to provide rules of the road that are clear and predictable, and that promote the competition needed to ensure a vibrant, world-leading, innovation-based mobile economy.

53. In its examination of the current case-by-case analysis used to evaluate mobile spectrum holdings, the Commission seeks comment on the costs and benefits of a case-by-case analysis to consumers, wireless service providers and others, as well as the overall effectiveness of such an approach in achieving its public policy objectives. The Commission also seeks comment on the specific costs and benefits of applying a case-by-case approach to initial licenses acquired through competitive bidding. In this regard, the Commission seeks comment on whether a case-by-case analysis affords auction participants sufficient certainty to determine whether they would be allowed to hold a given license post-auction and on whether the lack of a bright-line spectrum limit deters participation or provides an opportunity for bidding, regardless of whether bidders believe they ultimately would be allowed to hold the licenses, in order to raise bidding costs or foreclose other competitors from acquiring certain licenses. Further, the Commission requests comment on whether there are additional measures the Commission would need to adopt to promote an effective and efficient auction process while discouraging the potential for anticompetitive behavior, such as including band-specific limits adopted prior to an auction.

54. In addition, the Commission seeks comment on whether the adoption of bright-line limits would serve the public interest now, and on the specific costs

[128] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17613–14 paras. 56–57, 17616–18 paras. 61–68.

[129] *Verizon Wireless-SpectrumCo Order,* FCC 12–95, at para. 121.

[130] *Verizon Wireless-Union Tel. Order,* 23 FCC Rcd at 16791 para. 9.

and benefits of adopting bright-line limits. The Commission also seeks comment on related implementation issues with respect to applying bright-line limits to both initial licenses acquired through competitive bidding as well as to licenses acquired through the secondary market. The Commission further requests comment on whether it should consider applying a band-specific spectrum limit in the context of any band-specific service rules that it adopts prior to an auction. Are there any alternative approaches to evaluate the competitive effect of spectrum aggregation, such as adopting a case-by-case analysis that does not include an initial spectrum screen? The Commission seeks comment on these approaches and how they could be implemented, and on any other alternatives.

55. If the Commission were to adopt any new or modified approach to reviewing mobile spectrum holdings, certain threshold issues would need to be considered, including initial definitions of the relevant product and geographic markets, deciding the relevant spectrum bands and their treatment, as well as attribution rules and potential remedies. Toward that end, the Commission seeks comment on whether the relevant product market has changed and, if so, whether these changes warrant any modifications to the Commission's product market definition. The Commission also seeks comment on how it should determine what spectrum to include in its overall evaluation. The Commission requests comment on any measures that might increase the transparency with which it determine what spectrum it would include in a case-by-case spectrum analysis or in implementing bright-line limits. The Commission further seek comment on the costs and benefits of implementing a new process for identifying the spectrum to include in a case-by-case spectrum analysis. Finally, what are the legal, economic, and engineering justifications to support the existing or any modified criteria for determining suitability and availability of spectrum?

56. Aside from general factors the Commission should consider in determining whether spectrum is suitable and available, the Commission also seeks comment on the application of these factors to particular spectrum bands. Specifically, the Commission seeks comment on which spectrum bands should be included, reduced, or removed from consideration in its spectrum analysis and whether there are any band-specific factors the Commission should consider in determining suitability and availability of a particular band.

57. The Commission also seeks comment on the appropriate geographic market definition to use when evaluating a licensee's mobile spectrum holdings, including any other issues with respect to geographic market definition that might be relevant to adopting a bright-line limit, case-by-case analysis, or any other approach that would promote competition and prevent excessive concentration of spectrum in any given area. Should the Commission adopt a two-tiered approach under which there is a spectrum threshold at the local level and a separate threshold that applies on a nationwide basis? In addition, the Commission seeks comment on the appropriate spectrum threshold to be used in evaluating mobile spectrum holdings, including whether the threshold should be higher in rural areas. For transactions that involve a large geographic area with national characteristics, the Commission also seeks comment on how to calculate mobile spectrum holdings at the national level.

58. The Commission has recognized that spectrum resources in different frequency bands can have disparate technical characteristics that affect how the bands can be used to deliver mobile services. Therefore, the Commission seeks comment on whether the Commission should adopt an approach to evaluating a licensee's mobile spectrum holdings that accounts for differing characteristics of spectrum bands, including whether the spectrum is below or above 1 GHz. If the Commission were to adopt differential treatment for different spectrum bands, the Commission seeks comment on what mechanism it should use to evaluate the aggregation of below 1 GHz spectrum and whether to apply different threshold limits—for example one to spectrum below 1 GHz and another to spectrum above 1 GHz. The Commission also seeks comment on whether to take into account the value of spectrum held by each licensee rather than the amount of spectrum held. If it were to assign value to spectrum, the Commission seeks comment on what variables it should consider when doing so. Possible variables include geographic location and location within the spectrum band itself.

59. Further, the Commission seeks comment on other methods or considerations that might be relevant in reviewing its policies regarding mobile spectrum holdings. For instance, should the Commission take into account special circumstances, such as how efficiently the licensee is using its existing spectrum resources and whether it has alternatives to meet its competitive needs aside from acquiring more spectrum? As part of a case-by-case analysis, should the Commission calculate the spectrum HHI, or the increase in concentration of spectrum shares post-transaction?

60. No matter which approach it decides to take, the Commission needs attribution rules to determine which of a licensee's spectrum interests counts toward that licensee's total mobile spectrum holdings. Whether or not the Commission decides to alter its review mechanism for transactions and license applications, the Commission seeks comment on whether and how the attribution rules that are used to implement its policies regarding mobile spectrum holdings should be amended and on what interests should be attributable for purposes of reviewing mobile spectrum holdings. The Commission also seeks comment on the types of interests that should be of primary importance when it reviews proposed transactions, and whether and how the importance of any attributable interests may have changed over time. Additionally, the Commission seeks comment on whether it should define as attributable any interests that have not been attributed in the past or exclude any non-controlling interests that have been attributed in the past. Further, if the Commission makes any changes to its spectrum holdings review process, how, if at all, should it attribute leased mobile spectrum holdings.

61. In considering applications for initial licenses and applications for the assignment or transfer of control of licenses, including spectrum leasing, the Commission must determine whether the applicants have demonstrated that the application will serve the public interest, convenience, and necessity. The Commission reviews the competitive effects of a transaction under the broad public interest standard, and may impose remedies, such as requiring divestitures of certain licenses, to address potential harms likely to result from a transaction or to help ensure the realization of potential benefits promised for the transaction. With this in mind, the Commission seeks comment on what remedies, including divestitures, would be appropriate for the Commission to require in order to prevent competitive harm. The Commission also seeks comment on the value of divestures as a remedy to redress particular competitive harms, and whether different approaches or types of divestures including a clustered approach, full business unit divestures,

spectrum-only divestures, divestitures with a ''right of first refusal'' to a particular set of licensees, particular limits on parties that have licenses divested to them (such as requiring divestiture to rural or midsize carriers that may be in a position to offer roaming), or divestiture of spectrum by sale on the secondary market, would best serve the Commission's goals.

62. The Commission also seeks comment on measures it can adopt to facilitate spectrum being divested expeditiously to licensees that will put it to use quickly and efficiently, and what conditions, limits or other rules should apply if the Commission should decide to permit divestiture of spectrum by sale on the secondary market. Toward that end, the Commission proposes rules governing mobile spectrum holdings. These include proposed Section 20.21(b), which would require applicants subject to divestiture of interests as required by the Commission, in conjunction with the grant of a license application or a transfer of control or assignment of authorization, to divest expeditiously, and within the time period specified by the Commission.[131] The Commission also proposes rules governing the attribution of interests, including controlling interests, non-controlling interests, and waivers.[132] These proposed rules generally follow the attribution standards it currently applies, but the Commission seeks comment on whether it should make any changes in those standards, including the level of non-controlling interest that should be attributable, and whether that level should be different whether the Commission adopts a case-by-case approach or a bright-line limit.

63. In addition, many licensees hold spectrum in multiple frequency bands with different propagation or other characteristics, and some spectrum holdings may be more valuable than others. The Commission seeks comment on whether it should adopt different criteria for divestiture based on whether the spectrum to be divested is from lower or upper frequency bands or is immediately ''useable'' by another licensee, perhaps for a particular technology, and any other factors it should consider when determining which and how much spectrum should be divested to prevent competitive harm. The Commission also seeks comment on any other approach to spectrum divestiture that would meet its goals of promoting competition yet make its policies regarding mobile spectrum holdings more clear, transparent and predictable.

64. Further, as an alternative or supplement to divestiture, the Commission has previously placed conditions on transactions to remedy certain aspects that may be contrary to the public interest, convenience, and necessity, including any potential anti-competitive effects of the transaction. The Commission seeks comment on the extent to which it should remedy the potential harms posed by a transaction by placing other conditions on it, including leasing, roaming, or collocation, in conjunction with or in lieu of requiring divestitures. The Commission also seeks comment on whether there are other remedial approaches it could require and how it might apply them. The Commission further seeks comment on what changes and clarifications might be needed in using divestiture as a remedy to cure competitive harm resulting from spectrum acquired in an auction in the context of a case-by case analysis.

Finally, the Commission seeks comment on whether there are any transition issues to consider if new rules or policies are implemented. The Commission anticipates that grandfathering existing holdings in excess of any spectrum limit it may adopt would serve the public interest. The Commission seeks comment on the grandfathering issue, as well as on any other transition issues that may arise in implementing the new rules or policies.

2. Legal Basis

65. The sources of authority for the actions proposed in this NPRM are contained in Sections 1, 2, 4(i), 4(j), 301, 303(g), 303(r), 309(j) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 152, 154(i), 154(j), 301, 303(g), 303(r), 309(j) and 310(d).

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

66. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

67. In the following paragraphs, the Commission further describes and estimates the number and type of small entities that may be affected by its proposals regarding mobile spectrum holdings. Implementing new policies regarding mobile spectrum holdings would affect entities that hold or lease spectrum within spectrum bands that are available for mobile wireless service.

68. This IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information that describes auction results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

69. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Its action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration. As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

[131] *See* proposed 47 CFR 20.21(b), Appendix A, *supra.*

[132] *See* proposed 47 CFR 20.21(c), Appendix A, *supra.*

70. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' Under that SBA category, a business is small if it has 1,500 or fewer employees. The census category of ''Cellular and Other Wireless Telecommunications'' is no longer used and has been superseded by the larger category ''Wireless Telecommunications Carriers (except satellite).'' The Census Bureau defines this larger category to include ''establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.''

71. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007, which supersede similar data from the 2002 Census, shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard.

72. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except satellite). The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had 999 or fewer employees and 15 had 1000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by its proposed action.

73. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA approved these definitions. The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won 31 licenses, and one bidder that qualified as a small business entity won a license.

74. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years, which would thus be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years, which would thus be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. The winning bidder was not a small entity.

75. *3650–3700 MHz Band Licensees.* In March 2005, the Commission released an order providing for the nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

76. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms in the Wireless Telecommunications Carriers (except Satellite) category that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

77. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the

first two C-Block auctions. A total of 93 bidders that claimed small and very small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

78. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 14 winning bidders in that auction, six claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

79. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as a small business. For AWS–2 and AWS–3, although the Commission does not know for certain which entities are likely to apply for these frequencies, it notes that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but has proposed to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

80. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses was conducted in 2002 (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). All three winning bidders claimed small business status.

81. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.[133]

82. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

83. *700 MHz Guard Band Licenses.* In 2000, the Commission adopted the *700 MHz Guard Band Report and Order,* in which it established rules for the A and B block licenses in the Upper 700 MHz band, including size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of these licenses was conducted in 2000. Of the 104 licenses auctioned, 96 licenses were won by nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses was

[133] *Id.*

held in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

84. *Specialized Mobile Radio.* The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The Commission defined a ''very small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service. The first 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses. The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the $15 million size standard won 38 licenses for the upper 200 channels. A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

85. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category channels in the 800 MHz SMR band qualified as small or very small businesses. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

86. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues not exceeding $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

87. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands, and in the unpaired 1390–1392 MHz band in 2007. For these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, had average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. Neither of the two winning bidders claimed small business status.

88. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS''). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, which resulted in the licensing of 78 authorizations in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.[134] Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

89. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[135] Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound,

[134] *Id.* at 8296 para. 73.

[135] The term ''small entity'' within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). The Commission does not collect annual revenue data on EBS licensees.

and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' For these services, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1,000 employees or more. Thus, the majority of these firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

90. The NPRM initiates a review of the FCC's policies and rules governing mobile spectrum holdings. The FCC seeks comment on whether it should retain or modify its current rules. To the extent the Commission retains its current policies, this proceeding will not result in any additional reporting, recordkeeping, or other compliance burdens. If the FCC modifies its rules, those changes could alter the compliance requirements (and burdens) that apply to small entities. Those burdens, which may be offset by efficiencies associated with any modified rules, could include professional skills necessary to monitor and abide by the new rules, burdens associated with the ability to retain or acquire additional spectrum, and costs associated with changes in market competition.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

91. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[136]

92. In light of the surge in consumer demand for mobile broadband services that require greater bandwidth, spectrum is becoming increasingly critical for all providers. With that in mind, the Commission initiates a review of policies governing mobile spectrum holdings. This proceeding provides the opportunity to obtain valuable input from a broad range of active participants in the mobile broadband industry, trade associations, and consumer groups that have requested that the Commission's policies be revised to keep pace with market changes. The Commission seeks comment on whether and how to revise its policies and rules regarding mobile spectrum holdings. In particular, the Commission seeks alternatives that address how to ensure that its policies and rules afford all interested parties greater certainty, transparency and predictability to make investment and transactional decisions, while reducing the regulatory burdens on small entities.

93. First, the Commission seeks comment on retaining or modifying the current case-by-case analysis used to evaluate mobile spectrum holdings in the context of transactions and auctions, as well as on bright-line limit proposals advocated by some providers and public interest groups. The Commission seeks comment on the costs and benefits of a case-by-case analysis to consumers, wireless service providers and others, as well as the overall effectiveness of such an approach in achieving its public policy objectives. The Commission requests alternatives that would reduce the burdens on small entities while making the process more transparent, predictable, or better tailored to promote its goals.

94. The Commission also seeks comment on whether adoption of bright-line limits would now serve the public interest, and if so on its potential application, and on the specific costs and benefits of adopting bright-line limits. The Commission seeks possible alternatives that would best balance the goal of providing greater certainty, clarity, and predictability with regard to auction participation and secondary market transactions while maximizing the Commission's flexibility to consider individualized circumstances and respond swiftly to the changing needs of the mobile wireless industry and consumers, all while reducing the burden on small entities. Further, the Commission seeks comment on any alternative approaches regarding the competitive effect of spectrum aggregation, how alternative approaches could be implemented, and on any other alternatives that would further reduce burdens on small businesses.

95. The Commission also seeks comment on whether the current approach to the product and geographic market definitions continues to be appropriate when evaluating a licensee's mobile spectrum holdings. The Commission seeks alternate proposals that might increase the transparency with which it determines what spectrum it would include in a case-by-case spectrum analysis or in implementing bright-line limits, as well as any other approach that would promote competition and prevent excessive concentration of spectrum in any given area. Such alternative proposals should address the issue of reducing burdens on small business.

96. In addition, the Commission seeks comment on updating the spectrum bands that should be considered in any evaluation of mobile spectrum holdings and whether to make distinctions between bands. The Commission requests alternatives that would reduce the burdens on small entities while advancing the goals of promoting wireless competition, innovation, investments and broadband deployment in rural areas.

97. The Commission also seeks comment on whether and how the attribution rules that are used to implement its policies regarding mobile spectrum holdings should be amended if the Commission decides to continue its existing case-by-case review of transactions and in the event that the Commission alters its transaction review mechanism. Further, the Commission seeks comment on its proposed rules regarding attribution standards, which include a waiver provision, and more generally on the types of interests that should be of primary importance when the Commission reviews proposed wireless transactions, and whether and how the importance of any attributable interests may have changed over time. The Commission seeks to receive alternate proposals regarding potential changes to the attribution rules in general, and more specifically how any proposed changes could limit the burdens on small entities.

98. The Commission also seeks comment on what remedies, including divestitures, would be appropriate to prevent competitive harm, and how it might apply them. The Commission seeks comment on the value and types of divestitures that would be effective remedies to redress particular competitive harms, its proposed divestiture rule, and any other

[136] *See* 5 U.S.C. 603(c).

alternative approaches that could provide greater predictability to allow the industry to better make needed investment decisions, while easing the burden on small entities. Commenters should discuss and quantify any associated costs or benefits of implementing any remedial approaches or any other proposals that would best serve the Commission's goals of providing clarity and certainty to parties while promoting competition and further reducing the burden on small business.

99. Finally, if the Commission were to change its current case-by case approach or adopt new rules or polices, the Commission seeks comment on whether there are any transition issues to consider as new rules or policies are implemented, such as considering grandfathering spectrum held before the effective date of any new rule or policy. The Commission seeks alternate proposals that would best achieve the goal of reducing the burdens on small business while making its policies regarding mobile spectrum holdings more clear, transparent and predictable.

100. For each of the proposals in the Notice, the Commission seeks discussion, and where relevant, alternative proposals, on the effect that each prospective new requirement, or alternative rules, might have on small entities. For each proposed rule or alternative, the Commission seeks discussion about the burden that the prospective regulation would impose on small entities and how the Commission could impose such regulations while minimizing the burdens on small entities. For each proposed rule, the Commission asks whether there are any alternatives it could implement that could achieve the Commission's goals while at the same time minimizing the burdens on small entities. For the duration of this docketed proceeding, the Commission will continue to examine alternatives with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

*B. Paperwork Reduction Act Analysis*

101. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

*C. Ex Parte Rules*

102. *Permit-But-Disclose.* The proceeding initiated by this Notice of Proposed Rulemaking shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[137] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*D. Filing Requirements*

103. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

104. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

105. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

[137] 47 CFR 1.1200 *et seq.*

106. *Additional Information.* For additional information on this proceeding, contact Monica DeLong, *Monica.DeLong@fcc.gov,* of the Wireless Telecommunications Bureau, Spectrum and Competition Policy Division, (202) 418–1337.

**V. Ordering Clauses**

107. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 4(j), 301, 303(g), 303(r), 309(j) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 303(g), 303(r), 309(j) and 310(d), that this Notice of Proposed Rulemaking in WT Docket No. 12–269 IS *adopted.*

108. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects 47 CFR Part 20**

Communications common carriers.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 20 as follows:

## PART 20—COMMERCIAL MOBILE SERVICES

1. The authority citation for part 20 continues to read as follows:

**Authority:** 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

2. Add § 20.21 to read as follows:

### § 20.21 Rules Governing Mobile Spectrum Holdings

(a) This section applies to mobile spectrum holdings that are suitable and available for commercial use. Applicants for mobile spectrum licenses for commercial use, for assignment or transfer of control of such licenses, or for long-term *de facto* transfer leasing arrangements as defined in § 1.9003 of subpart X of part 1 of these rules and long-term spectrum manager leasing arrangements as identified in § 1.9020(e)(1)(ii) must demonstrate that the public interest, convenience, and necessity will be served thereby. The Commission will evaluate any such license application consistent with the standards set forth in WT Docket No. 12–269.

(b) Divestiture of interests as required by the Commission, in conjunction with the grant of a license application or a transfer of control or assignment of authorization, must occur expeditiously, and within the time period specified by the Commission.

(c) *Attribution of Interests.* Ownership and other interests in mobile spectrum holdings for commercial use will be attributable to their holders pursuant to the following criteria:

(1) Controlling interests shall be attributable. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) Non-controlling interests of 10 percent or more in mobile spectrum holdings shall be attributable. Non-controlling interests of less than 10 percent in mobile spectrum holdings shall be attributable if the Commission determines that such interest confers *de facto* control, including but not limited to partnership and other ownership interests and any stock interest in a licensee.

(3) The following interests in mobile spectrum shall also be attributable to holders:

(i) Officers and directors of a licensee shall be considered to have an attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee.

(ii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. (For example, if A owns 20 percent of B, and B owns 40 percent of licensee C, then A's interest in licensee C would be 8 percent. If A owns 20 percent of B, and B owns 51 percent of licensee C, then A's interest in licensee C would be 20 percent because B's ownership of C exceeds 50 percent.)

(iii) Any person who manages the operations of a licensee pursuant to a management agreement shall be considered to have an attributable interest in such licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence, the nature or types of services offered by such licensee, the terms upon which such services are offered, or the prices charged for such services.

(iv) Any licensee or its affiliate who enters into a joint marketing arrangement with another licensee or its affiliate shall be considered to have an attributable interest in the other licensee's holdings if it has authority to make decisions or otherwise engage in practices or activities that determine or significantly influence the nature or types of services offered by the other licensee, the terms upon which such services are offered, or the prices charged for such services.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until converted or unless the Commission determines that these interests confer *de facto* control.

(vii) Long-term *de facto* transfer leasing arrangements as defined in § 1.9003 of subpart X of part 1 of these rules and long-term spectrum manager leasing arrangements as identified in § 1.9020(e)(1)(ii) that enable commercial use shall be attributable to lessees, lessors, sublessees, and sublessors for purposes of this section.

(4) Requests for waivers of paragraph (c) of this section, pursuant to § 1.925 of the Commission rules, must contain the information necessary to make an affirmative showing to the Commission that:

(a) The interest holder is not likely to affect the relevant geographic market(s) in an anticompetitive manner;

(b) The interest holder is not involved in the day-to-day operations of the licensee and does not have the ability to influence the licensee on a regular basis; and

(c) Grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential harm to the market.

[FR Doc. 2012–24790 Filed 10–5–12; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[MB Docket No. 12–217; FCC 12–86]**

### Cable Television Technical and Operational Requirements

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission proposes to update technical and operational rules related to cable television systems and other multichannel video programming distributors that operate coaxial cable systems. The Commission seeks comments on rules that would update its minimum signal quality standards and signal leakage detection and monitoring for digital transmission. Additionally, the Commission proposes numerous corrections and updates to its to its cable television technical rules.

**DATES:** Comments are due on or before December 10, 2012; reply comments are due on or before January 7, 2013. Written PRA comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before December 10, 2012.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 12–217 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Electronic Comment Filing System (ECFS) Web Site: http://fjallfoss.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Jeffrey Neumann, *Jeffrey.Neumann@fcc.gov,* of the Engineering Division, Media Bureau, (202) 418–7000. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 12–217, adopted and released on August 3, 2012. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This document contains proposed information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Public and agency comments are due December 10, 2012.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

*OMB Control Number:* 3060–0289.

*Title:* Section 76.601 Performance Tests, Section 76.1704 Proof of Performance Test Data, Section 76.1705 Performance Tests (Channels Delivered), 76.1717 Compliance with Technical Standards

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; State, local or tribal government.

*Number of Respondents and Responses:* 5,150 respondents; 7,705 responses.

*Estimated Time per Response:* 0.5 to 70 hours.

*Frequency of Response:* Recordkeeping requirement; Semi-annually and Triennial reporting requirements; Third party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 624(e).

*Total Annual Burden:* 178,697 hours.

*Total Annual Costs:* None.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* The Commission is seeking approval for this revised proposed information collection from the Office of Management and Budget (OMB). On August 3, 2012, the Commission released a Notice of Proposed Rulemaking, In the Matter of Cable Television Technical and Operational Requirements, MB Docket No. 12–217; FCC 12–86. This rulemaking proposes to revise the information collection requirements that support the Commission's cable television proof-of-performance rules that would be codified at 47 CFR 76.601, as required by the 1992 Cable Act at 47 U.S.C. 624(e). Currently, the Commission's rules are designed for analog transmission; the Notice of Proposed Rulemaking proposes creation of equivalent, digital rules. In recent years, operators transitioning away from analog cable technology have no longer been able to perform proof-of-performance testing on those systems or portions of systems. By creating equivalent, digital rules, the NPRM proposes to once again require the majority of the cable industry to meet standards.

The proposed information collection requirements for this collection are as follows:

47 CFR 76.601(b) requires the operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605 and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (e.g., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system and should include at least one test point in each local franchise area. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(b)(3), (4), and (5) shall be made on each of the National Television System Committee (NTSC), or the analog television broadcast standard, or similar video channels of that system. Unless otherwise noted, proof-of-performance tests for all other standards in § 76.605 (b) shall be made on a minimum of five (5) channels for systems operating a total activated channel capacity of less than 550 MHz, and ten (10) channels for systems operating a total activated channel capacity of 550 MHz or greater. The channels selected for testing must be representative of all the channels within the cable television system.

(i) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(b)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(ii) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(b)(11).

(3) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(c)(1) shall be made on each of the Quadrature Amplitude Modulation (QAM), or the digital cable transmission standard, or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(c) shall be made on a minimum of five (5) channels for systems operating a total activated channel capacity of less than 550 MHz, and ten (10) channels for systems operating a total activated channel capacity of 550 MHz or greater. The channels selected for testing must be representative of all the channels within the cable television system.

(4) For cable televisions systems which operate both NTSC or similar and QAM of similar channels, proof-of-performance tests to determine the extent to which the cable televisions system complies with § 76.605(b)(1), (2), (6)–(11) and 76.605(c)(1) shall be apportioned relative to the proportion of channels allocated to each transmission type, except that at no time shall less than two channels of a particular type be tested.

47 CFR 76.605(e) requires that cable television systems distributing signals by methods other than 6 MHz NTSC or similar analog channels or 6 MHz QAM or similar channels on conventional coaxial or hybrid fiber-coaxial cable systems and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraphs (b) and (c) of this section, may be permitted to operate upon Commission approval on a case-by-case basis. To obtain Commission approval, the operator must submit to the Commission its own proof-of-performance plan for ensuring subscribers receive good quality signals.

*OMB Control Number:* 3060–0331.

*Title:* Aeronautical Frequency Notification, FCC Form 321.

*Form Number:* FCC Form 321.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 1,100 respondents; 1,100 responses.

*Estimated Time per Response:* 0.67 hours.

*Frequency of Response:* On occasion reporting requirement; Recordkeeping requirement; One time reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory

authority for this collection of information is contained in 47 U.S.C. 302 and 303.

*Total Annual Burden:* 737 hours.

*Total Annual Costs:* $66,000.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The Commission is seeking approval for this revised proposed information collection from the Office of Management and Budget (OMB). On August 3, 2012, the Commission released a Notice of Proposed Rulemaking, In the Matter of Cable Television Technical and Operational Requirements, MB Docket No. 12–217; FCC 12–86. This rulemaking proposes to revise the information collection requirements that support the Commission's signal leakage rules that would be codified at 47 CFR 76.1804, as required by the Communications Act of 1934, as amended, as codified at 47 U.S.C. 154(i), 301, 303, 308, 309, and 621. With this Notice of Proposed Rulemaking, the Federal Communications Commission is proposing to extend the notification requirements to operators of digital systems at lower thresholds than those required under existing, analog rules. Currently, operators are required to file FCC Form 321 to notify the Commission when they operate at a power above a particular threshold. This threshold was designed to protect over-the-air users of the spectrum from interference from analog cable systems. The NPRM proposes to adopt a lower threshold for digital systems in order to provide over-the-air users of the spectrum with an equivalent level of protection.

The NPRM proposes to create a digital equivalency for the Commission's analog rules. As a result, these rules are designed to capture the same respondents previously covered by the Commission's analog rules, but who have transitioned, or are transitioning, to digital operation. Further, this digital equivalency is designed to take an equivalent amount of time to fulfill. As a result, absent external factors, the hourly estimated burden will not change as a result of this NPRM (there will not be an increase or decrease to the hourly burden). However, widespread industry consolidation has resulted in fewer, though larger, respondents, resulting in a decrease in the total number of estimated responses.

The NPRM does not propose that the information to be submitted on the form be changed. The proposed information collection requirements for this collection are as follows: Section 76.1804 states a Multichannel Video Programming Distributor (MVPD) shall notify the Commission before transmitting any carrier of other signal component with an average power level across a 30 kHz bandwidth in any 2.5 millisecond time period equal to or greater than $10^{-5}$ watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108–137 MHz, 225–400 MHz). The notification shall be made on FCC Form 321 . Such notification shall include:

(a) Legal name and local address of the MVPD;

(b) The names and FCC identifiers (e.g., CA0001) of the system communities affected, for a cable system, and the name and FCC identifier (e.g., CAB901), for other MVPDs;

(c) The names and telephone numbers of local system officials who are responsible for compliance with §§ 76.610 through 76.616 and § 76.1803;

(d) Carrier frequency, tolerance, and type of modulation of all carriers in the aeronautical bands at any location in the cable distribution system and the maximum of those average powers measured over a 2.5 kHz bandwidth as described in the introductory paragraph to this rule section;

(e) The geographical coordinates (in NAD83) of a point near the center of the system, together with the distance (in kilometers) from the designated point to the most remote point of the plant, existing or planned, that defines a circle enclosing the entire plant;

(f) Certification that the monitoring procedure used is in compliance with § 76.614 or description of the routine monitoring procedure to be used; and

(g) For MVPDs subject to § 76.611, the cumulative signal leakage index derived under § 76.611(a)(1) or the results of airspace measurements derived under § 76.611(a)(2), including a description of the method by which compliance with the basic signal leakage criteria is achieved and the method of calibrating the measurement equipment.

(h) Aeronautical Frequency Notifications, FCC Form 321, shall be personally signed either electronically or manually by the operator; by one of the partners, if the operator is a partnership; by an officer, if the operator is a corporation; by a member who is an officer, if the operator is an unincorporated association; or by any duly authorized employee of the operator.

(i) Aeronautical Frequency Notifications, FCC Form 321, may be signed by the operator's attorney in case of the operator's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the FCC Form 321 was not signed by the operator. In addition, if any matter is stated on the basis of the attorney's belief only (rather than the attorney's knowledge), the attorney shall separately set forth the reasons for believing that such statements are true.

(j) The FCC Registration Number (FRN).

*OMB Control Number:* 3060–0332.

*Title:* Section 76.614, Cable Television System Regular Monitoring, and Section 76.1706, Signal Leakage Logs and Repair Records.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 5,000 respondents; 5,000 responses.

*Estimated Time per Response:* 0.0167–0.5 hours.

*Frequency of Response:* On occasion reporting requirement; Recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 302 and 303.

*Total Annual Burden:* 3,502 hours.

*Total Annual Costs:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The Commission is seeking approval for this revised proposed information collection from the Office of Management and Budget (OMB). On August 3, 2012, the Commission released a Notice of Proposed Rulemaking, In the Matter of Cable Television Technical and Operational Requirements, MB Docket No. 12–217; FCC 12–86. This rulemaking proposes to revise information collection 3060–0332 which supports the Commission's signal leakage monitoring, logging and repair rules that are codified at 47 CFR 76.614 and 76.1706, as required by the obligation to manage the radio frequency spectrum, as codified at 47 U.S.C. 302 and 303. Currently, § 76.614 requires cable operators to monitor for leaks which exceed a particular threshold. This threshold was designed to protect over-the-air users of the spectrum from interference from analog cable systems. The NPRM proposes to adopt a lower threshold for digital systems in order to provide over-the-air

users of the spectrum with an equivalent level of protection.

The NPRM proposes to create a digital equivalency for the Commission's analog rules. As a result, these rules are designed to capture the same respondents previously covered by the Commission's analog rules, but who have transitioned, or are transitioning, to digital operation. Further, this digital equivalency is designed to take an equivalent amount of time to fulfill. As a result, absent external factors, the hourly estimated burden will not change as a result of this NPRM (there will not be an increase or decrease to the hourly burden). However, widespread industry consolidation has resulted in fewer, though larger, respondents, resulting in a decrease in the total number of estimated responses.

*OMB Control Number:* 3060–0433.

*Title:* Basic Signal Leakage Performance Report, FCC Form 320.

*Form Number:* FCC Form 320.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 5,550 respondents; 5,550 responses.

*Estimated Time per Response:* 20 hours.

*Frequency of Response:* On occasion reporting requirement; Recordkeeping requirement; Annual reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 302 and 303.

*Total Annual Burden:* 111,000 hours.

*Total Annual Costs:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The Commission is seeking approval for this revised proposed information collection from the Office of Management and Budget (OMB). On August 3, 2012, the Commission released a Notice of Proposed Rulemaking, MB Docket No. 12–217; FCC 12–86. This rulemaking proposes to revise information collection 3060–0433 which supports the Commission's cumulative signal leakage calculation and reporting rules that would be codified at 47 CFR 76.611 and 76.1803, as required by the obligation to manage the radio frequency spectrum, as codified at 47 U.S.C. 302 and 303. With this Notice of Proposed Rulemaking, the Federal Communications Commission is proposing that operators of digital cable systems calculate and report leakage at different thresholds than those required of analog systems. Currently, § 76.611 requires operators of coaxial-cable television systems to tabulate leaks above a certain threshold, and prohibits them from operating if the accumulated leaks exceed a particular number. These thresholds were designed to protect over-the-air users of the spectrum from interference from analog cable systems. The NPRM proposes to adopt a lower thresholds for digital systems in order to provide over-the-air users of the spectrum with an equivalent level of protection.

The NPRM does not propose that the form submitted pursuant to Section 76.1803 be changed. The NPRM proposes to create a digital equivalency for the Commission's analog rules. As a result, these rules are designed to capture the same respondents previously covered by the Commission's analog rules, but who have transitioned, or are transitioning, to digital operation. Further, this digital equivalency is designed to take an equivalent amount of time to fulfill. As a result, absent external factors, the hourly estimated burden will not change as a result of this NPRM (there will not be an increase or decrease to the hourly burden). However, widespread industry consolidation has resulted in fewer, though larger, respondents, resulting in a decrease in the total number of estimated responses.

## Summary of the Notice of Proposed Rulemaking

### I. Introduction

1. With this Notice of Proposed Rulemaking (''NPRM''), we propose to update our cable television technical rules to facilitate the cable industry's widespread transition from analog to digital transmission systems. Specifically, we seek comment on our proposals to modernize and modify the Commission's proof-of-performance rules [1] and basic signal leakage performance criteria.[2] In addition, we propose modifications throughout Part 76 to remove outdated language, correct citations, and make other minor or non-substantive updates. This NPRM promotes the goals of Executive Order 13579 and the Commission's plan adopted thereto, whereby the Commission analyzes rules that may be outmoded, ineffective, insufficient, or excessively burdensome and determines whether any such regulations should be modified, streamlined, expanded, or repealed.[3] As set forth below, we seek to adopt clear and effective rules that reflect technological advancements in the cable television industry, and apply them to cable operators in a way that is minimally burdensome.

### II. Background

2. The cable television industry is rapidly transitioning to digital service. The vast majority of cable system operators offer digital service,[4] and several cable system operators have already migrated to ''all-digital'' service.[5] Today, more than 80 percent of cable customers subscribe to some level of digital service, and that percentage is expected to increase to 84 percent by the end of this year.[6] Cable television operators' transition to more efficient digital technology has freed up their limited bandwidth so they can offer new and improved products and services, such as high-definition (''HD'') video programming, high-speed Internet access, and digital voice services.[7] For this reason, we expect most cable

[1] *See* 47 CFR 76.601, 605, 609, 1704, 1705, and 76.1713.

[2] *See* 47 CFR 76.610 through 620, 76.615(a)(12), 76.1706, 76.1803 through 1804.

[3] *See* Executive Order No. 13579, section 2, 76 FR 41587 (July 11, 2011); *Final Plan for Retrospective Analysis of Existing Rules,* Public Notice, 2012 WL 1851335 (rel. May 18, 2012) (also available at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0521/DOC-314166A1.doc).*

[4] While digital service has become the most prevalent cable service, most cable systems that offer digital service still maintain some analog channel offerings. These cable systems are called ''hybrid'' systems.

[5] We note, for example, that BendBroadband and RCN have completed their transition to all-digital service, and Comcast and Cablevision are rapidly transitioning to all-digital service. *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* Fifth Report and Order, FCC 12–59, 77 FR 36178 at 36183, para. 13, n.58, June 18, 2012 (''*Viewability Sunset Order*''). Comcast expects to have completed transitioning to all-digital service in 50% of its footprint by the end of 2012. *See* Comcast Comments in MB Docket No. 11–169 at 4.

[6] *See* SNL Kagan, ''Video growth enjoys seasonal lift in Q1; service providers notch sub gains,'' (May 16, 2012) (''More than 80% of basic subs are now digital.''); SNL Kagan, ''SNL Kagan's 10-Year Cable TV Projections,'' (Jul. 28, 2011). SNL Kagan projects that the percentage of cable subscribers subscribing to digital cable service will reach about 84 percent by year-end 2012, 88 percent by year-end 2013, 91 percent by year-end 2014, and 93 percent by year-end 2015. *Id. See also* NCTA's statistics, available at *http://www.ncta.com/statistics.aspx* (last visited June 9, 2012) (indicating an 80.2% digital penetration rate (the percentage of total cable video customers that subscribe to a digital tier of cable service)).

[7] *See, e.g., Viewability Sunset Order,* 77 FR at 36185, para. 16. *See also* NCTA News Release, ''Cable's Digital Transformation Providing Consumers with Advanced Technology, Lower Prices and Enhanced Competition,'' (dated Jul. 29, 2009), available at *http://www.ncta.com/ReleaseType/MediaRelease/Cables-Digital-Transformation-Providing-Consumers-with-Advanced-Technology-Lower-Prices-and-Enhanced.aspx.*

operators will eventually transition to all-digital systems.[8] Accordingly, in this NPRM, we propose revisions and updates to our technical standards that would apply to the operation of ''all-digital'' and ''hybrid'' cable systems.

3. We specifically examine several of our technical rules ranging from those that ensure cable customers receive a good quality signal to those that protect spectrum users from interference by cable systems. This examination is necessary because our cable television technical rules were largely established when analog technology was predominant and digital technology was rare. As a result, our current rules treat the use of digital technology as an exception rather than the rule. For example, our current proof-of-performance (or signal quality) rules permit cable operators that use ''non-conventional'' technologies (i.e., non-analog) to file individual waivers in which the Commission might substitute alternative technical standards to ensure a good quality signal.[9] The Commission has received several such petitions based on cable operators transitioning to all-digital operation.[10] Instead of addressing these issues on a case-by-case basis, however, we believe that it is necessary to establish clear and generally applicable technical rules governing the signal quality of digital channels. In the cumulative signal leakage context, our existing rules require multichannel video programming distributors (MVPDs) operating coaxial cable systems to protect certain aeronautical frequencies from interference by analog signals, but provide no guidance about how to provide aeronautical protection from their digital signals. Additionally, we address numerous technical rules that have become outdated as a result of external factors. By addressing the gaps in our rules arising from these industry changes, we intend to provide operators with greater certainty regarding the standards that must be met in order to establish a good quality signal. In addition, updating our rules will help protect aeronautical distress and safety frequencies from interference and, at the same time, allow operators to utilize their spectrum more efficiently.

4. *Proof-of-Performance.* The Commission has maintained technical standards since 1972 to govern the signal quality cable television systems deliver to consumers.[11] Our rules focus on the electrical characteristics of analog television signals and set thresholds for numerous aspects of the signals when measured at subscribers' terminals to ensure that subscribers receive good quality cable signals.[12] These standards, plus the requirement that operators test their systems and maintain the results of these tests in their public files, are collectively called ''proof-of-performance'' rules. The Cable Television Consumer Protection and Competition Act of 1992 added section 624(e) of the Communications Act to establish a statutory mandate for cable TV signal quality standards.[13] The statute requires the Commission to ''update such standards periodically to reflect improvements in technology.''[14] Since 1992, the Commission has adopted slight modifications to these rules,[15] but the underlying assumption of the rules, analog transmission technology, remains unchanged.

5. When the Commission adopted the current technical standards in 1992, it declined to extend the standards to the then-nascent practice of delivering cable television using digital signals.[16] The Commission explained that technical standards for ''digital transmission techniques * * * may be vastly different than those for analog NTSC signals,'' but that it ''retain[s] authority * * * to address this issue at a later time should the adoption of technical standards * * * appear necessary or desirable.''[17] Since the analog rules were adopted in 1992, an increasing number of cable television systems have adopted digital delivery technologies. The majority of digital signals today are being delivered digitally via quadrature amplitude modulation (''QAM'') over hybrid fiber-coax (''HFC'') cable plant.[18] Non-QAM digital cable systems have also emerged, though in far smaller numbers than QAM/HFC systems, and primarily utilize Internet Protocol (''IP'') delivery over either fiber-optic cable or DSL-based transmission[19] over twisted-pair copper wires. Most recently, QAM-based operators have begun trials of DOCSIS-based[20] IP delivery of cable service over HFC cable plant.[21] Therefore, in this NPRM, we propose to establish proof-of performance rules that specifically address these advances in digital technology.

[8] *See, e.g., Viewability Sunset Order,* 77 FR at 36178, para. 13. An all-digital cable system offers only digital service to its subscribers, while a hybrid cable system offers both analog and digital cable service to its subscribers.

[9] 47 CFR 76.605(b).

[10] *See, e.g., RCN Corporation Petition for Special Relief,* CSR–8166 and CSR–8301–Z (2010), *Bend Cable Communications, LLC, Petition for Special Relief,* CSR–8294–Z (2010), *Petition of the City of Burlington, VT, D/B/A Burlington Telecom, for Relief from Proof of Performance Testing,* CSR–8273–Z (2009), *Massillon Cable TV, Inc. and Clear Picture, Inc., Petition for Special Relief,* CSR–8274–Z (2010), *Jackson Energy Authority Petition for Special Relief,* CSR–6936–Z (2005).

[11] *See Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems,* Report and Order, 37 FR 3252, Feb. 12, 1972.

[12] Specific signal characteristics that the rules address include aural carrier center frequency location and relative signal level; visual signal carrier signal level, amplitude characteristics of each subcarrier, and signal level to noise ratio; terminal isolation, hum modulation, and color carrier signal characteristics. *See* 47 CFR 76.605; *Cable Television Technical and Operational Requirements,* Report and Order, FCC 92–61, 57 FR 11000, April 1, 1992 (''*1992 Order*''), *aff'd in part and modified in part,* Memorandum Opinion and Order, FCC 92–508, 57 FR 61009, Dec. 23, 1992 (''*1992 Reconsideration Order*'').

[13] 47 U.S.C. 544(e) (requiring the establishment of ''minimum technical standards relating to cable systems' technical operation and signal quality'').

[14] *Id.*

[15] *See, e.g., Metric Conversion of Parts 1, 2, 18, 21, 22, 23, 25, 36, 61, 6368, 69, 73, 74, 76, 78, 80, 87, 90, and 94 of the Commission's Rules,* Order, 58 FR 44952, Aug. 25, 1993 (converting the Commission's rules to metric); *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment,* First Report and Order, 59 FR 25339, May 16, 1994 (requiring cable systems to adopt the EIA IS–132 standard channel plan); *Amendment of Part 76 of the Commission's Rules to Extend Interference Protection to the Marine and Aeronautical Distress and Safety Frequency 406.25 MHz,* Report and Order, 69 FR 57862, Sept. 28, 2004 (''*406 MHz Order*'') (requiring cable systems to adopt the CEA–542–B channel plan and removing various expired clauses).

[16] *See 1992 Order.*

[17] *Id.* NTSC refers to the analog television system developed by the National Television System Committee and was the standard employed for analog broadcast television and analog cable television in the United States.

[18] Digital (QAM) transmission differs from analog (NTSC) transmission in two key ways. First, the digital carrier encodes multiple video and audio streams as well as associated meta-data as a single data stream which is parsed by the subscriber's equipment. Second, as a radio frequency signal, the QAM signal no longer contains the three distinct sub-carriers that make up an analog television signal, but instead appears in the spectrum in what is commonly referred to as a ''haystack.'' Therefore, concepts such as the aural carrier separation from the video carrier are simply no longer applicable as these carriers are no longer distinct radio frequency components. Further, even where a signal characteristic could be measured for both an analog and digital signal, such as signal to noise ratio, the level of performance required for a digital QAM signal to be received and properly decoded is not the same as the signal to noise ratio required for the visual carrier of an analog television signal. *See* Walter Ciciora, et al., *Modern Cable Television Technology* 148–151 (2nd Ed. 2004).

[19] *See 1992 Order.* ''DSL'' stands for Digital Subscriber Line and is the technology employed by many MVPDs that utilize telephone networks to deliver video signals. Video is typically provisioned over VDSL (Very-high-bitrate DSL), providing up to 52 Mbps downstream or ADSL2+ (Asynchronous DSL version 2+), providing up to 24 Mbps downstream.

[20] DOCSIS is the Data Over Cable Service Interface Specification, and is the standard by which cable operators provide cable modem service to customers. *See* H. Newton, *Newton's Telecom Dictionary* 265, (20th ed. 2004).

[21] *See* Sean Portnoy, *Comcast Testing out IPTV Service at MIT to Compete Better Against Online Video Rivals,* ZDNet (May 26, 2011).

6. *Cable Signal Leakage—Protection of Aeronautical Channels.* In addition to the minimum technical standards for signal quality, the Commission maintains a comprehensive testing, reporting, and repair regime to address the issue of interference caused by unintentional emissions from MVPDs. Established in 1984 after the Commission convened an advisory committee on the issue, the signal leakage rules require MVPDs that operate coaxial cable plants (specifically, what are commonly referred to as ''cable systems'' as well as additional ''non-cable'' [22] systems) and use the designated aeronautical communications bands at 108 to 137 MHz and 225 to 400 MHz to notify the Commission prior to doing so and to begin a regimen of routine monitoring to identify and correct any instances of signal leakage. These rules were established prior to the current widespread deployment of digital cable technology by cable and non-cable operators, and must be updated to provide adequate protection to aeronautical frequencies. Specifically, with regard to the ''offset'' requirement for analog signals, the Commission must account for the inability of digital signals to be ''offset'' relative to aeronautical channels and the implications this has on the interference potential of the signals. In this NPRM, we propose adjustments to our various signal leakage thresholds and modify our procedures for systems utilizing digital transmission to provide adequate protection of the aeronautical channels.

## III. Discussion

7. Below, we seek comment on proposed modifications to our cable television technical rules to specifically address the provision of digital cable service. The Commission especially seeks comment on the costs and benefits of the rule changes proposed below, along with data supporting the assessments. The Commission further welcomes comment on any other technical rules that may have become unworkable or ineffective as a result of the transition to digital, the diversification of transmission technologies now employed by the cable industry, or other developments in technology.[23]

### *A. Proof of Performance*

8. Our proof-of-performance rules require a cable operator to provide a good quality signal to its customers and enable the Commission to evaluate compliance with this requirement.[24] These rules include the following: Section 76.601 (testing requirement), § 76.605 (technical standards), § 76.609 (methods and requirements for performing the tests), §§ 76.1704 and 76.1705 (recordkeeping requirements), and § 76.1713 (process for resolving complaints regarding signal quality).[25] In keeping with our statutory mandate to update our proof-of-performance rules to reflect improvements in technology,[26] we seek comment on updating these rules as they apply to QAM digital systems and non-QAM digital systems. In addition, we consider testing and recordkeeping issues, such as how many points in a system must be tested, how many channels on a system must be tested, and certain ancillary issues.

9. In this NPRM, we specifically address the issue of how to establish digital proof of performance standards that are similar in function to the analog proof of performance standards we adopted in the *1992 Order.*[27] At the time of the *1992 Order,* analog cable transmission was predominant and possessed uniform characteristics, which made adoption of technical standards relatively straightforward. As mentioned above, today, QAM transmission is the dominant form of digital cable transmission. Unlike analog cable transmission, however, QAM is not uniform and may appear in a variety of configurations such as 64 QAM, 256 QAM, and potentially 1024 QAM, each requiring different performance standards.[28] Further, non-QAM digital systems using such technologies as VDSL, ADSL2+, or transmitting via fiber-optic cables, now make up an increasing percentage of digital systems. We are also confronted with the potential decoupling of the concept of signals of ''good technical quality'' (*i.e.,* a highly reliable signal) from the concept of signals of ''good visual quality.'' In analog transmission, operators would replicate the exact electrical signal provided by the programming provider and the primary factor impacting signal quality was the quality of the electrical transmission (*i.e.,* a highly reliable signal provides good visual quality). In contrast, with digital transmission, operators will often re-compress the signal to relieve capacity constraints or support different devices.[29] If the operator is too aggressive in this re-compression, or if the signal processing equipment in the head-end introduces errors, a viewer may perceive a poor quality of video even though the transmission is perfect. Accordingly, we seek comment on whether we should consider qualitative measures to assess consumer perceptions of video quality. We seek specific comment on the pros and cons of adopting subjective consumer perception measures as opposed to or in addition to adopting objective measurements for assessing signal quality. Overall, we seek to develop the optimal approach to ensure that digital cable subscribers receive good quality

[22] ''Non-cable'' systems are those MVPDs that are exempted from the Commission's legal definition of a cable system, but that are subject to some the Commission's cable technical rules based on their technical characteristics. *See* 47 CFR 76.5(a). Examples of these systems include facilities that serve only to retransmit the television signals of one or more television broadcast stations (such as master antenna systems), facilities that serve subscribers without using any public right-of-way (such as private cable operations, hotels, motels, prisons, and so on), and ''open video systems'' that comply with Section 653 of the Communications Act. *See* 47 CFR 76.5(a)(1) through (5). These systems are required to comply with the Commission's aeronautical frequency notification and signal leakage rules where technically applicable.

[23] *See* 47 CFR 76.601 through 640 (''Subpart K—Technical Standards'').

[24] We note that the Commission's proof-of-performance rules are used not just by the Commission, but also by local franchising authorities who frequently operate as the first line in addressing constituent complaints against a local cable operator. Local Franchising Authorities enter into agreements with cable operators (among other service providers in their communities), and establish the conditions under which cable operators may use public rights-of-way and other community resources. As a result of this contractual relationship, cable operators may have obligations to local franchising authorities in addition to those required by the Commission. Further, while some franchising has transitioned to the state level, local franchising authorities typically retain control over their local public rights-of-way. *See 1992 Order* at 2023, para. 5.

[25] *See* 47 CFR 76.601, 605, 609, 1704, 1705, and 76.1713. We also note that the Commission has placed certain technical performance requirements on digital cable operators with more than 750 MHz of activated channel capacity as part of their required support for unidirectional cable products. *See* 47 CFR 76.640(b)(1)(i) (requiring compliance with SCTE 40 2003: ''Digital Cable Network Interface Standard''). We draw on this precedent in our proposal regarding QAM-based digital cable proof-of-performance requirements.

[26] *See* 47 U.S.C. 544(e).

[27] *See* 47 CFR 76.601, 76.605, and 76.609. These standards measure the electrical characteristics of an analog cable signal on coaxial cable.

[28] Quadrature Amplitude Modulation, or QAM is a sophisticated modulation technique, using variations in signal amplitude and phase, that allows multiple bits to form a single ''symbol,'' which is then impressed on a single sine wave. ''Quadrature'' refers to the fact that four distinct amplitude levels are defined. 16 QAM creates a symbol of 4 bits through 16 distinct signal points, or variations in amplitude and phase (2 raised to the 4th power equals 16). 64 QAM, by extension, conveys 6 bits through 64 distinct signal points (2 raised to the 6th power equals 64). 256 QAM conveys 8 bits per symbol, and 1024 QAM conveys 10. *See* H. Newton, *Newton's Telecom Dictionary* 674, (20th ed. 2004).

[29] We note that cable operators receive digital signals that are already compressed; therefore, any alteration to the signals is considered recompression.

signals, while imposing a minimal regulatory burden on cable operators, and we seek comment on the costs and benefits associated with our proposals.

1. Standards for QAM-Based Digital Cable Systems

10. We propose to adopt the standard established by the Society of Cable Telecommunications Engineers, the SCTE 40 Digital Cable Network Interface Standard, as the signal quality standard for QAM-based digital cable systems and, in addition, propose to require testing and documentation that demonstrates compliance with the metrics associated with this standard.[30] We tentatively conclude that the relatively straightforward SCTE 40 standard provides the best source of the digital proof-of-performance metrics. This standard is currently incorporated into our rules supporting unidirectional digital cable televisions and products, and is thus already followed by a significant portion of QAM digital cable operators.[31] In the unidirectional CableCARD proceeding, the Commission, consumer electronics industry, and cable industry determined that standardizing certain attributes of the network would be necessary for such products to be successful.[32] The Commission noted that such digital standards were already supported by some systems, with widespread adoption forthcoming, and that such standards encapsulated the common performance metrics well.[33] As a result, selection of SCTE 40 2003 was unopposed by any party.[34] For these same reasons, we believe that selecting an existing industry-developed standard and well-focused set of measurements for digital cable places little to no additional burden on cable operators yet will ensure that consumers receive good signal quality. The SCTE has subsequently updated the SCTE 40 standard and it has received the American National Standards Institute (ANSI) approval.[35] Accordingly, we tentatively conclude that we should incorporate the current version of that standard, SCTE 40 2011, into our rules as minimum signal quality standards for QAM digital cable service. We seek comment on our proposal and tentative conclusions. We also seek comment on any alternative standards that could be used to ensure a good quality digital signal.

11. We continue to believe that testing and documentation is essential to ensuring compliance and permitting effective enforcement of our proof-of-performance rules. Therefore, in addition to adopting SCTE 40 2011 as the standard for digital proof-of-performance, we propose to require QAM-based cable operators to document the successful completion of proof-of performance testing to demonstrate compliance. SCTE 40 2011 contains tables with entries detailing the metrics for compliance. We tentatively conclude that operators should perform a test for each of the entries located on those tables dealing with the delivery of cable video signals, but not those dealing with upstream or downstream data performance.[36] We seek comment on this tentative conclusion. Additionally, similar to the analog context, while operators are required to comply with the standard on every applicable channel, we only propose to require operators to test all channels and document their compliance with the standard's parameters that pertain to the relationships between channels, and to test and document a subset of channels for compliance with the standard's parameters that pertain to individual channel characteristics. Thus, we propose to require the Adjacent Channel Levels (SCTE 40 2011, Table 6) and Nominal Power Levels (SCTE 40 2011, Table 5) to be tested across every QAM channel on the system. Similarly, we propose that the channel-specific standards for normal video channels contained in the Forward Application Transport table (SCTE 40 2011, Table 4)[37] be tested only on a subset of channels. We provide more specifics on the number of channels to be sampled, as well as other aspects of testing and recordkeeping, below. We seek comment from cable operators that have implemented periodic testing procedures based on the SCTE 40 standard regarding their experiences with implementing this metric and what procedures they have put into place to measure and ensure compliance with this standard.

12. We seek comment on whether to supplement, or otherwise modify, the SCTE 40 2011 standard for purposes of establishing our digital signal quality standard. In particular, we seek comment on whether we should adopt elements of the SCTE's recent Fourth Edition of its Measurement Recommended Practices for Cable Systems (SCTE Recommended Practice).[38] The SCTE Recommended Practice provides a comprehensive and extensive set of best practices covering nearly every potential aspect of cable operation for both analog and digital cable operators. More specifically, the SCTE Recommended Practice provides guidance to cable system operators about how to comply with the SCTE 40 standard. We recognize that, given the scope of the SCTE Recommended Practice, it may be more than is necessary to ensure digital cable consumers receive good quality signals. Nevertheless, we seek comment on whether any particular parts of the SCTE Recommended Practice would be effective as an enhancement to the SCTE 40 2011. In addition, we seek comment on whether other metrics, such as the measurement of visual signal quality or the MPEG stream would be appropriate as an enhancement to the SCTE 40 2011.

2. Non-QAM Cable Systems and Qualitative Signal Quality

13. As noted above, ready sources of widely-followed industry standards exist on which we can base our rules for

[30] *See Society of Cable Telecommunications Engineers ANSI/SCTE 40 2011: Digital Cable Network Interface Standard,* available at *http://www.scte.org/documents/pdf/standards/SCTE_40_2011.pdf* (''SCTE 40 2011''). SCTE 40 2011 describes the basic technical operational characteristics for digital cable systems using QAM, including such characteristics as relative channel power, carrier-to-noise ratios, and adjacent-channel characteristics.

[31] *See* 47 CFR 76.640(b)(1)(i). The rules apply to cable systems operating at 750 MHz or greater.

[32] *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices,* Report and Order, FCC 03–225, 68 FR 66734, Nov. 28, 2003 (''*CableCARD Order*'') (incorporated for use by 47 CFR 76.640(b)(1)(i)). In the unidirectional CableCARD proceeding, the Commission incorporated SCTE 40 2003 into its rules. In Section III.D below, we propose to update our incorporation for § 76.640 to the 2011 version of this standard as well, as these versions are substantively the same, and only minor updates to certain parameters, administrative clarifications, and ANSI certification have been changed.

[33] *See CableCARD Order.*

[34] *Id.*

[35] *See ANSI/SCTE 40 2011 Digital Cable Network Interface Standard,* American National Standards Institute, available at *http://webstore.ansi.org/RecordDetail.aspx?sku=ANSI/SCTE+40+2011.*

[36] We observe that these parameters primarily relate to two-way services, such as data service and video-on-demand, which we do not propose including within the testing requirements. In SCTE 40, these parameters are contained in Table 2 and Table 3, the Forward and Reverse Data Channel (FDC and RDC) Tables. Table 1, the Digital Cable Network Frequency Bands, indicates the frequency bands in which various channels may operate, and while compliance with this provision is required, testing and documentation of compliance is not. *See* SCTE 40 2011 at Tables 1, 2, 3.

[37] SCTE 40 defines the Forward Application Transport (FAT) Channel as ''the data channel carried from the headend to the terminal device in a modulated channel at a rate of 26.97 or 38.81 Mbps. MPEG–2 transport is used to multiplex video, audio, and data into the FAT channel. The FAT Channel is also considered the ''In-band'' channel. The FAT channel is used for MPEG–2 compressed video and audio.'' *See* SCTE 40 2011 at 9.

[38] *See* Society of Cable Telecommunications Engineers, *SCTE Measurement Recommended Practices for Cable Systems* (4th ed., 2012) (''SCTE Measurement Recommended Practice'').

digital cable transmission via QAM on hybrid fiber-coax systems. In contrast, non-QAM systems such as the fiber optic, hybrid fiber/twisted pair, and the VDSL and ADSL2+ systems do not possess uniform characteristics. Accordingly, unlike for QAM systems, the SCTE 40 standard is not relevant to non-QAM systems, nor do we have available equivalent industry standards or guidance for each particular new technology. Therefore, we seek comment on how to establish proof of performance standards for non-QAM systems that are functionally comparable to the proof of performance standards proposed above for QAM systems. Similarly, we seek comment on the testing and documentation that should be required to demonstrate compliance with performance standards for non-QAM systems. If we are not able to adopt a uniform proof-of-performance standard for non-QAM systems, we propose, as discussed below, to establish a case-by-case approach for evaluating non-QAM system signal quality.

14. We seek comment on whether there are appropriate industry standards against which to determine signal quality in non-QAM systems. In the absence of any industry-developed standards, is it possible to formulate a uniform signal quality standard, or set of standards, that could apply to the various types of non-QAM systems? In the absence of a uniform standard for measuring the electrical signal characteristics for non-QAM systems, we seek comment on alternative means to objectively measure and evaluate whether a non-QAM digital cable system is providing a ''good quality signal.'' We also ask commenters to address whether objective methods exist to establish if ''good quality signals'' are reaching cable subscribers of non-QAM systems, either as a complement to, or in place of, regulating carrier signal quality, including: (1) An analysis of errors in the transmission of the compressed video stream, (2) a means by which to measure perceived visual signal quality, (3) a combination of the two, or (4) some alternative method. For example, we ask commenters to consider whether a standard regarding transmission errors would be useful in addressing audio-related problems, such as a lack of synchronization of the audio and video signal, or closed captioning related problems, such as poor or missing caption data. In this regard, we note that the vast majority of cable systems encode video using MPEG–2 or MPEG–4 AVC.[39] We seek comment on the potential of establishing standards based on the transmission of the compressed video stream and whether the technical qualities of the decoded signal, such as bit errors in the MPEG stream, are a possible substitute for or supplement to regulating carrier signal quality. With regard to perceived visual signal quality, we note the problem of ''pixelization'' or ''tearing''[40] of a video image that may occur as a result of bandwidth constraints or other non-transmission related network conditions. We seek comment on the suitability of testing visual signal quality, the availability of objective criteria, the availability of equipment, and the desirability of using metrics regarding perceived visual signal quality. Are there any entities currently analyzing and developing standards for visual signal quality? If so, please describe in detail. Finally, we seek comment on whether instead of, or in addition to, adopting objective technical requirements, there are other approaches we should consider to establish standards concerning non-QAM cable operators' signal quality.

15. To the extent that any type of uniform objective measurement is not possible to encompass the variety of existing or future non-QAM system platforms, we propose to establish a case-by-case approach whereby the non-QAM digital cable systems would demonstrate that they are providing a ''good quality signal'' to their customers by submitting a plan for Commission approval. As proposed for QAM systems, the non-QAM system proof-of-performance plan must include a testing and documentation component. This case-by-case approach would replace the existing case-by-case approach for cable systems using ''non-conventional'' techniques.[41] We propose to require each non-QAM digital cable system to submit its own proof-of-performance plan for ensuring subscribers receive good quality signals.[42] We envision these plans would contain a set of parameters, whether electrical signal characteristics, MPEG stream characteristics or other metrics to demonstrate signal quality.[43] We seek comment on whether there are minimum components that each performance plan should contain. We seek to establish objective criteria that the Commission would be able to readily evaluate and that the public could comment upon. For example, should each plan contain an explanation of the technical parameters of the equipment employed, nominal error rates, or other common criteria? Are there objective criteria that are common across all non-QAM systems and that can be used to evaluate proof-of-performance submissions? We would expect that each non-QAM system will have their own internal signal quality guidelines and may wish to use these guidelines as the basis for their proof-of-performance plan. We seek comment on how the Commission should evaluate the adequacy of performance plan submissions. Should we require operators to send a copy of their plan to local franchise authorities (LFAs) with jurisdiction over the system and to provide a mechanism for LFAs to comment on such plans?

3. Testing and Recordkeeping

16. In addition to proposing to adopt a new standard for QAM-based digital cable systems and seeking comment on how to determine signal quality on non-QAM systems, we also propose some minor updates to our current proof of performance testing and recordkeeping rules. Some of these proposed changes would only affect digital systems and others would also apply to analog systems.

a. Number of Channels Tested

17. We propose to simplify the formula by which both analog and QAM digital operators determine how many channels must be tested to ensure compliance with the proof-of-

[39] MPEG–2 and MPEG–4 AVC are standards for digitally encoding and compressing video and other signals developed by the Motion Picture Experts Group. MPEG–2 is used by terrestrial broadcast television stations and most QAM-based cable operators with respect to their traditional linear services; MPEG–4 is used by most IPTV operators.

[40] ''Pixelization'' and ''tearing'' describe the appearance to viewers of an underlying loss of signal. Pixelization appears as large blocks of the video image that either turn black or cease updating. Tearing appears as the moving portion of an image continues its motion over a background which has ceased updating, causing part of the image to appear separated from that immediately adjacent to it.

[41] Currently, the Commission's rules provide that cable systems using non-conventional techniques (today, this applies to any non-analog cable service) may be granted relief from the technical standards subject to assurances that subscribers to such systems will receive an equivalent level of ''good quality service.'' *See* 47 CFR 76.605(b).

[42] We propose that these showings be made electronically, through the Commission's Electronic Comment Filing System, through a similar process to that implemented for other Cable Special Relief (CSR) petitions. *See Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization,* Report and Order, FCC 11–16, 76 FR 24383, May 2, 2011.

[43] This submission should also contain an explanation of the parameters, including how they are measured and documented, and the means by which these parameters are evaluated by system engineers to ensure good signal quality.

performance rules regarding channel-specific characteristics. Currently, a formula exists for very small systems (systems with less than 300 MHz of activated spectrum) that requires a minimum of four channels and then adds channels as various additional blocks of spectrum are activated.[44] We continue to believe that testing every channel is unnecessary, except for those limited tests regarding adjacent channel power limits and nominal power levels, and that testing the channel-specific characteristics is particularly burdensome for small systems with more limited resources. Therefore, we propose to revise the testing formula to reflect a more simplified approach: a cable system with a total activated channel capacity up to 550 MHz will be required to test 5 channels, and any system with a total activated channel capacity of 550 MHz or greater must test 10 channels. We believe that this proposal simplifies compliance for all operators and will continue to ensure that a sufficient representative sample of channels is tested to accurately reflect the experience consumers receive. We seek comment on this proposal.

18. Although cable operators are increasingly transitioning to all-digital systems, most cable systems still deliver both analog and digital channels.[45] Therefore, where only a sampling of channels is called for, we propose to require operators to test each transmission format in proportion to its presence on the system. We propose that systems that deliver both analog and digital channels would be required to divide their proof-of-performance obligation between analog and digital channels proportionally with the percentage of the system that is allocated, by MHz, to each type of transmission, except that in no circumstances would fewer than two channels of a particular type be tested.[46] We seek comment on this proposal. We believe that there are no hybrid systems operating partially analog and partially non-QAM, or partially QAM and partially non-QAM. We seek comment on whether any such systems exist and, if so, how we should address this situation.

19. Currently, our analog proof-of-performance rules only apply to each NTSC or similar downstream cable television channel.[47] As we discuss above, we propose to require proof-of-performance testing on all QAM channels (or a subset, as appropriate),[48] and seek comment on addressing non-QAM digital video channels. These comments should also address switched-digital channels to the extent they deliver video programming that is comparable to traditional, pre-scheduled video programming on linear channels. Traditionally, the Commission has excluded channels used for other purposes, such as video-on-demand and cable modem service.[49] However, in some cases multiple services (*e.g.,* both linear video and video-on-demand) may be combined in a single QAM channel. We seek comment on which QAM channels are appropriate to include in the testing requirements.

b. Number of Test Points

20. Our current rules specify testing requirements for all cable television systems, regardless of whether they are analog or digital.[50] Specifically, two times per year, a cable operator must measure the technical characteristics contained in § 76.605 at specific points throughout its system.[51] The ultimate number of specific test points within a system is determined by the number of subscribers to the system.[52] Technological advancements, however, have resulted in less clear distinctions among physical components that make up a system or separate one system from another. This has resulted in the potential for subscribers to be allocable to more than one system. Additionally, the industry is increasingly moving toward consolidating headends to form regional clusters. For example, Verizon's fiber-to-the-home (FTTH) offering, FiOS, has largely done away with the notion of local headends, utilizing region-wide facilities instead.

21. We believe that the physical boundaries of a system—that is, the separation of one system from another—are not generally relevant to the purpose of proof-of-performance testing. Rather, the rules are subscriber focused, and so long as good quality signals are being delivered to subscribers, their specific origin need not be precisely defined. We propose, however, to modify the rules for the number of test points. While the Commission has preempted local franchising authorities from establishing their own standards,[53] local franchise authorities (LFAs) retain control over their public rights of way and have a much closer relationship with their cable operators and cable customers than does the Commission. Therefore, we propose to require that at least one test point, representative of the type of service (taking into account system architecture, channel delivery, and other technical characteristics) received by customers within that local franchise area, be located within each LFA's jurisdiction. We seek comment on the appropriate course of action if the number of LFAs exceeds the number of test points required by the existing formula. For example, should additional test points be added to the operator's obligations to equal the total number of LFAs served by that system? We seek to ensure that as system consolidation and technological innovation lead to ever larger system footprints, that our rules maintain the necessary geographic diversity and, at the same time, ensure that subscribers across an operator's

[44] 47 CFR 76.601(b)(2). Currently, the Commission uses a formula which requires every system to test a minimum of 4 channels for the first 100 MHz, plus one channel for each additional 100 MHz of cable system upper frequency limit (or fraction thereof). For example, a 750 MHz system is required to test a total of 11 channels (4 channels for the first 100 MHz plus 7 additional channels for each additional 100 MHz block of spectrum).

[45] For example, we note that as of December 31, 2010, approximately 92 percent of cable subscribers were served by a hybrid analog-digital cable system. *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 12–18, 77 FR 9187, Feb. 16, 2012.

[46] For example, a 750 MHz system would be required to test 10 channels under our proposal. Assuming this system maintains 36 channels of analog transmission and 80 channels of digital, the percentage of the system allocated to analog would be 31%. Therefore, we would expect the system to test 3 analog channels against our analog standards, and 7 digital channels against our digital standards. However, should the system maintain fewer than 23 analog channels (20% of its capacity by MHz), the operator would continue to be required to test 2 analog channels until the system transitions to all-digital operation.

[47] *See* 47 CFR 76.605(a).

[48] SCTE 40 2011 contains detailed specifications defining a ''channel'' for purposes of meeting the technical standards, including that it be 6 MHz wide, operate in specific frequency bands, be comprised of QAM carriers, and comply with numerous other standards. *See* SCTE 40 2011 at 17.

[49] At the time, the Commission observed that standards were not available for the delivery of non-traditional services such as pay-per-view or data services, but that operators would have a ''distinct incentive to fix'' any problems that occurred on these services. *See 1992 Order.*

[50] 47 CFR 76.601(a) (''The operator of each cable television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart.''); *see also* 47 CFR 76.5(a) (defining a ''cable system or cable television system'').

[51] 47 CFR 76.605.

[52] *See* 47 CFR 76.601(b)(1). The rules also specify the number of test points. Six test points are required for all systems with 1,000 to 12,500 subscribers. For systems with more than 12,500 subscribers, an additional test point is added for each multiple of 12,500 subscribers. Additionally, each portion of the system separated by a non-physical link, such as microwave, must be tested. The rules direct operators to separate the test points in a geographically representative manner.

[53] *See Amendment of Part 76 of the Commission's Rules and Regulations Relative to the Advisability of Federal Preemption of Cable Television Technical Standards or the Imposition of a Moratorium on Nonfederal Standards,* Report and Order, 39 FR 39050, Nov. 5, 1974.

system footprint receive good quality signals.

c. Recordkeeping

22. We propose to adopt recordkeeping obligations on digital cable operators identical to those placed on analog cable operators. Section 76.1704(a) of our rules provides that proof-of-performance test results shall be maintained on file at the operator's local business office for at least five years and shall be made available for inspection by the Commission or the local franchising authority, upon request.[54] In addition, § 76.1700(a) of our rules, broadly referred to as the public file obligations of a cable operator, provides that the operator of a cable system shall either provide this information to the public upon request or maintain a public inspection file containing this information, depending on the size of the system.[55] While we believe that the current rule has been effective, we seek comment on what, if any, changes should be made to our recordkeeping rules. For example, we seek comment on whether the rules should be modified to make these records more available or to alter the length of time records are retained.

d. Other Issues

23. We seek input regarding the extent to which a cable system's compliance with our technical standards depends on third parties. Are there factors outside of a cable system's control that could result in a degradation of signal quality? For example, to what extent does the signal quality received by cable subscribers depend on the reliability of networks controlled by third parties or on the programmer's original encoding of the material? Can a cable system contract with third parties to ensure compliance with our technical standards? What impact, if any, should a cable system's reliance on third parties have on our technical standards?

24. We also seek comment on what role, if any, set-top boxes should play in the Commission's efforts to ensure consumers receive good quality signals.[56] There appears to be some industry confusion regarding the proper role of set-top boxes in meeting a cable operator's proof-of-performance obligations.[57] In all-digital systems where most or all televisions require a set-top box, is it desirable to establish a testing regime which utilizes the output at the operator's leased set-top boxes as the testing point to determine whether a good quality signal is being delivered to subscribers? If so, do standards exist for the connections consumer now generally use to connect digital cable set-top boxes to televisions, such as HDMI and component video cables? Further, how could we ensure that subscribers owning non-operator-supplied set-top boxes or CableCARD-equipped televisions receive ''good quality signals?'' [58]

25. Finally, we also propose to rationalize the numbering scheme in our rules to accommodate our proposed rule changes. Specifically, we propose to relocate the analog proof of performance rules in a new § 76.605(b) and create § 76.605(c) for digital rules.[59] Section 76.605(a) will contain guidance for interpreting the rest of the section, and § 76.605(d) will contain an updated general signal leakage provision previously located in § 76.605(a)(12) that will apply both to analog and digital systems.[60] We also propose to renumber § 76.601, to consolidate the analog instructions under § 76.601(b)(2) and the digital instructions under § 76.601(b)(3). We believe that these changes will make the rules easier to read and follow. Additionally, we propose to update the signal-to-noise requirements of a new § 76.605(b)(7), formerly § 76.605(a)(7),[61] to reflect the completion of the transition to digital television broadcasting by amending any reference to Grade B Contour with a reference to the Noise-Limited Service Contour as the applicable, regulatory equivalent for digital broadcasting.[62] Finally, we propose to renumber the current § 76.605(b) to § 76.605(e), to be modified as detailed below. We seek comment on these proposals.

*B. Cumulative Signal Leakage*

26. MVPDs that operate coaxial cable plants (''coaxial cable systems'') use frequencies allocated for myriad over-the-air services within their system. Under ideal circumstances, those signals are confined within the cable system and do not cause interference with the over-the-air users of those frequencies. However, under certain circumstances, a coaxial cable plant can ''leak'' and interfere with over-the-air users of spectrum.[63] The Commission began looking at the issue of coaxial cable signal leakage in the 1970's, and in 1977 released a *First Report and Order* to address concerns that coaxial cable plants could leak electromagnetic radiation that could interfere with critical navigational and emergency frequencies.[64] Specifically, the Commission was concerned with interference to the aeronautical radio frequency bands, located at 108 to 137 MHz and 225 to 400 MHz, and that interference from leaks dispersed throughout the cable plant would constructively combine to appear as a single, much larger leak to receivers passing overhead. At the time, demonstrated incidents of interference were rare.[65] The order noted, however, that ''the major reason for formulating the rules * * * is not to solve an existing problem of crisis proportions.

[54] *See* 47 CFR 76.1704(a).

[55] The operator of a cable system with fewer than 1,000 subscribers is exempt from these requirements. *See* 47 CFR 76.1700(a). The operator of a cable system having 1,000 to 5,000 subscribers must provide this information upon request. *See id.* The operator of a cable system having 5,000 or more subscribers must maintain this information in a public inspection file. *See id.*

[56] *See* 47 CFR 76.605, Note 3 (''The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter''). 47 CFR 15.3(e) defines a ''cable system terminal device'' is a ''TV interface device that serves, as its primary function, to connect a cable system operated under part 76 of this chapter to a TV broadcast receiver or other subscriber premise equipment. * * * '' Generally, these are referred to as ''cable set-top boxes'' and are generally leased by customers from their MVPD, but may be purchased at retail as well. Rather than focusing on signal quality as determined by the proof-of-performance rules, the Part 15 rules ensure that boxes do not harm connected televisions or cause interference. *See* 47 CFR 15.115.

[57] *In the Matter of Pace Micro Technology PLC Petition for Special and Interim Relief,* Order, 19 FCC Rcd 1945 (MB 2004).

[58] We note that in 2010 the Commission updated its rules regarding CableCARDs, largely with respect to customer support-related issues, but also with respect to some technical rules. *See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment,* Third Report and Order, FCC 10–181, 76 FR 44279, July 25, 2011.

[59] 47 CFR 76.605.

[60] We note that this general signal leakage requirement is separate from the more stringent signal leakage requirements pertaining to the aeronautical bands and discussed below. *See* Section III.B; 47 CFR 76.610, et al.

[61] 47 CFR 76.605(a)(7).

[62] While the Grade B contour defined an analog television station's service area, see 47 CFR 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in § 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level. *See* 47 CFR 73.622(e). Accordingly, the Commission has treated a digital station's noise limited service contour (NLSC) as the functional equivalent of an analog station's Grade B contour. *See, e.g., Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA),* Report and Order and Order on Reconsideration, 75 FR 72968, Nov. 29, 2010.

[63] For example, leakage can occur when outside cabling becomes frayed due to age, damage caused by animals, or breaks due to severe weather.

[64] *Amendment of Part 76 of the Commission's Rules to Add Frequency Channeling Requirements and Restrictions and to Require Monitoring for Signal Leakage from Cable Television Systems,* Report and Order, FCC 77–541, 42 FR 41284, Aug. 16, 1977 (''*First Report and Order*'').

[65] *See First Report and Order.*

Rather * * * [it is] because we expect that the near future is likely to bring more cable televisions systems, more extensive use of mid-band frequencies'' and as a consequence, greater potential for interference.[66] While the *First Report and Order* established the basic framework for signal leakage that continues to be used today, the Commission at the time recognized the need for further analysis and commissioned a federal advisory committee for this purpose.[67]

27. In the wake of the *Final Report of the Advisory Committee on Cable Signal Leakage,*[68] the Commission adopted a *Second Report and Order* in 1984.[69] The *Second Report and Order* implemented the advisory committee's recommendations and established the comprehensive signal testing regime currently in use.[70] Importantly, the *Second Report and Order* affirmed the Commission's previous decision regarding the cumulative nature of leaks from cable systems and their potential for interference when aggregated by receivers in aircraft passing overhead.[71] It also noted that reported cases of interference increased between the adoption of the *First Report and Order* in 1977 and the *Second Report and Order* in 1984, lending credence to the *First Report and Order's* prediction that additional interference would appear as cable deployment continued.[72]

28. The rules established in 1984 by the *Second Report and Order* remained largely unchanged in the ensuing 25 years.[73] However, in 2004, the Commission extended protection to an emergency band near 406 MHz, and set limits for interference from both analog and digital cable systems.[74] The signal leakage rules are contained in §§ 76.610 to 76.620 (the technical rules), §§ 76.1706, 76.1803, 76.1804 (recordkeeping and reporting rules), and in § 76.605(a)(12) (a general signal leakage performance rule) of the Commission's rules.[75] MVPDs that operate coaxial cable systems [76] are responsible for ensuring that system design, installation and operation comply with the rules and for compliance testing four times per year.[77] Once each year, operators of coaxial cable systems must calculate their cumulative signal leakage and report their results to the Commission.[78] As set forth below, we seek comment on the adequacy of these rules, our proposed modifications for digital cable operations, and the costs and benefits associated with them.

1. Adapting Regulations for Digital Cable

a. Aeronautical Frequency Notifications

29. The first component of the Commission's signal leakage regime is the Aeronautical Frequency Notification (''AFN''). Prior to commencing operation in the aeronautical radio frequency bands above an average power level equal to or greater than $10^{-4}$ watts across a 25 kHz bandwidth in any 160 microsecond time period,[79] MVPDs are required to notify the Commission and provide a ''point and radius'' description of their system, allowing the Commission to generally locate the geographic area from which interference might aggregate.[80] This power threshold and measurement window were developed for analog systems, and an equivalent for digital systems must be selected.

30. We propose to use the same power threshold and measurement window to trigger the notification requirement for AFN as the power threshold and measurement window that triggers the prohibition around the 406 MHz emergency frequencies.[81] Near the emergency distress frequencies, systems are *prohibited* from operating above a particular peak power level ($10^{-5}$ watts over a 30 kHz bandwidth in any 2.5 millisecond time period).[82] In the *406 MHz Order,* the Commission determined that the power threshold should remain unchanged when considering interference from digital, rather than analog, coaxial cable systems, but that the measurement window needed to be adapted. Based on the relatively even distribution of power throughout the channel for digital signals, and the bandwidth of the devices receiving the interference,[83] the Commission determined that for digital systems, a $10^{-5}$ watt average power level should be calculated across a 30 kHz bandwidth for a time period of 2.5 milliseconds.[84] Given the similar channelization of aeronautical receivers (25 kHz for aeronautical receivers versus 24 kHz for satellite), for the AFN requirement, we tentatively conclude that the same power threshold and measurement window are appropriate.

31. Today, the vast majority of coaxial cable systems maintain an AFN on file with the Commission.[85] The change

[66] *Id.* at 823, para. 28.

[67] *See Amendment of Part 76 of the Commission's Rules to Add Frequency Channeling Requirements and Restrictions and to Require Monitoring for Signal Leakage From Cable Television Systems,* Further Notice of Proposed Rulemaking, FCC 80–126, 45 FR 19578, Mar. 26, 1980 (''Subsequently, the Commission did appoint an Advisory Committee on Cable Signal Leakage and partially funded a research program in this area. The Advisory Committee provided suggestions and guidance throughout the research program, examined the results of the research, drew technical conclusions, and recommended a new regulatory approach to preventing interference based on those conclusions.'').

[68] United States Advisory Committee on Cable Signal Leakage, Final report of the Advisory Committee on Cable Signal Leakage to the Chief, Cable Television Bureau, Federal Communications Commission (1979).

[69] *Amendment to Part 76 of the Commission's Rules to Add Frequency Channeling Requirements and Restrictions and to Require Monitoring for Signal Leakage from Cable Television Systems,* Second Report and Order, FCC 84–516, 49 FR 45431, Nov. 16, 1984 (''*Second Report and Order*''). *See also Amendment to Part 76 of the Commission's Rules to Add Frequency Channeling Requirements and Restrictions and to Require Monitoring for Signal Leakage from Cable Television Systems,* Memorandum Opinion and Order, FCC 85–333, 50 FR 29394, July 19, 1985 (This MO&O addressed seven petitions for reconsideration, upholding the *Second Report and Order* broadly but relaxing the precision with which regular monitoring must be performed and expanding what system expansion may be performed under the grandfathering provision).

[70] *Id.*

[71] *Second Report and Order,* para. 36.

[72] *Id.* at paras. 8 through 16.

[73] Minor changes to the rules have been made, including converting the rules to metric, non-substantive reorganization of the rules, and correction of typographical errors. *See, e.g. Oversight of Radio and TV Rules,* Order, 53 FR 2499 (Mass Media 1988) and *Oversight of Radio and TV Rules,* Correction, 53 FR 5684 (Mass Media 1988) (Correcting typographical errors).

[74] *See 406 MHz Order* (extending protection to the emergency band near 406 MHz).

[75] 47 CFR 76.610 through 620, 76.615(a)(12), 76.1706, 76.1803 through 1804.

[76] In addition to traditional cable operators, MVPDs such as hotels, motels, hospitals, apartment buildings, private settlements, university campuses, etc., who operate coaxial cable plants are responsible for complying with the signal leakage rules. MVPDs with fewer than 1000 subscribers are exempt from the recordkeeping requirements. *See* 47 CFR 76.1700(a).

[77] 47 CFR 76.614.

[78] *See* 47 CFR 76.611(a)(1) (requiring operators to conduct a complete CLI calculation every 12 months), and 47 CFR 76.1803 (requiring operators to report the results of their CLI testing to the Commission).

[79] 47 CFR 76.1804.

[80] *Id.* This notification is submitted to the Commission on FCC Form 321, now collected electronically through the COALS system at *www.fcc.gov/coals.*

[81] *See* 47 CFR 76.616(b).

[82] *See* 47 CFR 76.616. Specifically analog systems are prohibited from operating with a peak power level of $10^{-5}$ watts within 100 kHz of 121.5 MHz, within 50 kHz of 156.8 MHz and 243 MHz, and at any point between 405.925 and 406.176 MHz.

[83] *406 MHz Order,* (''The Search and Rescue Processor subsystem that receives the signals transmitted from the beacons has a receiver bandwidth of 24 kHz. It is critical that the transmitted signal be received by the processor subsystem without any interference. Therefore, we are imposing a limit on the average power of a digital signal over a resolution bandwidth of 30 kHz in order to protect the satellite receiver from interference.'').

[84] 47 CFR 76.616(b).

[85] Approximately 87% of active systems have an AFN on file with the Commission as of July 1, 2012.

Continued

proposed above will only affect those systems that are operating a digital channel or channels in the aeronautical band between the existing analog threshold ($10^{-4}$ watts peak power over a 25 kHz bandwidth in any 160 microsecond time period) and our proposed digital threshold ($10^{-5}$ watts average power over a 30 kHz bandwidth in any 2.5 millisecond time period). Under our rule proposed above, operators of those systems that were not previously required to notify the Commission will need to amend or file an AFN. We note, however, that some systems have transitioned to digital operation in these bands and ''withdrawn'' their AFN as a result. We believe that these systems should file a new AFN so that the Commission (for aeronautical users) and the Cospas-Sarsat (for international satellite search and rescue) can identify both potential sources of interference. Conversely, most modern coaxial cable systems operate on frequencies inclusive of the aeronautical bands, and thus only have the burden of notifying the Commission when the size of their system changes. Therefore, for the majority of systems, there is little, if any, additional regulatory burden as a result of this proposal as they should already have an AFN on file with the Commission covering the complete aeronautical bands and their complete service footprint. For those systems operating digital channels in the aeronautical bands below the old analog threshold but above our proposed digital threshold of $10^{-5}$ watts average power across a 30 kHz bandwidth in any 2.5 millisecond period, we believe that the one-time burden of notification to the Commission and infrequent updating is necessary to ensure public safety and presents only a minor burden on coaxial cable operators.[86] We seek comment on this proposal.

b. Channel Frequency Offsets

32. We propose not to apply the channel frequency offset requirement to digital signals as digital signals simply cannot be offset in the way analog frequencies can. Channel frequency offsets have always played a critical role in minimizing the interference potential from analog coaxial cable systems to both aircraft communication and aircraft navigation services, such as the Instrument Landing System (ILS) and VHF Omnidirectional Range service (VOR). The power levels of an analog television channel are not uniform across the bandwidth; rather, power is significantly higher at the center frequencies of each of the subcarriers contained within the channel. The Commission's rules prohibit the subcarriers from lining up directly with the ILS, VOR, or communications carriers to diminish the possibility that a leak will cause harmful interference to these safety services.[87] As a result, the *Second Report and Order* established a channel frequency offset of 12.5 kHz, with a tolerance of ± 5 kHz.[88] This requirement is not meaningful with respect to digital signals, however, as digital signals do not have the discrete carriers necessary to effectuate an offset. Instead, digital signals operate at a nearly constant average power throughout the 6 MHz channel. Therefore, we propose to maintain the channel frequency offset requirement only with respect to analog signals but eliminate the requirement for digital signals. We note, however, that removing the offset requirements for digital signals does not exempt operators from compliance with the channelization and identification requirements of § 76.605.[89] We seek comment on this proposal.

c. Analog to Digital Interference Equivalency

33. The Commission must address the implication of not having the interference protection afforded by the channel frequency offset requirement for digital channels. For analog signals, channel frequency offsets function to lower the strength of an undesired signal and our rules factored this offset into the signal leakage limit calculation.[90] Digital signals, however, distribute their power evenly throughout the 6 MHz channel. While the result of this even distribution is a signal which cannot be offset like an analog signal, it does provide an average power level well below the peak power of the visual carrier of an analog signal. Further, because we limit our analysis of interference potential to the receiver bandwidth of an aircraft receiver, which should be no larger than 25 kHz, these two offsetting effects can be quantified. In their comments for the *Second Report and Order,* the FAA stated that absent frequency offsets, the cumulative signal leakage threshold would need to be decreased by 25 dB.[91] This analysis, of course, was based on 1980s receiver technology. Accordingly, we seek comment on improvements in receiver components and hardware that have resulted in improved receiver sensitivity, selectivity, and other performance characteristics and might alter this calculation. However, we tentatively conclude that we do not need to consider improvements in receiver selectivity, as we are considering, by definition, undesired signals on-channel with desired signals. Comparing the average power level of a digital cable signal to the peak power level of an analog signal, the digital signal creates substantially less interference. Specifically, the peak power of the analog visual carrier is narrowly constrained, delivering essentially all of its power directly into the 25 kHz receiver front-end. A digital signal operating at a particular average power over 6 MHz delivers only a small subset of its power into any particular 25 kHz bandwidth. This results in a digital signal operating at a particular average power level across a 6 MHz channel delivering 23.8 dB less power into a receiver having a 25 kHz bandwidth than an analog television signal operating at the same peak power.[92] While the lack of frequency offsets increases the potential for signal interference to aviation receivers by 25 dB, the use of digital modulation decreases signal the level of potential interference by 23.8 dB, resulting in a net increase in interference potential of 1.2 dB for a receiver having a 25 kHz bandwidth.

34. We therefore propose to amend our rules to account for this increase of 1.2 dB to interference from digital signals. The general signal leakage requirement, stated in § 76.605(a)(12),[93] provides that the field strength of signal leakage should not exceed 15 microvolts per meter (μV/m) measured at 30 meters for frequencies below 54 MHz and

*See* FCC Cable Operations and Licensing System, *www.fcc.gov/COALS.*

[86] We expect this rule change to impact only cable systems which have completed the transition to all-digital operation and deactivated their AFN and new, all-digital cable systems which have never filed an AFN with the Commission.

[87] *See First Report and Order,* 65 FCC 2d at 824. A 10 kHz offset can result in undesired signal strength diminishing by up to 40 dB. *Id.* at 824 through 825.

[88] *Second Report and Order,* 99 FCC 2d at 520.

[89] *See* Proposed rule 47 CFR 76.605(b)(1)(ii) (currently 47 CFR 76.605(a)(1)(ii)) (requiring analog channel compliance with CEA–542–B: ''Standard: Cable Television Channel Identification Plan'') and proposed rule 47 CFR 76.605(c) (requiring digital channel compliance with ANSI/SCTE 40: ''Digital Cable Network Interface Standard,'' which requires compliance with CEA–542–B: ''Standard: Cable Television Channel Identification Plan'').

[90] *Second Report and Order,* 99 FCC 2d at 525.

[91] *Id.*

[92] The Relative bandwidth ratio of digital QAM signals to aviation receiver bandwidth can be calculated by the formula 10 * log (6 MHz/25 kHz), which equals 23.8 dB less effective interference power from the perspective of a 25 kHz wide aviation receiver. Wider receivers would receive more interference power and narrower receivers would receive less.

[93] 47 CFR 76.605(a)(12).

above 216 MHz, and 20 μV/m measured at 3 meters for frequencies between 54 MHz and 216 MHz. Accordingly, we propose to decrease the maximum leakage level for both of these bands by 1.2 dB, which when rounded to the nearest 0.1 μV/m, results in a 17.4 μV/m threshold between 54 MHz and 216 MHz, and a 13.1 μV/m threshold at all other frequencies. We seek comment on this proposal. Additionally, the requirement for regular signal leakage monitoring requires the use of a detector capable of detecting a leak in excess of 20 μV/m at 3 meters.[94] Following our reasoning above, we propose to permit the use of analog detectors with this sensitivity when measuring analog signals in a system which operates no digital signals in the aeronautical bands, but to require analog and digital detectors to have sufficient sensitivity to detect the 1.2 dB decrease in the maximum signal leakage level we propose above, or 17.4 μV/m, in those systems which operate digital signals in the aeronautical bands. Further, we propose to require digital leakage in excess of this threshold to be noted and repaired within a reasonable time, factoring in the severity of the leak and operational considerations. We seek comment regarding any potential burdens that this change in the general signal leakage requirement may have on operators. For instance, would cable operators have to acquire new or more sensitive equipment, or modify their testing procedures, to comply with the proposal? To the extent there are increased costs, are there also countervailing benefits?

35. For cumulative signal leakage, there are three thresholds that we propose adjusting to address digital transmission. They are the threshold at which the rules become applicable, the threshold at which leaks must be included in the cumulative leakage index (''CLI'') calculation, and the maximum leakage and CLI permissible. Under § 76.610, the CLI rules apply where operations in the aeronautical frequency bands exceed an average power level of 100 microwatts ($10^{-4}$ watts) or 38.75 dBmV in transmitting carriers or any signal component in a 25 kHz bandwidth in any 160 microsecond period at any point in the cable distribution system.[95] We propose to decrease the signal level at which the rules become applicable by 1.2 dB for digital signals resulting in a threshold power level of 75.85 microwatts or 37.55 dBmV. Once an operator is subject to CLI, the operators may demonstrate compliance based either upon a § 76.611(a)(1) ground-based measurement or by a § 76.611(a)(2) airspace measurement.[96] For ground-based measurements, operators must include analog leaks in excess of 50 μV/m in the signal leakage index calculation, and an $I_{3000}$ of less than or equal to $-7$ or $I_{\infty}$ of less than or equal to 64 is permissible.[97] Therefore, by subtracting 1.2 dB from each of these components, we propose that digital leaks in excess of 43.6 μV/m be included in the calculation (and reported to the Commission) and that the maximum acceptable $I_{3000}$ becomes $-8.2$ and the maximum acceptable $I_{\infty}$ becomes 62.8. For airspace measurements, coaxial cable operators may not exceed a field strength of 10 μV/m RMS at any point 450 meters above the average terrain of the coaxial cable system. Converting for digital leakage, the new maximum field strength becomes 8.7 μV/m. We seek comment on these proposals and any other issues that may arise from this conversion, especially on the equivalency of our ground and air based measurements. We also seek comment regarding any potential burdens that this change in the general signal leakage requirement may have on operators. For instance, would cable operators have to acquire new or more sensitive equipment, or modify their testing procedures, to comply with the proposal? To the extent there are increased costs, are there also countervailing benefits?

2. Miscellaneous Issues

36. We seek comment on several additional issues associated with the appropriate regulation of signal leakage with regard to digital transmissions. First, § 76.609(h) contains a detailed methodology for performing signal leakage measurements.[98] This methodology, however, is specific to analog signals and may not be appropriate for digital signals. We maintain this requirement for analog signals, and we seek comment on an appropriate measurement technique for digital signals. To the extent that § 76.1803 requires submission to the Commission of a description of the method by which compliance with the basic signal leakage criteria is achieved, we will continue to require such submission in the absence of a common procedure for digital signal as we believe this is necessary to permit verification of sound engineering practices. However, we may revisit this issue if measurement of digital signal leakage becomes widely standardized in the future.

37. Next, we address the issues of what type of signal, analog or digital, an operator must test and what signal leakage limit they must adhere to. The decreased signal levels we propose in the section above are designed to be equivalent in interference potential to analog signals. Accordingly, we propose to allow operators to choose to test either an analog carrier using either their existing analog signal leakage test equipment and an offset analog signal, or a digital carrier using new digital signal leakage test equipment.[99] Either method should yield the same peak signal leakage from the coaxial cable plant. Thus, we tentatively conclude that operators are allowed to select whether to perform tests on an analog carrier or a digital carrier at their discretion, except that where an operator transmits any digital signals in the aeronautical bands, the operator would be required to use the digital limits we described above.

38. We seek comment on whether our signal leakage performance criteria rules are sufficient, whether or not we need to expand the frequencies protected, and whether to maintain the requirement that the test frequency be located within the 108–137 MHz band.[100] We note that at the time of the *Second Report and Order,* 400 MHz was near the upper limit of the bandwidth of coaxial cable systems deployed at the time.[101] Today, coaxial cable systems routinely deploy in excess of 750 MHz, and deployments up to 1 GHz exist. We seek comment on potential and actual interference from coaxial cable systems to critical infrastructure operating above 400 MHz and the implications of extending signal leakage protection to

[94] 47 CFR 76.614.

[95] 47 CFR 76.610.

[96] 47 CFR 76.611(a)(1), (2).

[97] *Id.*

[98] 47 CFR 76.609(h). For example, 47 CFR 76.609(h)(2) directs the operator to express the field strength in terms of the rms (root mean square) value of the synchronizing peak for each cable television channel. Digital channels do not have a ''synchronizing peak.''

[99] ''A carrier is an electrical signal at a continuous frequency capable of being modified to carry information. For analog systems, the carrier is usually a sine wave of a particular frequency, such as [121.2625 MHz, commonly used for signal leakage]. It is the modifications or the changes from the carrier's basic frequency that become the information carried. Modifications are made via amplitude, frequency, or phase. The process of modifying a carrier signal is called modulation. A carrier is modulated and demodulated (the signal extracted at the other end) according to fixed protocols.'' H. Newton, *Newton's Telecom Dictionary* at 152 (20th ed. 2004).

[100] 47 CFR 76.611(b).

[101] *Second Report and Order,* 99 FCC 2d at 520.

higher bandwidths.[102] We further seek comment on our current testing and recordkeeping requirements,[103] including the requirement that tests be performed every three months, that tests be reported to the Commission once per year, the duration of time that records must be kept, and any other associated burdens that might be reduced without diminishing the efficacy of the Commission's signal leakage program. We seek comment on whether to retain or modify these rules.

39. Finally, we propose limiting, or potentially eliminating, the $I_{3000}$ method of calculating CLI, favoring the $I_{\infty}$ method.[104] $I_{3000}$ differs from $I_{\infty}$ in that it provides discounting of leaks based on their distance from the geographic center of the system, whereas $I_{\infty}$ considers all leaks equally. The respective total CLI values for each, however, are designed to result in equivalent levels of permissible leakage. At the time these formulas were established, systems were much smaller than they are today. Now that systems generally cover much larger geographical areas; the discounting based on distance results in a previously unforeseen breakdown in the $I_{3000}$ formula. Specifically, for sufficiently large systems, significant leaks, which alone would be impermissible under the $I_{\infty}$ formula, become minimized due to their distance from the center of the system. By calculation, we can determine that a single leak of 1340.05 μV/m located at the center of a coaxial cable system results in that system exceeding the maximum allowable CLI. However, that leak, if located more than 80.32 km from the system center, would appear to be equivalent to a 50 μV/m leak located at the system center. Such a leak, would be potentially strong enough to interfere with aircraft receivers alone, but would not be captured in an $I_{3000}$ measurement. Therefore, we propose to limit the application of $I_{3000}$ to systems with a total geographic diameter of less than 160 km. However, we also note that very few systems choose to calculate CLI using the $I_{3000}$ method due to the increased recordkeeping and calculation burden associated with determining the distance of a particular leak from the center of a system. Thus, in the alternative, we propose eliminating $I_{3000}$ as a calculation method altogether and requiring operators to use only $I_{\infty}$. We seek comment on both of these proposals.

*C. Reorganizations, Corrections, and Other Updates in Part 76*

40. We further propose edits to remove references to effective dates that have passed, make editorial corrections, delete obsolete rules, update various technical standards that are incorporated by reference into our rules, and clarify language in Part 76 of our rules. The proposed changes are intended to set forth existing compliance requirements more clearly for MVPDs, franchising authorities, and the public. We seek comment on any other requirements that have been implemented by Commission order, but that have inadvertently been omitted from our rules.

41. Specifically, we propose to remove obsolete references to dates in §§ 76.56(b), 76.57(e), 76.64(a), 76.105(b), 76.127(f), 76.309(c)(1), 76.606, 76.1204(a), 76.1601, and 76.1602. We propose to correct citation references in §§ 76.56(a)(1)(i), 76.612(b)(2), 76.1508, 76.1509, 76.1510, and 76.1701(d). We propose to correct the numbering and references in Section 76.1205, and to eliminate the duplicative reporting requirements found in § 76.1610(f) and (g). We seek comment on these proposed changes, and encourage commenters to propose any other non-substantive changes to Part 76 of our rules that will correct errors or more clearly convey the Commission's intent.

42. We propose to delete § 76.1909, which was created as part of the Commission's Broadcast Flag rules in 2003, since it is obsolete and without legal effect.[105] The Broadcast Flag rules were vacated by the Court of Appeals for the District of Columbia Circuit in 2005 insofar as they required demodulators to give effect to the Broadcast Flag.[106] The Media Bureau released an order on August, 24, 2011 deleting the Broadcast Flag rules in Parts 15 and 73 of the Commission's rules, but did not delete § 76.1909 from the CFR.[107] Although this provision was not vacated by the Court, without the obligation that equipment respect the Broadcast Flag, these rules would seem to be ineffective. Our proposed deletion of Section 76.1909 would remove the obsolete Broadcast Flag Rule. We seek comment on this proposed deletion.

43. We propose to update the various incorporations by reference in Part 76 to the most current versions made available by the relevant standards bodies.[108] We believe the standards incorporated in Part 76 have changed in minor ways since their original adoption by the Commission, correcting typographical errors, adding clarification, and updating various requirements in minor ways to reflect improvements in technology and continued innovation. Further, we expect that most industry participants are adhering to the current versions of these standards, even though they are not required to by our rules. The standards we are proposing to update are as follows:[109]

(1) ATSC A/65D: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision D),'' IBR used for § 76.640. **Note:** Part 76 of the Commission's rules currently incorporates revision B of this standard. Revision C was adopted for broadcast purposes in the 3rd DTV Periodic Review.[110] Regarding cable television, revision D primarily adds language to reflect the Commission's rules implementing the standard. Additionally, the potential exists for revision E of this standard to be released before the end of 2012.

(2) CEA–542–C, ''CEA Standard: Cable Television Channel Identification Plan,'' IBR used for § 76.605. **Note:** In the update from version B to version C, the channel plan has been extended from 864 MHz to 1002 MHz,

[102] *See, e.g.* Ron Hranac, *Some Thoughts on LTE Interference,* Communications Technology (Oct. 1, 2011) *available at http://www.cable360.net/ct/sections/columns/broadband/48482.html.* ''In one case, a leak on the order of 1,000 microvolts per meter (μV/m) was found, despite the fact that leakage in the VHF aeronautical band was well-below the FCC's 20 μV/m limit. The problem was a defective tap. A replacement tap took care of the leakage, but follow-up lab testing of the defective tap showed it had about 40 dB less shielding effectiveness at 750 MHz than it did at 133 MHz because of a flaky faceplate gasket. That correlated well with the approximately 1,000 μV/m leakage field strength at 750 MHz versus the approximately 10 μV/m leakage field strength at 133 MHz, also a 40 dB difference.''

[103] 47 CFR 76.614, 76.1706, 76.1803 through 1804.

[104] *See* 47 CFR 76.611.

[105] *See Digital Broadcast Content Protection,* Report and Order and Further Notice of Proposed Rulemaking, FCC 03–273, 68 FR 67624, Dec. 3, 2003. The broadcast flag rules were intended to prevent the indiscriminate redistribution of television broadcast content over the Internet.

[106] *See American Library Association, et al. v. FCC,* 406 F3d 689 (D.C. Cir. 2005).

[107] *See Amendment of Parts 1, 73 and 76 of the Commission's Rules,* Order, DA 11–1432, 76 FR 62642 Oct. 11, 2011.

[108] *See* 47 CFR 76.602, Incorporation by reference.

[109] SCTE standards are available from the Society of Cable Telecommunications Engineers Web site, located at *http://www.scte.org/standards/Standards_Available.aspx,* CEA standards are available from the Consumer Electronics Association Web site, located at *http://www.ce.org/Standards/,* and ATSC A/65 is available from the Advanced Television Systems Committee Web site located at *http://www.atsc.org/cms/index.php/standards.*

[110] *See Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* Report and Order, FCC 07–228, 73 FR 5634, Jan. 30, 2008.

accommodating the largest cable systems.

(3) CEA–931–C, ''Remote Control Command Pass-through Standard for Home Networking,'' IBR used for § 76.640. **Note:** This revision primarily extended the existing specifications to work over IP connections, among other minor changes.

(4) ANSI/SCTE 26 2010 (formerly DVS 194): ''Home Digital Network Interface Specification with Copy Protection,'' IBR used for § 76.640. **Note:** The 2010 revision to SCTE 26 provides for numerous minor updates, adding requirements to support additional features, such as powering-on and off, passing through tuning, mute, and restore volume functions, and other minor protocol additions.

(5) SCTE 28 2012 (formerly DVS 295): ''Host-POD Interface Standard,'' IBR used for § 76.640. **Note:** The most recent version of SCTE 28 has not yet been ANSI approved, and merely updates and adds references. Previous revisions have made minor changes to the ID reporting mechanism, application interface, and baseline HTML profile requirements.

(6) ANSI/SCTE 40 2011 (formerly DVS 313), ''Digital Cable Network Interface Standard,'' IBR used for §§ 76.605 and 76.640. **Note:** The 2011 update to SCTE 40 updates internal citations, renumbers various tables, and makes minor adjustments to the performance specifications that generally loosen the standard.

(7) ANSI/SCTE 41 2011 (formerly DVS 301): ''POD Copy Protection System,'' IBR used for § 76.640. **Note:** The 2011 revision to SCTE 41 updates internal references to other standards, requires PODs and Hosts to support an ''ID reporting screen,'' and removes the section on Two-Way System Host Authentication Message Protocol.''

(8) ANSI/SCTE 54 2009 (formerly DVS 241), ''Digital Video Service Multiplex and Transport System Standard for Cable Television,'' IBR used for § 76.640. **Note:** The 2009 revision to SCTE 54 updates internal references to other standards, and containing minor revisions to the MPEG–2 registration descriptor, program identifier, audio elementary stream identifier, among others and adds a section for Emergency Cable Alert as adopted by the Commission's EAS orders.[111]

(9) ANSI/SCTE 65 2008 (formerly DVS 234), ''Service Information Delivered Out-of-Band for Digital Cable Television,'' 2008, IBR used for § 76.640. **Note:** The most recent revisions to SCTE 65 primarily update internal references, including requiring compliance SCTE 28 for host-POD interaction.

We believe that the updated versions of these standards are generally backwards-compatible, such that parties following the version currently incorporated in the Commission's rules would also be in compliance with the current versions of these standards.[112] We seek comment on our proposal to revise our rules by incorporating these updated standards.

44. Finally, we propose to amend the note to § 76.55(d).[113] Section 76.55 contains the definitions applicable to the Commission's must-carry rules, and subpart (d) lists the requirements to be considered a ''qualified low power station.'' Among the requirements, § 76.55(d)(4) requires the station to deliver a ''good quality signal'' to the appropriate cable system headend, and the Note to Paragraph (d) provides the definition of ''good quality signal'' in this context. In 2001, the Commission established the standard for digital television, but the Note to paragraph (d) was never updated.[114] We propose, then, to amend the paragraph to list the digital threshold of −61 dBm at all channels. We also propose to strike the phrase, ''or a baseband signal'' from the note. This phrase contradicts both the plain language and the purpose of the section it clarifies. Section 76.55(d)(4), requires a low power television station to deliver a good quality *over-the-air* signal to qualify for carriage on the system. A baseband signal, in contrast, is not an over-the-air signal, instead being the result of an alternate means of delivery.[115] Therefore, we tentatively conclude that the inclusion of the phrase ''or a baseband signal'' was inadvertent, and propose removing it for clarity.

## IV. Procedural Matters

### *A. Initial Regulatory Flexibility Act Analysis*

45. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'')[116] the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (''NPRM''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[117]

#### 1. Need for, and Objectives of, the Proposed Rules

46. With this NPRM, we propose to update our cable television technical rules to facilitate the cable industry's widespread transition from analog to digital transmission systems. Specifically, we seek comment on our proposals to modernize and modify the Commission's proof-of-performance rules and basic signal leakage performance criteria. In addition, we propose modifications throughout Part 76 to remove outdated language, correct citations, and make other minor or non-substantive updates. We seek to adopt clear and effective rules that reflect technological advancements in the cable

[111] *See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief,* Second Report and Order and Further Notice of Proposed Rulemaking, FCC 07–109, 72 FR 62123, Nov. 2, 2007.

[112] For example, SCTE 40 2011 has been updated from SCTE 40 2003 by being reordered for clarity, extended to cover systems operating up to 1002 MHz from 864 MHz, and revised to require less stringent technical performance, such as permitting stronger adjacent signals. Operators wishing to continue to follow the more-strict requirements of SCTE 40 2003 would not need to alter their systems to comply with an update to SCTE 40 2011. *See* ANSI/SCTE 40 2011: ''Digital Cable Network Interface Standard,'' available at *www.scte.org/documents/pdf/standards/SCTE_40_2011.pdf.*

[113] 47 CFR 76.55(d).

[114] *Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules et al,* Report and Order, FCC 01–22, 66 FR 16523, Mar. 26, 2001.

[115] This note was introduced by the Memorandum, Opinion, and Order resolving petitions for reconsideration arising from the 1993 Must-Carry order (*See Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues,* Memorandum, Opinion, and Order, FCC 94–251, 59 FR 62330, Dec. 5, 1994; *Resolving petitions for reconsideration arising from Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, *EFFECTIVE DATES* April 2, June 3, June 17, and May 3, 1993,* Report and Order, FCC 93–144, 58 FR 17350, Apr. 2, 1993). In so doing, the Commission *sua sponte* moved to clarify the relevant signal carriage standards for must-carry purposes, answering the question of under what circumstances ''noncommercial stations place adequate signal levels over a cable system's principal headend'' (*see the Cable TV Act of 1992* at 6735–6). This standard also relates to over-the-air measurement, for which providing a baseband signal would not be appropriate. Further, the term baseband is not used in the item except in the appendix listing new rule language.

[116] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[117] *See* 5 U.S.C. 603(a).

television industry, and to apply them to cable operators in a way that is minimally burdensome.

47. *Cable Signal Quality (Proof-of-Performance).* The need for FCC action in this area derives from changing technology in the cable services market. Section 624(e) of the Communications Act requires the Commission to maintain standards for cable systems to ensure that consumers receive good quality signals. When the Commission adopted technical rules in the 1990s, digital cable service was in its infancy, and therefore the rules were adopted with analog cable service in mind. Today, digital cable service is common, but certain analog technical rules related to cable service do not translate well to digital cable. Therefore, the NPRM proposes to establish proof-of-performance rules that specifically address digital technology. Today, digital cable can be divided into those systems which utilize QAM, a type of digital modulation, and those that do not. QAM digital cable is used by the majority of systems to serve the vast majority of cable subscribers in the United States. Therefore, the NPRM proposes to adopt a QAM standard, SCTE 40, which was designed to ensure that unidirectional CableCARD products receive good quality service, and to apply it broadly as a new proof-of-performance standard for QAM digital cable systems. For non-QAM systems to which SCTE 40 cannot be applied, the NPRM proposes a new, streamlined process by which each such system can coordinate with the Commission to develop a plan to follow. Thus, the Commission seeks to ensure that consumers continue to receive good quality cable service while imposing the minimum possible compliance, testing, and recordkeeping burden on cable operators.

48. *Cable Signal Leakage (CLI).* The NPRM further tentatively concludes that the Commission's protection of spectrum used for aeronautical navigation and communication remains a critical need for public safety. However, the rules designed for analog systems were established prior to the current widespread deployment of digital cable technology and must be updated to provide adequate protection to aeronautical frequencies from digital systems. With the proposed digital rules, MVPDs utilizing coaxial cable systems will no longer be prohibited from operating above certain power thresholds. By updating our signal leakage standards, removing the required channel offsets, but retaining notification of operation above certain power levels and regular testing, recordkeeping, and reporting, operators will be permitted to operate above these thresholds provided they can demonstrate a lack of harm to other spectrum users. In so doing, cable operators will be able to offer additional and expanded services on these aeronautical frequency bands, thus utilizing their facilities more efficiently. Therefore, the Commission predicts that these rules will be a benefit to small entities, which have generally fewer resources to expand their facilities to higher frequencies to avoid causing interference to the aeronautical bands. Further, the Commission predicts that by adopting flexible rules for testing leakage, small entities will be able to demonstrate their lack of leakage with minimal, if any, additional burden.

49. Finally, by revising and updating the Commission's rules, the Commission seeks to make it easier for MVPDs to understand the Commission's rules, and therefore to make compliance more straightforward. By reducing the burden associated with reading and interpreting the Commission's rules, we believe that small entities will need to expend fewer resources to ensure compliance.

2. Legal Basis

50. The authority for the action proposed in this rulemaking is contained in sections 1, 4(i), 4(j), 301, 302a, 303, 307, 308, 624(e), and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 544(e), and 544a.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

51. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[118] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under section 3 of the Small Business Act.[119] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[120] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').[121]

52. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [122] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[123] According to Census Bureau data for 2007, there were a total of 955 firms in the subcategory of Cable and Other Program Distribution that operated for the entire year.[124] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[125] Thus, under this size standard, the Commission believes that a majority of firms operating in this industry can be considered small.

53. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable

[118] 5 U.S.C. 603(b)(3).

[119] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies, ''unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such the term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.

[120] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[121] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation, and independence are sometime difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[122] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition), *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[123] 13 CFR 121.201, NAICS code 517110 (2007).

[124] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (located at *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).*

[125] *See id.*

company'' is one serving 400,000 or fewer subscribers, nationwide.[126] Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard.[127] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[128] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[129] Thus, under this second size standard, the Commission believes that most cable systems are small.

54. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [130] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[131] Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard.[132] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[133] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

55. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.[134] The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[135] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[136] OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' [137] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.[138] In addition, we note that the Commission has certified some OVS operators, with some now providing service.[139] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[140] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service.[141] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

56. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' [142] which was developed for small wireline firms.[143] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[144] Census data for 2007 indicate that in that year there were 1,906 firms operating businesses as wired telecommunications carriers. Of that 1,906, 1,880 operated with 999 or fewer employees, and 26 operated with 1,000 employee or more. Based on this data, we estimate that a majority of operators of SMATV/PCO companies

[126] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[127] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[128] 47 CFR 76.901(c).

[129] Warren Communications News, *Television & Cable Factbook 2008,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[130] 47 U.S.C. 543(m)(2); *see also* 47 CFR 76.901(f) & nn.1–3.

[131] 47 CFR 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

[132] These data are derived from R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); *Warren Communications News, Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[133] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules.

[134] *See* 47 U.S.C. 573.

[135] 47 U.S.C. 571(a)(3) through (4). *See 13th Annual Report,* 24 FCC Rcd at 606, para. 135.

[136] *See* 47 U.S.C. 573.

[137] U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[138] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[139] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[140] *See 13th Annual Report,* 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[141] *See http:// www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems* (current as of July 2012).

[142] *See* 13 CFR 121.201, NAICS code 517110 (2007).

[143] Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in section 340's definition of ''satellite carrier.'' *See* 47 U.S.C. 340(i)(1) and 338(k)(3); 17 U.S.C. 119(d)(6).

[144] 13 CFR 121.201, NAICS code 517110 (2007).

were small under the applicable SBA size standard.[145]

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements

57. The rules proposed in the NPRM will impose additional reporting, recordkeeping, and compliance requirements on cable operators. Currently, all cable operators are required to perform proof-of-performance testing twice each year, in the warmest and coldest parts of the year, to document the successful completion of those tests, and to maintain the records in their public file for five years. Further, all operators of coaxial cable systems, which includes not just cable operators but non-cable operators, such as PCOs, Open Video Systems, SMATV operators, are required to perform signal leakage testing four times per year, to document the results of those test, to maintain those records in their public file for five years, and to submit the results of one of those tests on FCC Form 320 to the Commission. The NPRM proposes tests to new digital standards, to be performed by operators of hybrid and all-digital cable systems, but maintains the existing recordkeeping requirements.

5. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

58. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[146]

59. *Cable Signal Quality (Proof-of-Performance).* In this NPRM, the Commission tentatively concludes that creating rules for digital cable systems using QAM will lead to benefits for consumers in the form of consistent, good quality signals, and will reduce the burden on operators by removing the need to file individual waivers for exemption from the analog rules. For non-QAM systems, where simple standards are not readily available, the NPRM proposes a streamlined process which will reduce the economic burden on small operators of filing formal waivers by providing a case-by-case evaluation of a proof-of-performance plan based on the operator's internal guidelines. Therefore the Commission believes that this proposed streamlined process will result in minimal additional burdens on small entities. The Commission predicts that adopting a simple, easily understood signal quality standard already supported by numerous entities protects the public interest with a minimum of burden on cable operators.

60. With respect to the modification of technical standards for digital cable transmission, the Commission considered maintaining the *status quo.* The Commission has tentatively concluded that its proposal to adopt new standards for signal quality with respect to digital service will provide cable operators with certainty that the signals that they provide to their subscribers are of adequate quality, and permit them to operate within the Commission's rules without submitting individual waiver requests. The Commission's proposed rules are based on performance rather than design standards, and are already required of some cable systems as a result of their support for CableCARD products. Therefore, no new burdens of compliance will be imposed on these systems. The rules further reduce burdens on small entities because they contain provisions for small cable systems to test fewer channels, and to test those channels in fewer locations. The proposed rules further simplify the means by which these numbers are calculated. Finally, similar to the analog rules the recordkeeping burden associated with this testing is not required of very small systems.

61. *Cable Signal Leakage (CLI).* With respect to the proposals regarding basic signal leakage performance criteria, the Commission has undertaken to create a digital rule equivalent in interference protection to basic signal rules for analog cable signals. The existing basic signal leakage rules as they apply to analog cable signals cannot apply to digital cable signals due to the differences in the physical attributes of the two types of signals. However, the Commission has proposed a testing procedure that permits systems with limited resources to continue utilizing existing equipment when complying with the new, digital standards.

62. We welcome comments that suggest modifications of any proposal if based on evidence of potential differential impact on smaller entities. We also seek comment on alternatives to the proposed rules that would assist small entities while ensuring the Commission's goals of providing good quality signals to consumers and protecting aeronautical communications and spectrum users from interference are met.

6. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

63. None.

*B. Initial Paperwork Reduction Act of 1995 Analysis*

64. This NPRM has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA'')[147] and contains proposed modified information collection requirements.[148] It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA.[149] The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other interested parties to comment on the information collection requirements contained in this document, as required by the PRA.

*C. Ex Parte Presentations*

65. *Permit-But-Disclose.* This proceeding will be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[150] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed.[151] More than a one- or two-sentence description of the views and arguments presented is generally

[145] *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[146] 5 U.S.C. 603(b).

[147] The Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[148] *See* OMB Control Nos. 3060–0289 (proof-of-performance test data* * *); 3060–0331 (aeronautical frequency notification, FCC Form 321; 3060–0332 (signal leakage logs and repair records), and 3060–0433 (basic signal leakage performance report, FCC Form 320).

[149] *See* 44 U.S.C. 3507(d).

[150] *See* 47 CFR 1.1206 (rule for permit-but-disclose'' proceedings); *see also* 47 CFR 1.1200 through 1.1216.

[151] *See* 47 CFR 1.1206(b)(2).

required.[152] Additional rules pertaining to oral and written presentations in ''permit-but-disclose'' proceedings are set forth in § 1.1206(b) of the rules.[153]

66. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS.[154] These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

## V. Ordering Clauses

67. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 302a, 303, 307, 308, 624(e), and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 544(e), and 544a, *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

68. *It is further ordered* that the Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

## List of Subjects in 47 CFR Part 76

Cable television, Incorporation by reference, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

## Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 part 76 as follows:

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE:

1. The Authority Citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Revise § 76.55 Note to paragraph (d) to read as follows:

### § 76.55 Definitions applicable to the must-carry rules.

* * * * *

**Note to Paragraph (d):** For the purposes of this section, for over-the-air broadcast, a good quality signal shall mean a signal level of either –45 dBm for analog VHF signals, –49 dBm for analog UHF signals, or –61 dBm for digital signals (at all channels) at the input terminals of the signal processing equipment.

* * * * *

3. Revise § 76.56 (a)(1)(i) and (b) introductory text to read as follows:

### § 76.56 Signal carriage obligations.

(a) * * *

(1) * * *

(i) Systems with 12 or fewer usable activated channels, as defined in § 76.5(oo), shall be required to carry the signal of one such station;

* * * * *

(b) *Carriage of local commercial television stations.* A cable television system shall carry local commercial broadcast television stations in accordance with the following provisions:

* * * * *

4. Revise § 76.57(e) to read as follows:

### § 76.57 Channel positioning.

* * * * *

(e) At the time a local commercial station elects must-carry status pursuant to § 76.64, such station shall notify the cable system of its choice of channel position as specified in paragraphs (a), (b), and (d) of this section. A qualified NCE station shall notify the cable system of its choice of channel position when it requests carriage.

* * * * *

5. Revise § 76.64(a) to read as follows:

### § 76.64 Retransmission consent.

(a) No multichannel video programming distributor shall retransmit the signal of any commercial broadcasting station without the express authority of the originating station, except as provided in paragraph (b) of this section.

* * * * *

6. Revise § 76.105(b) introductory text to read as follows:

### § 76.105 Notifications.

* * * * *

(b) Broadcasters entering into contracts which contain syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

* * * * *

### § 76.127 [Amended]

7. In § 76.127, remove paragraph (f).

8. Revise § 76.309(c) introductory text to read as follows:

### § 76.309 Customer service obligations.

* * * * *

(c) Cable operators are subject to the following customer service standards:

* * * * *

9. Revise § 76.601(b) to read as follows:

### § 76.601 Performance tests.

* * * * *

(b) The operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605 and shall be as follows:

(1) For cable television systems with 1000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (e.g., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system and should include at least one test point in each local franchise area. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and

[152] *See id.*

[153] *See* 47 CFR 1.1206(b). *See also Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings,* Public Notice, 15 FCC Rcd 19945 (2000). We note that the Commission recently amended the rules governing the content of *ex parte* notices. *See Amendment of the Commission's Ex Parte Rules and Other Procedural Rules,* Report and Order and Further Notice of Proposed Rulemaking, GC Docket No. 10–43, FCC 11–11, paras. 35 through 36 (rel. Feb. 2, 2011).

[154] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(b)(3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(b) shall be made on a minimum of five (5) channels for systems operating a total activated channel capacity of less than 550 MHz, and ten (10) channels for systems operating a total activated channel capacity of 550 MHz or greater. The channels selected for testing must be representative of all the channels within the cable television system.

(i) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(b)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(ii) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(b)(11).

(3) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(c)(1) shall be made on each of the QAM or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(c) shall be made on a minimum of five (5) channels for systems operating a total activated channel capacity of less than 550 MHz, and ten (10) channels for systems operating a total activated channel capacity of 550 MHz or greater. The channels selected for testing must be representative of all the channels within the cable television system.

(4) For cable televisions systems which operate both NTSC or similar and QAM of similar channels, proof-of-performance tests to determine the extent to which the cable televisions system complies with § 76.605(b)(1), (2), (6) through (11) and 76.605(c)(1) shall be apportioned relative to the proportion of channels allocated to each transmission type, except that at no time shall less than two channels of a particular type be tested.

* * * * *

10. Revise § 76.602 to read as follows:

**§ 76.602 Incorporation by Reference.**

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at the Federal Communications Commission, 445 12th. St. SW., Reference Information Center, Room CY–A257, Washington, DC 20554 and 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/code_of_federal_regulations/ibr_locations.html.* (b) ATSC. The following materials are available from Advanced Television Systems Committee (ATSC), 1776 K Street NW., 8th Floor, Washington, DC 20006; phone: 202–872–9160; or online at *http://www.atsc.org/standards.html.*

(1) ATSC A/65D: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision D),'' April 14, 2009, IBR approved for § 76.640.

(2) ATSC A/85:2011 ''ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,'' (July 25, 2011) (''ATSC A/85 RP''), IBR approved for § 76.607.

(c) CEA. The following materials are available from Consumer Electronics Association (CEA), 1919 S. Eads St., Arlington, VA 22202; phone: 866–858–1555; or online at *http://www.ce.org/standards.*

(1) CEA–542–C, ''CEA Standard: Cable Television Channel Identification Plan,'' July 2009, IBR approved for § 76.605.

(2) CEA–931–C, ''Remote Control Command Pass-through Standard for Home Networking,'' 2007, IBR approved for § 76.640.

(d) SCTE. The following materials are available from Society of Cable Telecommunications Engineers (SCTE), 140 Philips Road, Exton, PA 19341–1318; phone: 800–542–5040; or online at *http://www.scte.org/standards/Standards_Available.aspx.*

(1) ANSI/SCTE 26 2010 (formerly DVS 194): ''Home Digital Network Interface Specification with Copy Protection,'' 2010, IBR approved for § 76.640.

(2) ANSI/SCTE 28 2012 (formerly DVS 295): ''Host-POD Interface Standard,'' 2012, IBR approved for § 76.640.

(3) ANSI/SCTE 40 2011 (formerly DVS 313), ''Digital Cable Network Interface Standard,'' 2011, IBR approved for §§ 76.605 and 76.640.

(4) ANSI/SCTE 41 2011 (formerly DVS 301): ''POD Copy Protection System,'' 2011, IBR approved for § 76.640.

(5) ANSI/SCTE 54 2009 (formerly DVS 241), ''Digital Video Service Multiplex and Transport System Standard for Cable Television,'' 2009, IBR approved for § 76.640.

(6) ANSI/SCTE 65 2008 (formerly DVS 234), ''Service Information Delivered Out-of-Band for Digital Cable Television,'' 2008, IBR approved for § 76.640.

(e) Some standards listed above are also available for purchase from the following sources:

(1) American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036; phone: 212–642–4980; or online at *http://webstore.ansi.org/.* Show citation box

(2) Global Engineering Documents (standards reseller), 15 Inverness Way East, Englewood, CO 80112; phone: 800–854–7179; or online at *http://global.ihs.com.*

11. Revise § 76.605 to read as follows:

**§ 76.605 Technical standards.**

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise noted. The requirements of paragraph (b) of this section are applicable to each NTSC or similar video downstream cable

television channel in the system, the requirements of paragraph (c) of this section are applicable to each QAM or similar video downstream cable television channel in the system, and the requirements of paragraph (d) of this section are applicable to all downstream cable television channels in the system. Cable television systems utilizing other technologies to distribute programming must comply with paragraph (e) of this section.

(b) For each NTSC or similar video downstream cable television channel in the system:

(1)(i) The cable television channels delivered to the subscriber's terminal shall be capable of being received and displayed by TV broadcast receivers used for off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter; and

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in CEA–542–C: ''Standard: Cable Television Channel Identification Plan,'' (Incorporated by reference, see § 76.602).

(2) The aural center frequency of the aural carrier must be 4.5 MHz ± 5 kHz above the frequency of the visual carrier at the output of the modulating or processing equipment of a cable television system, and at the subscriber terminal.

(3) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of 0.0133 (Z) millivolts and, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, shall be 2 times the square root of 0.00662(Z) millivolts, where Z is the appropriate impedance value.)

(4) The visual signal level on each channel, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall not vary more than 8 decibels within any six-month interval, which must include four tests performed in six-hour increments during a 24-hour period in July or August and during a 24-hour period in January or February, and shall be maintained within:

(i) 3 decibels (dB) of the visual signal level of any visual carrier within a 6 MHz nominal frequency separation;

(ii) 10 dB of the visual signal level on any other channel on a cable television system of up to 300 MHz of cable distribution system upper frequency limit, with a 1 dB increase for each additional 100 MHz of cable distribution system upper frequency limit (e.g., 11 dB for a system at 301–400 MHz; 12 dB for a system at 401–500 MHz, etc.); and

(iii) A maximum level such that signal degradation due to overload in the subscriber's receiver or terminal does not occur.

(5) The rms voltage of the aural signal shall be maintained between 10 and 17 decibels below the associated visual signal level. This requirement must be met both at the subscriber terminal and at the output of the modulating and processing equipment (generally the headend). For subscriber terminals that use equipment which modulate and remodulate the signal (e.g., baseband converters), the rms voltage of the aural signal shall be maintained between 6.5 and 17 decibels below the associated visual signal level at the subscriber terminal.

(6) The amplitude characteristic shall be within a range of ±2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.

(7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television channels, the requirements of this section are applicable only to:

(i) Each signal which is delivered by a cable television system to subscribers within the predicted Grade B or noise-limited service contour, as appropriate, for that signal;

(ii) Each signal which is first picked up within its predicted Grade B or noise-limited service contour, as appropriate;

(iii) Each signal that is first received by the cable television system by direct video feed from a TV broadcast station, a low power TV station, or a TV translator station.

(8) The ratio of visual signal level to the rms amplitude of any coherent disturbances such as intermodulation products, second and third order distortions or discrete-frequency interfering signals not operating on proper offset assignments shall be as follows:

(i) The ratio of visual signal level to coherent disturbances shall not be less than 51 decibels for noncoherent channel cable television systems, when measured with modulated carriers and time averaged; and

(ii) The ratio of visual signal level to coherent disturbances which are frequency-coincident with the visual carrier shall not be less than 47 decibels for coherent channel cable systems, when measured with modulated carriers and time averaged.

(9) The terminal isolation provided to each subscriber terminal:

(i) Shall not be less than 18 decibels. In lieu of periodic testing, the cable operator may use specifications provided by the manufacturer for the terminal isolation equipment to meet this standard; and

(ii) Shall be sufficient to prevent reflections caused by open-circuited or short-circuited subscriber terminals from producing visible picture impairments at any other subscriber terminal.

(10) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 3 percent of the visual signal level. Measurements made on a single channel using a single unmodulated carrier may be used to demonstrate compliance with this parameter at each test location.

(11) The following requirements apply to the performance of the cable television system as measured at the output of the modulating or processing equipment (generally the headend) of the system:

(i) The chrominance-luminance delay inequality (or chroma delay), which is the change in delay time of the chrominance component of the signal relative to the luminance component, shall be within 170 nanoseconds.

(ii) The differential gain for the color subcarrier of the television signal, which is measured as the difference in amplitude between the largest and smallest segments of the chrominance signal (divided by the largest and expressed in percent), shall not exceed ±20%.

(iii) The differential phase for the color subcarrier of the television signal which is measured as the largest phase difference in degrees between each segment of the chrominance signal and reference segment (the segment at the blanking level of 0 IRE), shall not exceed ±10 degrees.

(c) For each downstream QAM or similar video downstream cable television channel in the system the technical requirements of ANSI/SCTE 40 2011 (Formerly DVS 313): ''Digital Cable Network Interface Standard'' (incorporated by reference, see § 76.602) shall apply, provided:

(1) For purposes of demonstrating compliance with proof-of-performance, the RF transmission characteristics of Table 4 shall be tested and recorded pursuant to §§ 76.601 and 76.1706.

(2) For purposes of demonstrating compliance with proof-of-performance, the Adjacent Channel Characteristics of Table 6 and the Nominal Relative Carrier Power Levels of Table 5 shall be tested and recorded pursuant to §§ 76.601 and 76.1706.

(d) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the type of signals carried by the cable television system, signal leakage shall be limited as follows:

| Frequencies | Signal leakage limit | Distance in meters (m) |
|---|---|---|
| Analog signals less than and including 54 MHz, and over 216 MHz | 15μV/m | 30 |
| Digital signals less than and including 54 MHz, and over 216 MHz | 13.1μV/m | 30 |
| Analog signals over 54 MHz up to and including 216 MHz | 20μV/m | 3 |
| Digital signals over 54 MHz up to and including 216 MHz | 17.4μV/m | 3 |

Where analog NTSC or similar signals are measured in accordance with the procedures outlined in § 76.609(h).

(e) Cable television systems distributing signals by methods other than 6 MHz NTSC or similar analog channels or 6 MHz QAM or similar channels on conventional coaxial or hybrid fiber-coaxial cable systems and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraphs (b) and (c) of this section, may be permitted to operate upon Commission approval on a case-by-case basis. To obtain Commission approval, the operator must submit to the Commission its own proof-of-performance plan for ensuring subscribers receive good quality signals.

**Note 1:** Local franchising authorities of systems serving fewer than 1000 subscribers may adopt standards less stringent than those in § 76.605(b) and (c). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

**Note 2:** For systems serving rural areas as defined in § 76.5, the system may negotiate with its local franchising authority for standards less stringent than those in §§ 76.605(b)(3), 76.605(b)(7), 76.605(b)(8), 76.605(b)(10) and 76.605(b)(11). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

**Note 3:** The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter.

**Note 4:** Should subscriber complaints arise from a system failing to meet § 76.605(b)(10), the cable operator will be required to remedy the complaint and perform test measurements on § 76.605(b)(10) containing the full number of channels as indicated in § 76.601(b)(2) at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order that the full number of channels as indicated in § 76.601(b)(2) be tested at all required locations for future proof-of-performance tests.

**Note 5:** No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

12. Revise § 76.606 to read as follows:

**§ 76.606 Closed captioning.**

(a) The operator of each cable television system shall not take any action to remove or alter closed captioning data contained on line 21 of the vertical blanking interval.

(b) The operator of each cable television system shall deliver intact closed captioning data contained on line 21 of the vertical blanking interval, as it arrives at the headend or from another origination source, to subscriber terminals and (when so delivered to the cable system) in a format that can be recovered and displayed by decoders meeting § 79.101 of this chapter.

13. Revise § 76.610 to read as follows:

**§ 76.610 Operation in the frequency bands 108–137 MHz and 225–400 MHz—scope of application.**

The provisions of §§ 76.605(d), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617, 76.1803 and 76.1804 are applicable to all MVPDs (cable and non-cable) transmitting analog carriers or other signal components carried at an average power level equal to or greater than $10^{-4}$ watts across a 25 kHz bandwidth in any 160 microsecond period or transmitting digital carriers or other signal components at an average power level of 75.85 microwatts across a 25 kHz bandwidth in any 160 microsecond period at any point in the cable distribution system in the frequency bands 108–137 and 225–400 MHz for any purpose. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1803.

14. Revise § 76.611(a)(1), (a)(2), and (e) to read as follows:

**§ 76.611 Cable television basic signal leakage performance criteria.**

(a) * * *

(1) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, based on a sampling of at least 75% of the cable strand, and including any portion of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the system, the cable operator demonstrates compliance with a cumulative signal leakage index by showing either that (i) 10 log $I_{3000}$ is equal to or less than −7 for analog systems and equal to or less than −8.2 for digital systems or (ii) 10 log $I_{\infty}$ is equal to or less than 64 for analog systems and equal to or less than 62.8 for digital systems, using one of the following formula, except that no system of diameter greater than 160 kilometers may utilize $I_{3000}$:

$$I_{3000} = \frac{1}{\theta}\sum_{i=1}^{n}\frac{E_i^2}{R_i^2},$$

$$I_{\infty} = \frac{1}{\theta}\sum_{i=1}^{n}E_i^2,$$

*Where:*

$$R_i^2 = r_i^2 + (3000)^2$$

$r_i$ is the distance (in meters) between the leakage source and the center of the cable television system;

θ is the fraction of the system cable length actually examined for leakage sources and is equal to the strand kilometers (strand miles) of plant tested divided by

the total strand kilometers (strand miles) in the plant;

$R_i$ is the slant height distance (in meters) from leakage source i to a point 3000 meters above the center of the cable television system;

$E_i$ is the electric field strength in microvolts per meter (μV/m) measured 3 meters from the leak i; and

n is the number of leaks found of field strength equal to or greater than 50 μV/m for analog leaks measured pursuant to § 76.609(h) or 43.6 μV/m for digital leaks.

The sum is carried over all leaks i detected in the cable examined; or

(2) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, the cable operator demonstrates by measurement in the airspace that at no point does the field strength generated by the cable system exceed 10 microvolts per meter (μV/m) RMS for an offset analog signal or 8.7 microvolts per meter (μV/m) RMS for a digital signal at an altitude of 450 meters above the average terrain of the cable system. The measurement system (including the receiving antenna) shall be calibrated against a known field of 10 μV/m RMS produced by a well characterized antenna consisting of orthogonal resonant dipoles, both parallel to and one quarter wavelength above the ground plane of a diameter of two meters or more at ground level. The dipoles shall have centers collocated and be excited 90 degrees apart. The half-power bandwidth of the detector shall be 25 kHz. If an aeronautical receiver is used for this purpose it shall meet the standards of the Radio Technical Commission for Aeronautics (RCTA) for aeronautical communications receivers. The aircraft antenna shall be horizontally polarized. Calibration shall be made in the community unit or, if more than one, in any of the community units of the physical system within a reasonable time period to performing the measurements. If data is recorded digitally the 90th percentile level of points recorded over the cable system shall not exceed 8.7 μV/m or 10 μV/m RMS as indicated above; if analog recordings is used the peak values of the curves, when smoothed according to good engineering practices, shall not exceed 8.7 μV/m or 10 μV/m RMS for digital or analog leakage, respectively.

* * * * *

(e) Prior to providing service to any subscriber on a new section of cable plant, the operator shall show compliance with either: (1) The basic signal leakage criteria in accordance with paragraph (a)(1) or (a)(2) of this section for the entire plant in operation or (2) a showing shall be made indicating that no individual leak in the new section of the plant exceeds 20 μV/m at 3 meters in accordance with § 76.609 of the rules for analog systems or 17.4 μV/m at 3 meters for digital systems.

* * * * *

15. Revise § 76.612 introductory text to read as follows:

**§ 76.612 Cable television frequency separation standards.**

All cable television systems which operate analog NTSC or similar channels in the frequency bands 108–137 MHZ and 225–400 MHz shall comply with the following frequency separation standards for each NTSC or similar channel:

* * * * *

16. Revise § 76.614 to read as follows:

**§ 76.614 Cable television regular monitoring.**

Cable television operators transmitting carriers in the frequency bands 108–137 and 225–400 MHz shall provide for a program of regular monitoring for signal leakage by substantially covering the plant every three months. The incorporation of this monitoring program into the daily activities of existing service personnel in the discharge of their normal duties will generally cover all portions of the system and will therefore meet this requirement. Monitoring equipment and procedures utilized by a cable operator shall be adequate to detect a leakage source from an analog signal which produces a field strength in these bands of 20 μV/m or greater at a distance of 3 meters and from a digital signal which produces a field strength in these bands of 17.4 μV/m or greater at a distance of 3 meters. During regular monitoring, any analog leakage source which produces a field strength of 20 μV/m or greater at a distance of 3 meters or digital leakage source which produces a field strength of 17.4 μV/m or greater at a distance of 3 meters in the aeronautical radio frequency bands shall be noted and such leakage sources shall be repaired within a reasonable period of time.

**Note 1 to § 76.614:** Section 76.1706 contains signal leakage recordkeeping requirements applicable to cable operators.

17. Revise § 76.640(b) to read as follows:

**§ 76.640 Support for unidirectional digital cable products on digital cable systems.**

* * * * *

(b) Cable operators shall support unidirectional digital cable products, as defined in § 15.123 of this chapter, through the provisioning of Point of Deployment modules (PODs) and services, as follows:

(1) Digital cable systems with an activated channel capacity of 750 MHz or greater shall comply with the following technical standards and requirements:

(i) ANSI/SCTE 40 2011 (formerly DVS 313): ''Digital Cable Network Interface Standard'' (incorporated by reference, see § 76.602), provided that the ''transit delay for most distant customer'' requirement in Table 4.3 is not mandatory.

(ii) ANSI/SCTE 65 2008 (formerly DVS 234): ''Service Information Delivered Out-of-Band for Digital Cable Television'' (incorporated by reference, see § 76.602), provided however that the referenced Source Name Subtable shall be provided for Profiles 1, 2, and 3.

(iii) ANSI/SCTE 54 2009 (formerly DVS 241): ''Digital Video Service Multiplex and Transport System Standard for Cable Television'' (incorporated by reference, see § 76.602).

(iv) For each digital transport stream that includes one or more services carried in-the-clear, such transport stream shall include virtual channel data in-band in the form of ATSC A/65D: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision D)'' (incorporated by reference, see § 76.602), when available from the content provider. With respect to in-band transport:

(A) * * *

(B) * * *

(C) The format of event information data format shall conform to ATSC A/65D: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision D)'' (incorporated by reference, see § 76.602);

(D) * * *

(E) * * *

(v) * * *

(A) * * *

(B) A virtual channel table shall be provided via the extended channel interface from the POD module. Tables to be included shall conform to ANSI/SCTE 65 2008 (formerly DVS 234): ''Service Information Delivered Out-of-Band for Digital Cable Television'' (incorporated by reference, see § 76.602).

(C) Event information data when present shall conform to ANSI/SCTE 65 2008 (formerly DVS 234): ''Service Information Delivered Out-of-Band for Digital Cable Television'' (incorporated

by reference, see § 76.602) (profiles 4 or higher).

(D) * * *

(E) * * *

(2) * * *

(i) ANSI/SCTE 28 2012 (formerly DVS 295): ''Host-POD Interface Standard'' (incorporated by reference, see § 76.602).

(ii) SCTE 41 2011 (formerly DVS 301): ''POD Copy Protection System'' (incorporated by reference, see § 76.602).

* * * * *

18. Amend § 76.1204 by revising paragraph (a), removing paragraph (e), and redesignating (f) as paragraph (e) and revising newly redesignated paragraph (e) to read as follows:

**§ 76.1204 Availability of equipment performing conditional access or security functions.**

(a)(1) A multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices. No multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.

* * * * *

(e) Paragraphs (a)(1), (b), and (c) of this section shall not apply to the provision of any navigation device that:

(1) Employs conditional access mechanisms only to access analog video programming;

(2) Is capable only of providing access to analog video programming offered over a multichannel video programming distribution system; and

(3) Does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or service to an analog format.

19. Revise § 76.1205(b) introductory text and paragraph (b)(5) to read as follows:

**§ 76.1205 CableCARD support.**

* * * * *

(b) A multichannel video programming provider that is subject to the requirements of § 76.640 must:

* * * * *

(5) Separately disclose to consumers in a conspicuous manner with written information provided to customers in accordance with § 76.1602, with written or oral information at consumer request, and on Web sites or billing inserts;

(i) Any assessed fees for the rental of single and additional CableCARDs and the rental of operator-supplied navigation devices; and,

(ii) If such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to:

(A) The rental of single and additional CableCARDs; and

(B) The rental of operator-supplied navigation devices.

(iii) CableCARD rental fees shall be priced uniformly throughout a cable system by such provider without regard to the intended use in operator-supplied or consumer-owned equipment. No service fee shall be imposed on a subscriber for support of a subscriber-provided device that is not assessed on subscriber use of an operator-provided device.

(iv) For any bundled offer combining service and an operator-supplied navigation device into a single fee, including any bundled offer providing a discount for the purchase of multiple services, such provider shall make such offer available without discrimination to any customer that owns a navigation device, and, to the extent the customer uses such navigation device in lieu of the operator-supplied equipment included in that bundled offer, shall further offer such customer a discount from such offer equal to an amount not less than the monthly rental fee reasonably allocable to the lease of the operator-supplied navigation device included with that offer. For purposes of this section, in determining what is ''reasonably allocable,'' the Commission will consider in its evaluation whether the allocation is consistent with one or more of the following factors:

(A) An allocation determination approved by a local, state, or Federal government entity;

(B)The monthly lease fee as stated on the cable system rate card for the navigation device when offered by the cable operator separately from a bundled offer; and

(C) The actual cost of the navigation device amortized over a period of no more than 60 months.

* * * * *

20. Revise § 76.1508 (a) to read as follows:

**§ 76.1508 Network non-duplication.**

(a) Sections 76.92 through 76.95 shall apply to open video systems in accordance with the provisions contained in this section.

* * * * *

21. Revise § 76.1509 to read as follows:

**§ 76.1509 Syndicated program exclusivity.**

(a) Sections 76.101 through 76.110 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.101 that refers to a ''cable community unit'' shall apply to an open video system.

(c) Any provision of § 76.105 that refers to a ''cable system operator'' or ''cable television system operator'' shall apply to an open video system operator. Any provision of § 76.105 that refers to a ''cable system'' or ''cable television system'' shall apply to an open video system except § 76.105(c) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding exercise of syndicated program exclusivity rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

(d) Any provision of § 76.106 that refers to a ''cable community'' shall apply to an open video system community. Any provision of § 76.106 that refers to a ''cable community unit'' or ''community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of §§ 76.106 through 76.108 that refers to a ''cable system'' shall apply to an open video system.

(e) Any provision of § 76.109 that refers to ''cable television'' or a ''cable system'' shall apply to an open video system.

(f) Any provision of § 76.110 that refers to a ''community unit'' shall apply to an open video system or that portion of an open video system that is affected by this rule.

22. Revise § 76.1510 to read as follows:

**§ 76.1510 Application of certain Title VI provisions.**

The following sections within part 76 shall also apply to open video systems: §§ 76.71, 76.73, 76.75, 76.77, 76.79,

76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); § 76.610 (signal leakage restrictions); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

23. Revise § 76.1601 to read as follows:

**§ 76.1601 Deletion or repositioning of broadcast signals.**

A cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

**Note 1 to § 76.1601:** No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods—generally including February, May, July and November—commonly known as audience sweeps.

24. Revise § 76.1602(b) introductory text to read as follows:

**§ 76.1602 Customer service—general information.**

* * * * *

(b) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

* * * * *

**§ 76.1610 [Amended]**

25. Amend § 76.1610 by removing paragraphs (f) and (g).

26. Revise § 76.1701(d) to read as follows:

**§ 76.1701 Political file.**

* * * * *

(d) Where origination cablecasting material is a political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the matter, the system operator shall, in addition to making the announcement required by § 76.1615, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the local office of the system. Such lists shall be kept and made available for two years.

27. Revise § 76.1804 section heading and introductory paragraph to read as follows:

**§ 76.1804 Aeronautical frequencies notification.**

An MVPD shall notify the Commission before transmitting any carrier of other signal component with an average power level across a 30 kHz bandwidth in any 2.5 millisecond time period equal to or greater than $10^{-5}$ watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108–137 MHz, 225–400 MHz). The notification shall be made on FCC Form 321. Such notification shall include:

* * * * *

**§ 76.1909 [Removed]**

28. Remove § 76.1909.

[FR Doc. 2012–24641 Filed 10–5–12; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R2–ES–2010–0045; FXES11130900000C2–123–FF09E32000]**

## Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petitions To List the Mexican Gray Wolf as an Endangered Subspecies or Distinct Population Segment With Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on two petitions to list the Mexican gray wolf (*Canis lupus baileyi*) (Mexican wolf) as an endangered subspecies or Distinct Population Segment (DPS) and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). Although not listed as a subspecies or DPS, the Mexican wolf is currently listed as endangered within the broader 1978 gray wolf listing, as revised, which listed the gray wolf in the lower 48 States and Mexico. Therefore, because all individuals that comprise the petitioned entity already receive the protections of the Act, we find that the petitioned action is not warranted at this time. However, we continue to review the appropriate conservation status of all gray wolves that comprise the 1978 gray wolf listing, as revised, and we may revise the current listing based on the outcome of that review.

**DATES:** The finding announced in this document was made on October 9, 2012.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2010–0045. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Headquarters Office, Endangered Species Program, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

**FOR FURTHER INFORMATION CONTACT:** Rick Sayers, (see **ADDRESSES**); by telephone at (703) 358–2171; or by facsimile at (703) 358–1735. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within

12 months. We must publish these 12-month findings in the **Federal Register**.

*Previous Federal Actions*

The Mexican wolf was listed as an endangered subspecies on April 28, 1976 (41 FR 17736). In 1978, we published a rule (43 FR 9607, March 9, 1978) reclassifying the gray wolf as an endangered population at the species level (*C. lupus*) throughout the conterminous 48 States and Mexico, except for the Minnesota gray wolf population, which was classified as threatened. This species level listing subsumed the previous Mexican wolf subspecies listing, although it stated that the Service would continue to recognize valid biological subspecies for the purpose of research and conservation (43 FR 9607). We initiated recovery programs for the gray wolf in three broad geographical regions of the country: The Northern Rockies, the Great Lakes, and the Southwest. In the Southwest, a recovery plan was developed specifically for the Mexican wolf, acknowledging and implementing the regional gray wolf recovery focus on the conservation of the Mexican wolf as a subspecies. The 1982 Mexican Wolf Recovery Plan did not contain measurable recovery criteria for delisting, but rather it recommended a two-pronged approach to conservation that included establishment of a captive breeding program and reintroduction of wolves to the wild (Service 1982, p. 28).

In 1996, we published a Final Environmental Impact Statement, ''Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States,'' after assessing potential locations for the reintroduction of the Mexican wolf (61 FR 67573; December 23, 1996). On April 3, 1997, the Department of the Interior issued its Record of Decision on the Final Environmental Impact Statement (62 FR 15915). We published a final rule, ''Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico,'' on January 12, 1998 (63 FR 1752), which established the Mexican Wolf Experimental Population Area in central Arizona and New Mexico and designated the reintroduced population as a nonessential experimental population under section 10(j) of the Act. In March of that year, 11 Mexican wolves from the captive breeding program were released to the wild.

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule, we established three DPS designations for the gray wolf. Gray wolves in the Western DPS and the Eastern DPS were reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Mexican wolves in the Southwestern DPS retained their previous endangered or experimental population status. On January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that the April 1, 2003, final rule violated the Act (*Defenders of Wildlife* v. *Norton,* 1:03–1348–JO (D. Or. 2005) and *National Wildlife Federation* v. *Norton,* 1:03–CV–340, (D. Vt. 2005)). The Courts invalidated the revisions of the gray wolf listing, and also invalidated the three DPS designations in the April 1, 2003, rule and the associated special regulations.

The status of the Mexican wolf as endangered was not changed by the listing rule or the Courts' invalidation of the rule. Invalidation of the rule establishing the three DPSs did cause the suspension of formal separate recovery planning for the Southwestern DPS, as that entity no longer existed as such, but recovery efforts for the Mexican wolf continued as part of the reinstated 1978 lower-48-State-and-Mexico gray wolf listing. On May 5, 2010, we announced the availability of the Mexican Wolf Conservation Assessment (75 FR 24741), a nonregulatory document intended to provide scientific information relevant to the conservation of the Mexican wolf in Arizona and New Mexico as a component of the Service's gray wolf recovery efforts (Service 2010). In December 2010, we convened a new Mexican Wolf Recovery Team, which is tasked with revising and updating the 1982 recovery plan. The new recovery plan will provide objective recovery criteria for the delisting of the Mexican wolf. A draft revised recovery plan is anticipated in 2013, and the final plan in late 2014.

On August 11, 2009, we received a petition from the Center for Biological Diversity requesting that the Mexican wolf be listed as an endangered subspecies or DPS and critical habitat be designated under the Act. On August 12, 2009, we received a petition dated August 10, 2009, from WildEarth Guardians and The Rewilding Institute requesting that the Mexican wolf be listed as an endangered subspecies and critical habitat be designated under the Act. The petitions clearly identified themselves as such and included the requisite identification information for the petitioner(s), as required by 50 CFR 424.14(a). On October 22, 2009, we responded with letters to the petitioner(s) indicating that the petitions were under review and that we would make a finding as to whether or not the petitions present substantial information indicating that the requested action may be warranted. In response to complaints from the petitioners, we agreed, pursuant to a stipulated settlement agreement, to complete the 90-day finding in response to these petitions by July 31, 2010.

On August 4, 2010, we published in the **Federal Register** a notice of our 90-day finding (75 FR 46894) addressing both petitions. Our finding stated that the petitions presented substantial scientific or commercial information indicating that the Mexican wolf subspecies may warrant listing, such that reclassifying the Mexican wolf as a separate subspecies may be warranted, and we initiated a status review. One of the petitions also requested listing of the Mexican wolf as an endangered DPS. While we did not address the DPS portion of the petition in our finding, we stated that we would further evaluate that information during the status review. This notice constitutes the 12-month finding on the two petitions to list the Mexican wolf as either an endangered subspecies or DPS with critical habitat.

*Species Information*

The Mexican wolf is a genetically distinct subspecies of the North American gray wolf; adults weigh 23–41 kilograms (kg) (50–90 pounds (lbs)) with a length of 1.5–1.8 meters (m) (5–6 feet (ft)) and height at shoulder of 63–81 centimeters (cm) (25–32 inches (in)) (Young and Goldman 1944; Brown 1983, p. 119). Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1983, p. 118); solid black or white Mexican wolves do not exist as seen in other North American gray wolves.

Integration of ecological, morphological, and genetic evidence supports several conclusions relevant to the southwestern United States regarding gray wolf taxonomy and range. First, there is agreement that the Mexican wolf is distinguishable from other gray wolves based on morphological and genetic evidence. Second, recent genetic evidence continues to support the observation that historic gray wolf populations existed in intergradations across the landscape as a result of their dispersal ability (Leonard *et al.* 2005, pp. 9–17). Third, evidence suggests that the southwestern United States (southern Colorado and Utah, Arizona, and New Mexico) included multiple wolf

populations distributed across a zone of intergradation and interbreeding, although only the Mexican wolf inhabited the southernmost extent (Leonard *et al.* 2005, pp. 9–17). Currently, Mexican wolves exist in the wild only where they have been reintroduced; that population has oscillated between 40 and 60 wolves since 2003.

Historically, Mexican wolves were associated with montane woodlands and adjacent grasslands (Brown 1983, p. 19) in areas where ungulate prey were numerous. Wolf packs establish territories, or home ranges, in which they hunt for prey. Recent studies have shown the preferred prey of Mexican wolves to be elk (Reed *et al.* 2006, pp. 1127–1133; Merkle *et al.* 2009, pp. 480–485).

Gray wolves die from a variety of causes including disease, malnutrition, debilitating injuries, interpack strife, and human exploitation and control (Service 1996, p. A–2). In the reintroduced Mexican wolf population, causes of mortality have been largely human-related (vehicular collision and illegal shooting). Additionally, reintroduced Mexican wolves have been removed from the wild for management purposes. To date, the Mexican wolf population has had a failure (mortality plus removal) rate too high for natural or unassisted population growth, and, as stated above, the population has oscillated between 40 and 60 wolves since 2003. The most recent end-of-year population survey in 2011 documented a minimum of 58 Mexican wolves in the wild.

## Finding

The Mexican wolf has been listed as endangered as part of the broader lower-48-State-and-Mexico gray wolf listing, as revised, since 1978 (43 FR 9607, March 9, 1978). Thus, although not currently listed separately as a subspecies or DPS, Mexican wolves have been protected by the Act for the last 36 years. As a result of this protection, and the actions described below, the minimum number of Mexican wolves in the wild in the United States has risen from none in the late 1990's to 58 in 2011. It is important to note that the 1978 reclassification rule stipulated that ''biological subspecies would continue to be maintained and dealt with as separate entities'' (43 FR 9609), and offered ''the firmest assurance that [the Service] will continue to recognize valid biological subspecies for purposes of its research and conservation programs'' (43 FR 9610, March 9, 1978).

In accordance with these assurances, the Service has actively focused on Mexican wolf conservation and recovery beginning with our involvement in the establishment of the captive breeding program in the late 1970s (Parsons 1996, Lindsey and Siminski 2007), the completion of the Mexican wolf recovery plan in 1982 (Service, 1982), the establishment of the Mexican Wolf Experimental Population Area in central Arizona and New Mexico in 1998 (63 FR 1752), and the reintroduction of Mexican wolves into the wild later that same year. Further, we are currently in the process of revising and updating the 1982 recovery plan, which we anticipate releasing for public and peer review in 2013. These actions demonstrate the Service's long-standing commitment to Mexican wolf recovery.

The current listing of all gray wolves in the lower 48 states and Mexico (save for those in the western Great Lakes, and the northern Rocky Mountains) encompasses any gray wolf subspecies or DPS that may occur in those same states or Mexico. More generally, the listing of any species as endangered or threatened encompasses within it all subspecies or potential DPSs comprising that species. Were the Service to separately list each constituent subspecies or potential DPS comprising an already listed entity, the endangered and threatened list would almost certainly be expanded several fold, and the limited resources of the Service would be consumed for years by the task, only to give again the protection of the Act to individual plants and animals that already had it. There is no indication in the Endangered Species Act that Congress intended the Service to list separately each of the constituent subspecies or DPSs encompassed within a broader listed entity, and it has been the consistent practice of the Service not to do so.

Therefore, because all individuals that comprise the petitioned entity already receive the protections of the Act, and in fact are collectively the focus of a significant Service-led recovery effort consistent with the 1978 revised listing, we find the petitioned action is not warranted at this time. However, we continue to review the appropriate conservation status of all gray wolves that comprise the 1978 lower-48-State-and-Mexico gray wolf listing, as revised, and we may revise the current listing based on the outcome of that review. In particular, we note that we could not, consistent with the requirements of the Act, take any action that would remove the protections accruing to Mexican wolves under the 1978 lower-48-State-and-Mexico listing, as revised, without first determining whether the Mexican wolf warranted listing separately as a subspecies or a DPS, and, if so, putting a separate listing in place.

## References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

## Authors

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service, Headquarters Office, Endangered Species Program.

## Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 10, 2012.

**Christine E. Eustis,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 2012–24275 Filed 10–5–12; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register

Vol. 77, No. 195

Tuesday, October 9, 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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Board for International Food and Agricultural Development; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the public meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:45 a.m. to 3:30 p.m. on Tuesday, October 16, 2012 at the Downtown Des Moines Marriott located at 700 Grand Avenue, Des Moines, Iowa. The central theme of this year's meeting will be ''*The Nexus of Agriculture, Nutrition and Human Health*''.

Dr. Brady Deaton, BIFAD Chair and Chancellor of the University of Missouri at Columbia, will preside over the meeting.

The public meeting will begin promptly at 8:45 a.m. with opening remarks by BIFAD Chair Brady Deaton. The Board will address both old and new business during this time and hear from USAID and the university community on progress and mechanisms for advancing programming in agriculture, with a focus on health and nutrition. There will be two panels on this topic, one in the morning and the other in the afternoon. Two board members will provide comments on a recent visit to Haiti to assess the impact of their recommendations to strengthen agricultural research and capacity building. The Board will also hear updates on Feed the Future and the G8 New Alliance for Food Security and Nutrition and will present their findings from a review of the Collaborative Research Support Program (CRSP) model, with a USAID response. Time will then be allowed for public comment.

In the afternoon, the BIFAD chair will present the reinstituted 'BIFAD Award for Scientific Excellence in a USAID Collaborative Research Support Program.' Additional time for public comment will be allowed in the afternoon. At 3:30 p.m., the public meeting of the BIFAD will adjourn.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Susan Owens, Executive Director and Designated Federal Officer for BIFAD. Interested persons may write to her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue NW., Room 2.12–001, Washington, DC 20523–2110 or telephone her at (202) 712–0218.

Dated: September 20, 2012.

**Susan Owens,**

*USAID Designated Federal Officer, BIFAD.*

[FR Doc. 2012–24711 Filed 10–5–12; 8:45 am]

BILLING CODE P

## BROADCASTING BOARD OF GOVERNORS

### Government in the Sunshine Act Meeting Notice

**DATE AND TIME:** Thursday, October 11, 2012, 1:15 p.m. EDT.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

**SUBJECT:** Notice of Meeting of the Broadcasting Board of Governors.

**SUMMARY:** The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. At the meeting, the BBG will recognize the David Burke Distinguished Journalism Awards winners. The BBG will receive and consider proposed BBG meeting dates in 2013 and consider a resolution honoring an employee for his service. The BBG will recognize the anniversaries of Agency language services, receive a Middle East trip report, receive a distribution/technology initiatives update, receive a budget update, and receive reports from the International Broadcasting Bureau Director, the Technology, Services and Innovation Director, the Communications and External Affairs Director, the VOA Director, the Office of Cuba Broadcasting Director, and the Presidents of Radio Free Europe/Radio Liberty, Radio Free Asia, and the Middle East Broadcasting Networks.

The public may attend this meeting in person at BBG headquarters in DC as seating capacity allows. Member of the public seeking to attend the meeting in person must register at *http://bbgboardmeetingoct2012.eventbrite.com* by 12 p.m. (EDT) on October 10. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at *pubaff@bbg.gov.* This meeting will also be available for public observation via streamed webcast, both live and on-demand, on the BBG's public Web site at *www.bbg.gov.* The public is advised to check the Web site for updated information on the starting time of the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

**Paul Kollmer-Dorsey,**

*Deputy General Counsel.*

[FR Doc. 2012–24909 Filed 10–4–12; 4:15 pm]

BILLING CODE 8610–01–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:* Northeast Multispecies Days-At-Sea Leasing Program.

*OMB Control Number:* 0648–0475.

*Form Number(s):* NA.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 500.

*Average Hours per Response:* Days at Sea Lease Transfer, 5 minute per party; downgrade vessel specifications baseline request, 1 hour.

*Burden Hours:* 88.

*Needs and Uses:* This request is for an extension of this information collection.

National Marine Fisheries Service (NMFS) Northeast Region manages the Northeast (NE) Multispecies Fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States through the NE Multispecies Fishery

Management Plan (FMP). The New England Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulations implementing the FMP are specified at 50 CFR part 648 Subpart F. The NE multispecies DAS leasing requirements at § 648.82(k) form the basis for this collection of information.

The NE Multispecies Days-at-Sea (DAS) Leasing Program was implemented in 2004 as a result of Amendment 13 (69 FR 22906) which substantially reduced the number of DAS available for the NE multispecies vessels. To mitigate some of the adverse impact associated with the reduction in DAS, the NE Multispecies Leasing Program was developed to enable vessels to increase their revenue by either leasing additional DAS from another vessel to increase their participation on the fishery, or by leasing their unused allocated DAS to another vessel.

NMFS requests DAS leasing application information in order to process and track requests from allocation holders to transfer DAS to another vessel. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ. The DAS leasing downgrade information is collected to allow vessel owners that are eligible to lease NE Multispecies DAS a one-time downgrade in their baseline specifications to their current vessel specifications. This one-time downgrade provides greater flexibility for vessel to lease their DAS.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion, one time.

*Respondent's Obligation:* Required to obtain or maintain benefits.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: October 2, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–24707 Filed 10–5–12; 8:45 am]

**BILLING CODE 3510–22–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:* Puget Sound Recreational Shellfish Harvesting Survey.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (request for a new information collection).

*Number of Respondents:* 1,974

*Average Hours per Response:* Initial telephone contact, 3 minutes; survey, 30 minutes.

*Burden Hours:* 538.

*Needs and Uses:* This request is for a new collection of information.

The Puget Sound estuary provides one of the most valuable shellfish habitats in the Pacific Northwest. Shellfish are important economically, ecologically, and socially to the Puget Sound basin. While shellfish bed closures have decreased area-wide, persistent closures continue in certain locations, affecting local growers and restricting commercial and recreational harvest opportunities. The Puget Sound Partnership (Partnership), a Washington State agency established to facilitate the conservation and restoration of Puget Sound, has set a priority to reduce the risks of shellfish growing area closures and adverse effects on human health. The Partnership's Action Agenda, the blueprint for action to restore and protect Puget Sound, has set a goal for a net increase of 10,800 harvestable shellfish acres by 2020.

In support of the Partnership's pursuit of this goal, the Northwest Fisheries Science Center is undertaking an economics research project to assess the behavior of individual shellfish harvesters in response to the opening and closing of individual shellfish beaches for human health reasons, and how these actions affect the value of shellfish harvesting. The Puget Sound Recreational Shellfish Harvesting Project (PSRSHP) will provide critical economic data related to recreational shellfish harvesting. More specifically, the PSRSHP will collect data needed to assess (1) the socioeconomic characteristics of recreational shellfish harvesting participants; (2) the economic value of access to Puget Sound beaches for recreational shellfish harvesting through statistical estimation of models; and (3) the potential changes in these values stemming from possible changes in management policies related to human health that affect the status of particular shellfish harvesting areas.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*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: October 3, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–24784 Filed 10–5–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Performance Review Board Membership

**AGENCY:** Economics and Statistics Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** Below is a listing of individuals who are eligible to serve on the Performance Review Board (PRB) in accordance with the Economics and Statistics Administration's Senior Executive Service and Senior Professional Performance Management Systems:

Kenneth A. Arnold
William G. Bostic, Jr.
Joanne Buenzli Crane
Justin R. Ehrenwerth
Ron S. Jarmin
Theodore A. Johnson
Steven J. Jost

Enrique Lamas
J. Steven Landefeld
Jennifer Madans
Brian E. McGrath
Thomas L. Mesenbourg, Jr.
Brian C. Moyer
Nancy A. Potok
Adam S. Wilczewski
Frank A. Vitrano
Katherine K. Wallman

**FOR FURTHER INFORMATION CONTACT:** Gail Smith, 301–763–3727.

Dated: September 19, 2012.

**Kenneth A. Arnold,**

*Associate Under Secretary for Management Chair, Performance Review Board.*

[FR Doc. 2012–24510 Filed 10–5–12; 8:45 am]

**BILLING CODE 3510–BS–P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census Advisory Committees

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of the Census (Census Bureau) is giving notice of a meeting of the National Advisory Committee on Racial, Ethnic, and Other Populations. The Committee will address issues related to the American Community Survey, Mixed-Mode Data Collection, and early 2020 Census planning. The Committee will meet in a plenary session on October 25–26, 2012. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

**DATES:** October 25–26, 2012. On October 25, the meeting will begin at approximately 9 a.m. and end at approximately 5:15 p.m. On October 26, the meeting will begin at approximately 9 a.m. and end at approximately 2:15 p.m.

**ADDRESSES:** The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

**FOR FURTHER INFORMATION CONTACT:** Jeri Green, *Jeri.Green@census.gov,* Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The National Advisory Committee on Racial, Ethnic, and Other Populations was established this year and comprises up to thirty-two members. The Committee provides a channel of communication between outside experts and the Census Bureau. The Committee provides advice about economic, housing, demographic, socioeconomic, technological, operational variables, etc., affecting the cost, accuracy and implementation of Census Bureau programs and surveys. The Committee also provides an outside-user perspective and advice on research and early design plans for the 2020 Census, the American Community Survey, and other related programs particularly as they pertain to increasing census participation. The Committee assists the Census Bureau in understanding ways that census data can best be disseminated to diverse racial and ethnic populations and other users. The Committee is established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2.

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on October 26. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. If you plan to attend the meeting, please register by Monday, October 22, 2012. You may access the online registration using the following link: *http://www.regonline.com/nac_oct2012_meeting.* Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security, and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: October 1, 2012.

**Thomas L. Mesenbourg, Jr.,**

*Acting Director, Bureau of the Census.*

[FR Doc. 2012–24802 Filed 10–5–12; 8:45 am]

**BILLING CODE 3510–07–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 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

[09/25/2012 through 10/02/2012]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Industrial Tube Corporation ... | 297 Valley Road, Somerville, NJ, 08876 | 9/27/2012 | Manufacturer of precision brass, cooper, bronze, and aluminum tubing and tubular parts. |
| Sytheon, Ltd. ..... | 315 Wootton Street, Unit N, Boonton, NJ 07005. | 10/2/2012 | Manufacturer of cosmetic ingredients for the personal care industry. |

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: October 2, 2012.

**Miriam Kearse,**

*Eligibility Examiner.*

[FR Doc. 2012–24747 Filed 10–5–12; 8:45 am]

BILLING CODE 3510–WH–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–45–2012]**

### Foreign-Trade Zone 7—Mayaguez, Puerto Rico, Authorization of Production Activity, Baxter Healthcare of Puerto Rico, (Pharmaceutical and Nutritional Intravenous Bags and Administration Sets); Aibonito and Jayuya, Puerto Rico

The Puerto Rico Industrial Development Company, grantee of FTZ 7, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Baxter Healthcare of Puerto Rico, at two sites within FTZ 7, located in Aibonito and Jayuya, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 36997, 6/20/2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: October 2, 2012.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2012–24827 Filed 10–5–12; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–843]**

### Certain Lined Paper Products From India: Antidumping Duty Administrative Review; 2010–2011

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products (CLPP) from India. The period of review is September 1, 2010, through August 31, 2011 and the review covers 57 producers/exporters of the subject merchandise. We have preliminarily found that sales of the subject merchandise have been made at prices below normal value.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Cindy Robinson or James Terpstra, 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) 482–3797 or (202) 482–3965, respectively.

#### Scope of the Order

The merchandise covered by this order is certain lined paper products. The merchandise subject to this order is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in *Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China,* 71 FR 56949 (September 28, 2006), remains dispositive.

#### Methodology

The Department has conducted this review in accordance with Section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export prices and constructed export prices have been calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. In making these findings, we have relied, in part, on facts available and because one or more respondents did not act to the best of their ability to respond to the Department's requests for information, we have drawn an adverse inference in selecting from among the facts otherwise available. *See* sections 776(a) and (b) of the Act. In accordance with section 773(b) of the Act, we disregarded the below-cost sales of Riddhi in the most recent administrative review of this company completed before the initiation of this review. With regard to SAB, petitioners filed an allegation demonstrating that SAB made sales below the cost of production. Therefore, we have reasonable grounds to believe or suspect that Riddhi's and SAB's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Accordingly, pursuant to section 773(b)(1) of the Act, we have conducted a COP analysis of Riddhi's and SAB's sales in India in this review. Based on this test, we disregarded certain sales made by Riddhi and SAB in their respective comparison markets which were made at below-cost prices.

For a full description of the methodology underlying our conclusions, please see the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Lined Paper Products from India'' (Preliminary Decision Memorandum), dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

## Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period September 1, 2010, through August 31, 2011:

*A. Calculated Rate for the Two Mandatory Companies*

| Manufacturer/Exporter | Weighted-average dumping margin (percent) |
|---|---|
| Riddhi Enterprises, Ltd. | 3.86 |
| SAB International | 2.30 |

*B. Rate for the Non-Selected, Cooperative Respondents*

| Manufacturer/Exporter | Weighted-average dumping margin (percent) [1] |
|---|---|
| Abhinav Paper Products Pvt Ltd | 3.36 |
| American Scholar, Inc. and/or I–Scholar | 3.36 |
| A R Printing & Packaging India | 3.36 |
| Akar Limited | 3.36 |
| Apl Logistics India Pvt. Ltd. | 3.36 |
| Artesign Impex | 3.36 |
| Arun Art Printers Pvt. Ltd. | 3.36 |
| Aryan Worldwide | 3.36 |
| Bafna Exports | 3.36 |
| Cargomar Pvt. Ltd. | 3.36 |
| Cello International Pvt. Ltd. (M/S Cello Paper Products) | 3.36 |
| Corporate Stationery Pvt. Ltd. | 3.36 |
| Crane Worldwide Logistics Ind Pvt. | 3.36 |
| Creative Divya | 3.36 |
| D.D International | 3.36 |
| Exel India (Pvt.) Ltd. | 3.36 |
| Exmart International Pvt. Ltd. | 3.36 |
| Expeditors International (India) Pvt/Expeditors Cargo Mgmnt Systems | 3.36 |
| Fatechand Mahendrakumar | 3.36 |
| FFI International | 3.36 |
| Freight India Logistics Pvt. Ltd. | 3.36 |
| Gauriputra International | 3.36 |
| International Greetings Pvt. Ltd. | 3.36 |
| Karur K.C.P. Packagings Ltd | 3.36 |
| Kejriwal Paper Ltd. and Kejriwal Exports | 3.36 |
| Lodha Offset Limited | 3.36 |
| M.S. The Bell Match Company | 3.36 |
| Magic International Pvt Ltd | 3.36 |
| Mahavideh Foundation | 3.36 |
| Marisa International | 3.36 |
| Navneet Publications (India) Ltd. | 3.36 |
| Orient Press Ltd. | 3.36 |
| Paperwise Inc. | 3.36 |
| Phalada Agro Research Foundations | 3.36 |
| Premier Exports | 3.36 |
| Raghunath Exporters | 3.36 |
| Rajvansh International | 3.36 |
| SAI Suburi International | 3.36 |
| SAR Transport Systems | 3.36 |
| SDV Intl Logistics Ltd. | 3.36 |
| Seet Kamal International | 3.36 |
| SGM Paper Products | 3.36 |
| Shivam Handicrafts | 3.36 |
| Soham Udyog | 3.36 |
| Sonal Printers Pvt. Ltd. | 3.36 |
| Super Impex | 3.36 |
| Swati Growth Funds Ltd. | 3.36 |
| Swift Freight (India) Pvt. Ltd | 3.36 |
| V&M | 3.36 |
| Yash Laminates | 3.36 |

*C. AFA Rate [2] for the Uncooperative Respondents*

| Manufacturer/Exporter | Weighted-average dumping margin (percent) |
|---|---|
| Ampoules & Vials Mfg. Co. Ltd. | 36.27 |
| AR Printing & Packaging (India) PVT | 36.27 |
| Chitra Exports | 36.27 |
| Diki Continental Exports | 36.27 |
| Pioneer Stationery Pvt. Ltd. | 36.27 |

## Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[3] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than the later of 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[4] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[5]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS within 30 days after the date of publication of this notice.[6] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised by the parties in any written briefs, not later 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

## Assessment Rate

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[7] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

[1] This rate is a weighted average of the weighted-average dumping margins for the two mandatory respondents (weighted by the publicly-ranged U.S. sales quantities from Section A) for the period September 1, 2010, through August 31, 2011. *See* Memorandum to the File, titled, ''Certain Lined Paper Products from India: Margin for Respondents Not Selected for Individual Examination,'' from Cindy Robinson and Victoria Cho, Case Analysts, through James Terpstra, Program Manager, dated concurrent with these results.

[2] *See* Preliminary Decision Memorandum for the selection of this rate.

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2).

[6] *See* 19 CFR 351.310(c).

[7] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Riddhi and SAB, and the remaining 55 companies listed in the ''Preliminary Result of the Review'' section, will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.91 percent, the all-others rate established in the investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: October 1, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix I**

**List of Topics Discussed in the Preliminary Decision Memorandum**

1. Summary
2. Background
   a. Selection of Respondents for Individual Examination
   b. Requests for Information
3. Scope of the Order
4. Discussion of the Methodology
   a. Fair Value Comparisons
   b. Export Price
   c. Normal Value
   i. Selection of Comparison Market
   ii. Product Comparisons
   iii. Calculation of Normal Value Based on Comparison Market Prices
   iv. Level of Trade
   v. Date of Sale
   vi. Cost of Production Analysis
   1. Calculation of COP
   2. Test of Comparison Market Prices and COP
   3. Results of COP Test
   vii. Calculation of Normal Value Based on Constructed Value
   d. Rate for Non-Selected Companies
   e. Use of Facts Otherwise Available and Adverse Inferences
   i. Uncooperative Respondents
   ii. Selection of AFA Rate
   f. Currency Conversion
Recommendation

[FR Doc. 2012–24814 Filed 10–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–848]**

### Freshwater Crawfish Tail Meat From the People's Republic of China: Antidumping Duty Administrative Review; 2010–2011

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The period of review (POR) is September 1, 2010, through August 31, 2011. The review covers the following producers/exporters of the subject merchandise, Xiping Opeck Food Co., Ltd. (Xiping Opeck), Yancheng Hi-King Agriculture Developing Co., Ltd., (Hi-King Agriculture) and China Kingdom (Beijing) Import & Export Co., Ltd (China Kingdom). We have preliminarily determined that Hi-King Agriculture sold subject merchandise at less than normal value during the period of review and that Xining Opeck and China Kingdom have made sales in the United States at prices not below normal value.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3477, and (202) 482–1690, respectively.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Order**

The merchandise subject to the order is freshwater crawfish tail meat. The product is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes only, the written product description, available in *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review,* 71 FR 7013 (February 10, 2006), remains dispositive.

**Nature of Transactions Pertaining to the Entries Under Review With Respect to Xiping Opeck**

Although we have calculated a margin for Xiping Opeck for purposes of the preliminary results, we require additional information in order to accurately assess the nature of the transactions pertaining to entries under review with respect to Xiping Opeck. For further details on our analysis, please see the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul

Piquado, Assistant Secretary for Import Administration, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China'' (dated concurrently with this notice) (Preliminary Decision Memorandum), and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Treatment of Affiliated Parties as a Single Entity**

We preliminarily determine that Hi-King Agriculture and its affiliates, Yancheng Seastar Seafood Co., Ltd., Wuhan Hi-King Agriculture Development Co., Ltd., Yancheng Hi-King Frozen Food Co., Ltd., Jiangxi Hi-King Poyang Lake Seafood Co., Ltd., and Yancheng Hi-King Aquatic Growing Co., Ltd., should be treated as a single entity for the purpose of calculating an antidumping duty margin. *See* memorandum entitled ''Freshwater Crawfish Tail Meat from the People's Republic of China—Collapsing of Yancheng Hi-King Agriculture Developing Co., Ltd., and its Affiliates'' dated concurrently with this notice.

**Methodology**

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export Price is calculated in accordance with section 772(c) of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. Specifically the respondents' factors of production have been valued in Indonesian prices (when available), which is economically comparable to the PRC and a significant producer of comparable merchandise. For a full description of these ''surrogate'' values and the methodology underlying our conclusions, please see memorandum entitled ''Freshwater Crawfish Tail Meat from the People's Republic of China: Surrogate-Value Memorandum'' dated concurrently with this notice and the Preliminary Decision Memorandum.

**Preliminary Results of Review**

The Department has determined that the following preliminary dumping margins exist for the period September 1, 2010, through August 31, 2011:

| Company | Margin (percent) |
|---|---|
| Xiping Opeck Food Co., Ltd. | 0.00 |
| Yancheng Hi-King Agriculture Developing Co., Ltd. | 22.02 |
| China Kingdom (Beijing) Import & Export Co., Ltd. | 0.00 |
| Nanjing Gemsen International Co., Ltd.[1] | 22.02 |

**Disclosure and Public Comment**

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[2] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[3] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to the issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[4] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[5] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised by parties in their comments, within 120 days after the issuance of these preliminary results.

**Deadline for Submission of Publicly Available Surrogate Value Information**

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of these preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1), permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[6] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

**Assessment Rates**

Upon issuing the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For any individually examined respondent whose weighted average

[1] Nanjing Gemsen International Co., Ltd was not selected for individual examination.

[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(c)(1)(ii).

[4] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.310.

[6] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

Where the Department calculates a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment amounts based on the resulting per-unit amounts. Where an importer- (or customer-) specific *ad valorem* or per-unit amount is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[7] Where an importer- (or customer-) specific *ad valorem* or per-unit amount is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[8] For the companies for which this review has been preliminarily rescinded, the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies.

**Cash Deposit Requirements**

The following cash deposit requirements, when imposed, will apply to all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gemsen International Co., Ltd. will be the rates established in the final results of this administrative review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company) ; (2) for Shanghai Ocean and Xuzhou Jinjiang which claimed no shipments and have separate rates, the cash deposit rate will remain unchanged from the rate assigned to these companies in the most recently completed review of the companies; (3) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (4) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be PRC-wide rate of 223.01 percent; (5) for all non-PRC exporters of subject merchandise the cash deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act.

Dated: October 1, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

**List of Topics Discussed in the Preliminary Decision Memorandum**

1. Background
2. Scope of Merchandise
3. Intent To Rescind Review in Part
4. Evaluation of the Nature of Transactions Pertaining to the Entries Under Review With Respect to Xiping Opeck
5. Treatment of Affiliated Parties as a Single Entity
6. Non-Market-Economy Country Status
7. Surrogate Country
8. Separate Rates
9. Separate Rate for Non-Selected Company
10. PRC-Wide Entity Rate
11. Absence of De Jure Control
12. Absence of De Facto Control
13. U.S. Price
14. Normal Value
15. Surrogate Values
16. Currency Conversion

[FR Doc. 2012–24843 Filed 10–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* 19 CFR 351.212(b)(1).

[8] *See* 19 CFR 351.106(c)(2).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–941]**

### Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Antidumping Duty Administrative Review, 2010–2011

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (''Department'') is conducting the administrative review of the antidumping duty order on certain kitchen appliance shelving and racks from the People's Republic of China (''PRC'') for the period of review (''POR'') September 1, 2010, through August 31, 2011. The Department has preliminarily determined that New King Shan (Zhu Hai) Wire Co., Ltd. (''NKS'') did not sell subject merchandise in the United States at prices below normal value.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Order**

The scope of this order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, 8516.90.8000, 8516.90.8010, 7321.90.6040, and 8419.90.9520. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description, available in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order,* 74

FR 46971 (September 14, 2009), remains dispositive.

**PRC-Wide Entity**

Petitioners timely requested an administrative review for Asia Pacific CIS (Wuxi) Co., Ltd., Hengtong Hardware Manufacturing (Huizhou) Co., Ltd., Weixi, and Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia), companies which do not have a separate rate, and then timely withdrew their requests for review of the above-mentioned companies.[1] Because these companies have not established their eligibility for a separate rate, they will continue to be considered part of the PRC-wide entity. Although the PRC-wide entity is not under review for these preliminary results, the possibility exists that the PRC-wide entity could be under review for the final results of this administrative review. Therefore, as these companies are part of the PRC-wide entity, their disposition will be the same as the PRC-wide entity, and will be addressed in the final results.

**Methodology**

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). Constructed export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c). Specifically, the NKS's factors of production have been valued in Thai prices, which is economically comparable to the PRC and is a significant producer of comparable merchandise.

For a full description of the methodology underlying our conclusions, please see ''Decision Memorandum for Preliminary Results for the Antidumping Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Preliminary Results of Review**

The Department preliminarily determines that the following weighted-average dumping margin exists.

| Exporter | Weighted average dumping margin |
|---|---|
| New King Shan (Zhu Hai) Co., Ltd. | 0.00% (*de minimis*) |

**Disclosure and Public Comment**

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[2] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing. Interested parties are invited to comment on the preliminary results of this review.

The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**.[3] Interested parties may file rebuttal briefs, limited to issues raised in the case briefs.[4] The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. The Department intends to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[5] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

Where the Department calculates a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates. Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[6] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* the

[1] *See* Letter to the Department from Petitioners, Re: Withdrawal of Requests for Second Administrative Review of the Antidumping Duty Order, dated January 10, 2012.

[2] *See* 19 CFR 351.310(c).

[3] *See* 19 CFR 351.309(c)(1)(ii).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.212(b).

[6] *See* 19 CFR 351.212(b)(1).

Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[7]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For NKS, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 1, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

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[7] *See* 19 CFR 351.106(c)(2).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–912]**

### Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Antidumping Duty Administrative Review; 2010–2011

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (''OTR tires'') from the People's Republic of China (''PRC''). The period of review (''POR'') is September 1, 2010, through August 31, 2011. The review covers one exporter of subject merchandise, Hangzhou Zhongce Rubber Co., Ltd. (''Zhongce''). We have preliminarily found that Zhongce made sales of subject merchandise at less than normal value.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Andrew Medley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4987.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Order**

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[1]

**Partial Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice.

For all but five of the 85 companies for which the Department initiated an administrative review, Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (''Bridgestone''), a domestic interested party, was the only party that requested the review. On January 6, 2012, Bridgestone timely withdrew all of its review requests. On January 11, 2012, GTC[2] timely withdrew its three requests for self-review. On January 11, 2012, Tianjin United Tire & Rubber International Co., Ltd. (''TUTRIC'') timely withdrew its request for self-review.

For those companies named in the *Initiation Notice*[3] for which all review requests have been withdrawn and who previously received separate rate status in prior segments of this case, we are rescinding this administrative review, in accordance with 19 CFR 351.213(d)(I). These companies are listed in Appendix II.

Bridgestone's withdrawal of its timely request for an administrative review, as described above, included requests to conduct administrative reviews of multiple companies that do not have separate rates. While the requests for review of these companies were timely withdrawn, those companies remain a part of the PRC-wide entity. Although the PRC-wide entity is not under review for these preliminary results, the possibility exists that the PRC-wide entity could be under review for the final results of this administrative review. Therefore, we are not rescinding this review with respect to these companies at this time, but we intend to rescind this review with respect to these companies in the final results if the PRC-wide entity is not reviewed. These companies are listed in Appendix III.

*Methodology*

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our

[1] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008).

[2] Guizhou Tyre Co., Ltd., Guizhou Advance Rubber Co., Ltd., and Guizhou Tyre Import and Export Corporation (collectively, ''GTC'').

[3] *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 67133 (October 31, 2011) (''*Initiation Notice*'')

conclusions, please see ''Decision Memorandum for Preliminary Results of 2010–2011 Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated October 1, 2012 (''Preliminary Decision Memorandum'') and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Preliminary Results of Review**

The Department preliminarily determines that the following weighted-average dumping margin exists:

| Exporter | Weighted-average dumping margin |
|---|---|
| Hangzhou Zhongce Rubber Co., Ltd. | 132.98 |

**Disclosure and Public Comment**

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[4] Rebuttals to written comments may be filed no later than five days after the written comments are filed.[5]

Any interested party may request a hearing within 30 days of publication of this notice.[6] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[7]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Deadline for Submission of Publicly Available Surrogate Value Information**

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[8] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[9]

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[10] For assessment purposes, we calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise.

Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (i.e., less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Zhongce, the cash deposit rate will be the company-specific rate established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific or exporter/producer-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 210.48 percent;[11] and

[4] *See* 19 CFR 351.309(c).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.310(c).

[7] *See* 19 CFR 351.310(d).

[8] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[9] *See* 19 CFR 351.301(c)(3).

[10] *See* 19 CFR 351.212(b)(1).

[11] *See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China,* 77 FR 52683, 52686 (August 30, 2012).

(4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: October 1, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

**List of Topics Discussed in the Preliminary Decision Memorandum**

1. Background
2. Scope of the Order
3. Non-Market Economy Country
4. Separate Rates
5. Surrogate Country and Surrogate Value Data
6. Economic Comparability
7. Significant Producers of Identical or Comparable Merchandise
8. Data Availability
9. Date of Sale
10. Fair Value Comparisons
11. U.S. Price
12. Normal Value
13. Factor Valuations
14. Currency Conversion

## Appendix II

Separate rate companies for which we are rescinding this administrative review:

1. Exporter Aeolus Tyre Co., Ltd., for manufacturer Aeolus Tyre Co., Ltd.
2. Exporter Double Coin Holdings Ltd., for manufacturers Double Coin Holdings Ltd., Double Coin Group Rugao Tyre Co., Ltd, or Double Coin Group Shanghai Donghai Tyre Co., Ltd.
3. Exporter Double Happiness Tyre Industries Corp. Ltd., for manufacturer Double Happiness Tyre Industries Corp. Ltd.
4. Exporter Guizhou Tyre Co., Ltd., for manufacturers Guizhou Advance Rubber or Guizhou Tyre Co., Ltd.
5. Exporter Guizhou Tyre Import and Export Corporation, for manufacturers Guizhou Advance Rubber or Guizhou Tyre Co., Ltd.
6. Exporter Hebei Starbright Tire Co., Ltd.
7. Exporter Jiangsu Feichi Co., Ltd., for manufacturer Jiangsu Feichi Co., Ltd.
8. Exporter Kenda Global Holding Co. Ltd., for manufacturer Kenda Rubber (China) Co., Ltd.
9. Exporter Kenda Rubber (China) Co., Ltd., for manufacturer Kenda Rubber (China) Co., Ltd.
10. Exporter KS Holding Limited/KS Resources Limited
11. Exporter Laizhou Xiongying Rubber Industry Co., Ltd.
12. Exporter Oriental Tyre Technology Limited, for manufacturers Midland Off The Road Tire Co., Ltd., Midland Specialty Tire Co., Ltd., or Xuzhou Hanbang Tyres Co., Ltd.
13. Exporter Qingdao Aonuo Tyre Co. Ltd., for manufacturer Qingdao Aonuo Tyre Co. Ltd.
14. Exporter Qingdao Etyre International Trade Co. Ltd., for manufacturers Shandong Xingda Tyre Co. Ltd., Shandong Xingyuan International Trade Co. Ltd., or Shandong Xingyuan Rubber Co. Ltd.
15. Exporter Qingdao Free Trade Zone Full-World International Trading Co., Ltd., for manufacturers Qingdao Eastern Industrial Group Co., Ltd., Qingdao Qihang Tyre Co., Ltd., Qingdao Shuanghe Tyre Co., Ltd., Qingdao Yellowseatyre Factory, or Shandong Zhentai Tyre Co., Ltd.
16. Exporter Qingdao Hengda Tire Co. Ltd., for manufacturer Qingdao Hengda Tire Co. Ltd.
17. Exporter Qingdao Milestone Tyres Co., Ltd., for manufacturers Qingdao Shuanghe Tyre Co., Ltd., Shandong Zhentai Tyre Co., Ltd., Shifeng Double-Star Tire Co., Ltd., or Weifang Longtai Tyre Co., Ltd.
18. Exporter Qingdao Qihang Tyre Co. Ltd., for manufacturer Qingdao Qihang Tyre Co. Ltd.
19. Exporter Qingdao Qizhou Rubber Co., Ltd., for manufacturer Qizhou Rubber Co., Ltd.
20. Exporter Qingdao Sinorient International Ltd., for manufacturers Qingdao Hengda Tyres Co., Ltd., Shifeng Double-Star Tire Co., Ltd., or Tengzhou Broncho Tyre Co., Ltd
21. Exporter Qingdao Taifa Group Co., Ltd.
22. Exporter Shandong Huitong Tyres Co. Ltd., for manufacturer Shandong Huitong Tyres Co. Ltd.
23. Exporter Shandong Jinyu Tyre Co., Ltd., for manufacturer Shandong Jinyu Tyre Co., Ltd.
24. Exporter Shandong Taishan Tyre Co., Ltd., for manufacturer Shandong Taishan Tyre Co., Ltd.
25. Exporter Shandong Wanda Boto Tyre Co., Ltd., for manufacturer Shandong Wanda Boto Tyre Co., Ltd.
26. Exporter Shandong Xingyuan International Trading Co., Ltd., for manufacturers Shangdong Xingda Tyre Co., Ltd. or Xingyuan Tyre Group Co., Ltd.
27. Exporter Techking Tires Limited, for manufacturers Shandong Xingda Tyre Co. Ltd., Shandong Xingyuan International Trade Co. Ltd., or Shandong Xingyuan Rubber Co. Ltd
28. Exporter Tianjin United Tire & Rubber International Co., Ltd.
29. Exporter Triangle Tyre Co. Ltd., for manufacturer Triangle Tyre Co. Ltd.
30. Exporter Weihai Zhongwei Rubber Co., Ltd.
31. Exporter Wendeng Sanfeng Tyre Co. Ltd., for manufacturer Wendeng Sanfeng Tyre Co. Ltd.
32. Exporter Xuzhou Xugong Tyre Co. Ltd., for manufacturer Xuzhou Xugong Tyre Co. Ltd.
33. Exporter Zhaoyuan Leo Rubber Co. Ltd., for manufacturer Zhaoyuan Leo Rubber Co. Ltd.

## Appendix III

Companies that are part of the PRC-wide entity for which Bridgestone has withdrawn its review request:

1. Exporter Aeolus Tyre Co., Ltd., for any manufacturer other than Aeolus Tyre Co., Ltd.
2. Exporter Beijing Shouchuang Tyre Co. Ltd.
3. Exporter Cheng Shin Rubber (Xiamen) Ind. Ltd.
4. Exporter China Enterprises Ltd.
5. Exporter China Haohua Chemical Group Corp.
6. Exporter China National Tyre & Rubber Guilin Co., Ltd.
7. Exporter Cooper Chengshan (Shandong) Tire Co. Ltd.
8. Exporter Double Coin Group Rugao Tyre Co., Ltd.
9. Exporter Double Coin Group Shanghai Donghai Tyre Co. Ltd.
10. Exporter Double Coin Holdings Ltd., for any manufacturers other than Double Coin Holdings Ltd., Double Coin Group Rugao Tyre Co., Ltd, or Double Coin Group Shanghai Donghai Tyre Co., Ltd.
11. Exporter Double Happiness Tyre Industries Corp. Ltd., for any manufacturer other than Double Happiness Tyre Industries Corp. Ltd.
12. Exporter Eternity International L Freight Forwarder
13. Exporter GITI Tire (China) Investment Co., Ltd.
14. Exporter GITI Tire Pte. Ltd.
15. Exporter Guangzhou Pearl River Rubber Tyre Ltd.
16. Exporter Guilun Tire Co.
17. Exporter Guizhou Advance Rubber Co., Ltd.
18. Exporter Guizhou Tyre Co., Ltd., for any manufacturers other than Guizhou Advance Rubber or Guizhou Tyre Co., Ltd.
19. Exporter Guizhou Tyre Import and Export Corporation, for any manufacturers other than Guizhou Advance Rubber or Guizhou Tyre Co., Ltd.
20. Exporter Henan Tyre Ltd.
21. Exporter Hwa Fong Rubber Ltd (Hong Kong)
22. Exporter Innova Rubber Co., Ltd.
23. Exporter Jiangsu Feichi Co., Ltd., for any manufacturers other than Jiangsu Feichi Co., Ltd.
24. Exporter Kenda Global Holding Co. Ltd.,

for any manufacturer other than Kenda Rubber (China) Co., Ltd.
25. Exporter Kenda Rubber (China) Co., Ltd., for any manufacturer other than Kenda Rubber (China) Co., Ltd.
26. Exporter L-Guard International Enterprise
27. Exporter Longkou Xinglong Tire Co. Ltd.
28. Exporter Mai Shandong Radial Tyre Co., Ltd.
29. Exporter Maxxis International (HK) Co. Ltd.
30. Exporter Midland Speciality Tire Co., Ltd.
31. Exporter Oriental Tyre Technology Limited, for any manufacturers other than Midland Off The Road Tire Co., Ltd., Midland Specialty Tire Co., Ltd., or Xuzhou Hanbang Tyres Co., Ltd.
32. Exporter Qingdao Aonuo Tyre Co. Ltd., for any manufacturer other than Qingdao Aonuo Tyre Co. Ltd.
33. Exporter Qingdao Doublestar Tire Industrial Co., Ltd.
34. Exporter Qingdao Eastern Industrial Group Co. Ltd.
35. Exporter Qingdao Etyre International Trade Co. Ltd., for any manufacturers other than Shandong Xingda Tyre Co. Ltd., Shandong Xingyuan International Trade Co. Ltd., or Shandong Xingyuan Rubber Co. Ltd.
36. Exporter Qingdao Free Trade Zone Full-World International Trading Co., Ltd., for any manufacturers other than Qingdao Eastern Industrial Group Co., Ltd., Qingdao Qihang Tyre Co., Ltd., Qingdao Shuanghe Tyre Co., Ltd., Qingdao Yellowseatyre Factory, or Shandong Zhentai Tyre Co., Ltd.
37. Exporter Qingdao Hengda Tire Co. Ltd., for any manufacturer other than Qingdao Hengda Tire Co. Ltd.
38. Exporter Qingdao Honour Tyre Co. Ltd.
39. Exporter Qingdao Milestone Tyres Co., Ltd., for any manufacturers other than Qingdao Shuanghe Tyre Co., Ltd., Shandong Zhentai Tyre Co., Ltd., Shifeng Double-Star Tire Co., Ltd., or Weifang Longtai Tyre Co., Ltd.
40. Exporter Qingdao Qihang Tyre Co. Ltd., for any manufacturer other than Qingdao Qihang Tyre Co. Ltd.
41. Exporter Qingdao Qizhou Rubber Co., Ltd., for any manufacturer other than Qizhou Rubber Co., Ltd.
42. Exporter Qingdao Seanoble International Trade
43. Exporter Qingdao Shuanghe Tyre Co. Ltd.
44. Exporter Qingdao Sinorient International Ltd., for any manufacturer other than Qingdao Hengda Tyres Co., Ltd., Shifeng Double-Star Tire Co., Ltd., or Tengzhou Broncho Tyre Co., Ltd
45. Exporter Qingdao Tengjiang Tyre Co. Ltd.
46. Exporter Qingdao Yellowsea Tyre Factory
47. Exporter Sailun Co., Ltd.
48. Exporter Shandong Chengshan Group
49. Exporter Shandong Goldkylin Rubber Group Co.
50. Exporter Shandong Huatai Rubber Co. Ltd.
51. Exporter Shandong Huitong Tyres Co. Ltd., for any manufacturer other than Shandong Huitong Tyres Co. Ltd.
52. Exporter Shandong Jinyu Tyre Co., Ltd., for any manufacturer other than Shandong Jinyu Tyre Co., Ltd.
53. Exporter Shandong Linglong Tyre Co. Ltd.
54. Exporter Shandong LuHe Group General Co.
55. Exporter Shandong Sangong Rubber Co. Ltd.
56. Exporter Shandong Taishan Tyre Co., Ltd., for any manufacturer other than Shandong Taishan Tyre Co., Ltd.
57. Exporter Shandong Wanda Boto Tyre Co., Ltd., for any manufacturer other than Shandong Wanda Boto Tyre Co., Ltd.
58. Exporter Shandong Xingda Tyre Co., Ltd.
59. Exporter Shandong Xingyuan International Trading Co., Ltd., for any manufacturers other than Shangdong Xingda Tyre Co., Ltd. or Xingyuan Tyre Group Co., Ltd.
60. Exporter Shandong Xingyuan Rubber Co. Ltd.
61. Exporter Shandong Zhentai Tyre Co., Ltd.
62. Exporter Shanghai Huyai Group Company
63. Exporter Shangong Zhongce Tyre Co. Ltd.
64. Exporter Shifeng Double-Star Tire Co. Ltd.
65. Exporter Sichuan Haida Tyre Group Co. Ltd.
66. Exporter Techking Tires Limited, for any manufacturers other than Shandong Xingda Tyre Co. Ltd., Shandong Xingyuan International Trade Co. Ltd., or Shandong Xingyuan Rubber Co. Ltd
67. Exporter Tengzhou Broncho Tyre Co. Ltd.
68. Exporter Tianjin Wanda Tyre Group
69. Exporter Triangle Tyre Co. Ltd., for any manufacturer other than Triangle Tyre Co. Ltd.
70. Exporter U.S. Cooper Tire & Rubber Co.
71. Exporter Weifang Longtai Tyre Co., Ltd.
72. Exporter Wendeng Sanfeng Tyre Co. Ltd., for any manufacturer other than Wendeng Sanfeng Tyre Co. Ltd.
73. Exporter World Tyres Limited
74. Exporter Xiamen Rubber Factory
75. Exporter Xingyuan Tyre Co., Ltd
76. Exporter Xuzhou Hanbang Tyres Co., Ltd.
77. Exporter Xuzhou Xugong Tyre Co. Ltd., for any manufacturer other than Xuzhou Xugong Tyre Co. Ltd.
78. Exporter Zhaoyuan Leo Rubber Co. Ltd., for any manufacturer other than Zhaoyuan Leo Rubber Co. Ltd.

[FR Doc. 2012–24832 Filed 10–5–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–901]**

### Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 1, 2012, the Department of Commerce (the ''Department'') published in the **Federal Register** its preliminary results of the fifth administrative review of certain lined paper products from the People's Republic of China (''PRC'').[1] We invited parties to comment on the *Preliminary Results,* however, no party submitted a case brief to the Department. The current review covers two exporters: Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory (''Leo/Denmax'') and Shanghai Lian Li Paper Products Co., Ltd. (''Lian Li''). For Leo/Denmax, we continue to apply adverse facts available (''AFA''); for Lian Li, we are rescinding the review.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Cindy Robinson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3797.

**SUPPLEMENTARY INFORMATION:**

### Background

In the *Preliminary Results,* the Department preliminarily rescinded this review with respect to Lian Li based on evidence on the record indicating that Lian Li had no shipments of subject merchandise which entered the United States during the period of review (''POR'') of September 1, 2010, through August 31, 2011.[2] As discussed in the *Preliminary Results,* on December 30, 2011, Lian Li submitted a letter, certifying that they did not export the subject merchandise to the United States during the POR; the Department confirmed this information with U.S. Customs and Border Protection (''CBP''). We invited interested parties to submit comments on our *Preliminary Results,* but we received no comments.

In addition, the Department preliminarily applied AFA with respect to Leo/Denmax because Leo/Denmax did not respond to the Department's questionnaire. As stated above, on June 1, 2012, the Department published its *Preliminary Results.* On June 5, 2012, the Department received a letter dated May 29, 2012, from Leo/Denmax stating that they made no sales of subject merchandise to the United States during the POR and requesting rescission of the review with respect to Leo/Denmax. However, because Leo/Denmax's letter claiming that it made no shipments was

[1] *See Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Rescission, In Part,* 77 FR 32498 (June 1, 2012) (''*Preliminary Results*'').

[2] *Id.*

improperly and untimely submitted, the Department rejected and returned Leo/Denmax's letter on June 11, 2012.[3] Therefore, for purposes of these final results, we continue to apply AFA with respect to Leo/Denmax. *See* the ''Application of AFA with Respect to Leo/Denmax'' section below for further details.

**Period of Review**

The POR is September 1, 2010, through August 31, 2011.

**Scope of the Order**

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: Pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper'', and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches.

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2-3/8″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used

[3] *See* the Department's June 11, 2012, letter to Tilly Shiang, General Manager, Leo's Quality Products Co., Ltd. from James Terpstra, Program Manager, titled ''Certain Lined Paper Products from the People's Republic of China—Return of Improperly and Untimely Submission of Leos' May 29, 2012 No Shipment Letter, (Rejection Letter).''

trademark are not excluded from the scope).

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Since the issuance of the order, the Department has clarified the scope of the order in response to numerous scope inquiries. In addition, on September 23, 2011, the Department revoked, in part, the PRC AD order with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings.[4]

## Analysis of Comments Received

We have received no comments on our *Preliminary Results,* with the exception of Leo/Denmax's May 29, 2012, letter which the Department rejected on June 11, 2012, as noted above.

## Final Rescission of Review With Respect to Lian Li

Because there is no information on the record which indicates that Lian Li made shipments of subject merchandise which entered the United States during the POR, and because we did not receive any comments on our *Preliminary Results,* in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review of the antidumping duty order on certain lined paper products from the PRC for the period of September 1, 2010, through August 31, 2011, with respect to Lian Li. The cash deposit rate for Lian Li will continue to be the rate established in the most recently completed segment of this proceeding.

## Application of Adverse Facts Available (AFA) With Respect to Leo/Denmax

In this case, the Department issued a questionnaire to Leo/Denmax on November 8, 2011, by email. Receiving no acknowledgement of receipt of the emailed questionnaire from Leo/Denmax, the Department sent a hard copy of the questionnaire to Leo/Denmax through United Parcel Service (''UPS'') by registered mail on November 17, 2011.[5] After the Department announced its *Preliminary Results,* Leo/Denmax submitted a letter stating that Leo/Denmax did not have any exports, sales or entries of subject merchandise to the United States during the POR, and requested that the Department rescind the administrative review with respect to Leo/Denmax. The deadline for submitting a letter certifying ''no shipments'' was December 31, 2011, but the Department did not receive Leo/Denmax's no-shipment letter until June 5, 2012 (dated May 29, 2011), 158 days after the filing deadline for a no shipment letter.[6] Moreover, Leo/Denmax's letter was not filed electronically on the Department's filing system (IA ACCESS), as required and stated in the initial questionnaire issued to Leo/Denmax. Instead, Leo/Denmax filed its letter manually in regular mail without submitting the proper certifications. Therefore, on June 11, 2012, the Department rejected Leo's/Denmax's no-shipment submission dated May 29, 2012, because the letter was improperly and untimely submitted. In accordance with 19 CFR 351.302(d)(iii), the Department also withdrew all known copies of Leo/Denmax's May 29, 2012, letter from the record and returned them to Leo/Denmax. The Department informed Leo/Denmax that this information shall not be considered by the Department in making its final results of review.[7]

Section 776(a) of the Tariff Act of 1930, as amended (''the Act'') provides that the Department shall apply ''facts otherwise available'' if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous

[4] *See Certain Lined Paper Products From People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 76 FR 60803 (September 30, 2011).

[5] *See* ''Proof of Delivery of Antidumping Questionnaire to Leo's Quality Products Co., Ltd,'' memorandum to file from Joy Zhang, analyst, through James Terpstra, Program Manager, Office 3, AD/CVD Operations, dated January 4, 2012.

[6] The Department's Rejection Letter inadvertently stated that the deadline for filing a notice of no sale letter is October 31, 2011.

[7] *Id.*

administrative review, or other information placed on the record.[8] Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' [9]

Because Leo/Denmax did not provide the requested information timely and properly, they significantly impeded the proceeding and we find that application of facts available is appropriate under sections 776(a)(2)(A), (B), and (C) of the Act. We further find that application of AFA is appropriate under section 776(b) because Leo/Denmax failed to cooperate to the best of its ability in responding to the Department's requests for information.

**Separate Rates**

In proceedings involving nonmarket economy (''NME'') countries, there is a rebuttable presumption that all companies within that country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter demonstrates that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities.[10] It is the Department's practice to require a party to submit evidence that it operates independently of the State-controlled entity in each segment of a proceeding in which it requests separate rate status. The process requires exporters to submit a separate-rate status application.[11] As discussed in the *Preliminary Results,* Leo/Denmax did not respond to the Department's questionnaire regarding separate rate eligibility, or submit a separate rate certification. Furthermore, Leo/Denmax has not demonstrated that it operates free from government control. Therefore, the Department continues to find that Leo/Denmax is part of the PRC-wide entity.

**The PRC-Wide Entity**

Because we determined that Leo/Denmax is part of the PRC-wide entity, the PRC-wide entity is under review. Pursuant to section 776(a) of the Act, we further find that because the PRC entity (including Leo/Denmax) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, submitted information that cannot be verified, or otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC-wide entity using the facts otherwise available on the record. Moreover, by failing to respond to the Department's requests for information, we find that the PRC-wide entity has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information in this proceeding, within the meaning of section 776(b) of the Act. Therefore, an adverse inference is warranted in selecting from the facts otherwise available.[12]

**Selection of Adverse Facts Available Rate**

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.''[13]

Generally, the Department finds that selecting the highest rate from any segment of the proceeding as AFA is appropriate.[14] The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit (''CAFC'') have affirmed the Department's prior decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[15]

As AFA, we have assigned to the PRC-wide entity a rate of 258.21 percent, from the investigation of certain lined paper products from the PRC, which is the highest rate on the record of all segments of this proceeding.[16] As explained below, this rate has been corroborated.

**Corroboration of Secondary Information**

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[17] Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[18] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[19]

The AFA rate selected in this instance is from the original investigation. This

[8] *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); *Statement of Administrative Action,* reprinted in H.R. Doc. No. 103–216, at 870 (1994) (''*SAA*'').

[9] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382 (Fed. Cir. 2003) (''*Nippon*'').

[10] *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 *(May 6, 1991), as further developed in Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[11] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 (October 4, 2007), *Peer Bearing Co. Changshan* v. *United States,* 587 F.Supp. 2d 1319, 1324–25 (*CIT 2008*) (affirming the Department's determination in that review).

[12] *See Nippon,* 337 F.3d at 1382–83.

[13] *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 4913 (January 28, 2009).

[14] *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 70 FR 76755, 76761 (December 28, 2005).

[15] *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990) (''*Rhone Poulenc*''); *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding the application of an AFA rate which was the highest available dumping margin from a different respondent in an investigation).

[16] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006).

[17] *See SAA* at 870.

[18] *Id.*

[19] *See Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final determination), *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 62 FR 11825 (March 13, 1997).

rate was calculated based on information contained in the petition, which was corroborated for the final determination.[20] This rate was also applied in the 2007–2008 period of review of lined paper products from the PRC and the CIT found this PRC-wide rate to be corroborated.[21] No additional information has been presented in the current review which calls into question the reliability of the information.[22] Therefore, the Department finds that the information continues to be reliable and has probative value. In addition, the AFA rate we are applying is the rate currently in effect for the PRC-wide entity.[23]

### Final Results of Review

We determine that the following margin exists for the period September 1, 2010, through August 31, 2011:

| Exporter | Weighted-average margin (percent) |
|---|---|
| PRC-wide Entity (including Leo/Denmax) ..... | 258.21 |

### Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to liquidate all appropriate entries at the PRC-wide rate of 258.21 percent.

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of certain lined paper products from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) For previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (2) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 258.21 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, as amended, and 19 CFR 351.213(d)(4).

Dated: October 1, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012–24813 Filed 10–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[20] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006).

[21] *See Watanabe Group* v. *United States,* Court No. 09–520, Slip Op. 2010–139 (CIT Dec. 22, 2010), affirming *Final Results in Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review,* 74 FR 63387 (December 3, 2009).

[22] *See Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review,* 76 FR 23288 (April 26, 2011).

[23] *Id.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–954]**

### Certain Magnesia Carbon Bricks From the People's Republic of China: Antidumping Duty Administrative Review; 2010–2011

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (''Department'') is conducting the administrative review of the antidumping duty order on certain magnesia carbon bricks from the People's Republic of China (''PRC''), covering the period of review (''POR'') of March 12, 2010, through August 31, 2011. The Department has preliminarily applied adverse facts available (AFA) to the two mandatory respondents who both failed to cooperate to the best of their ability in this proceeding. The Department also intends to rescind the review of seven companies that certified that they had no shipments of subject merchandise to the United States during the POR.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4047.

### Scope of the Order

The merchandise subject to the order includes certain magnesia carbon bricks. Certain magnesia carbon bricks that are the subject of this order are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in *Certain Magnesia Carbon Bricks From Mexico and the People's Republic of China: Antidumping Duty Orders,* 75 FR 57257 (September 20, 2010), remains dispositive.

### Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that ANH (Xinyi) Refractories (''ANH''), Yingkou New Century Refractories Ltd. (''Yingkou New Century''), and RHI-

Refractories Asia Pacific Pte. Ltd., RHI Refractories (Dalian) Co., Ltd., RHI Refractories Liaoning Co., Ltd., RHI Trading Shanghai Branch, and RHI Trading (Dalian) Co., Ltd. (collectively, ''RHI'') made no shipments of subject merchandise during the POR of this administrative review. The Department received no-shipment certifications from ANH, Yingkou New Century, and RHI between November and December, 2011. The Department also issued no-shipment inquiries to U.S. Customs and Border Protection (''CBP'') in January 2012, asking CBP to provide any information contrary to our findings of no entries of subject merchandise for merchandise manufactured and shipped by ANH, Yingkou New Century, and RHI during the POR. We did not receive any response from CBP, thus indicating that there were no entries of subject merchandise into the United States exported by these companies. Consequently, as none of the companies made exports of subject merchandise during the POR, we are preliminarily rescinding the review, in part, with respect to ANH, Yingkou New Century and RHI.

**Methodology**

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). We have relied on facts available and because respondents did not act to the best of their ability to respond to the Department's requests for information, we have drawn an adverse inference in selecting from among the facts otherwise available.[1]

For a full description of the methodology underlying our conclusions, please see ''Decision Memorandum for Preliminary Results for the Antidumping Duty Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Preliminary Results of Review**

The Department has determined that the following preliminary dumping margins exist for the period March 12, 2010, and August 31, 2011:

| Company | Margin (percent) |
|---|---|
| Fengchi Imp. and Exp. Co., Ltd. of Haicheng City ..... | 236.00 |
| PRC-wide entity (including Yingkou Byuquan Refractories Co., Ltd.) ..... | 236.00 |

**Disclosure and Public Comment**

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[2] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[3] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[4] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[5] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

**Deadline for Submission of Publicly Available Surrogate Value Information**

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of these preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[6] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

**Assessment Rates**

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those

[1] *See* sections 776(a) and (b) of the Act.

[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[4] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.310.

[6] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

same sales in accordance with 19 CFR 351.212(b)(1).[7] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following cash deposit requirements, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Yingkou Bayuquan Refractories Co., Ltd. will be the rate established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this administrative review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 236.00 percent); and (4) the cash-deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: October 1, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

**List of Topics Discussed in the Preliminary Decision Memorandum**

1. Background
2. Scope of Merchandise
3. Non-Market Economy Country Status
4. Separate Rates
5. PRC-Wide Entity
6. Fengchi
7. Use of Facts Available and Adverse Facts Available (AFA)
8. Application of Total AFA to Fengchi
9. Application of Total AFA to the PRC-Wide Entity
10. Selection of AFA Rate
11. Corroboration of Secondary Information
12. Export Subsidy Adjustment

[FR Doc. 2012–24811 Filed 10–5–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–942]**

### Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Administrative Review; 2010

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') is conducting an administrative review of the countervailing duty order on certain kitchen appliance shelving and racks (''kitchen racks'') from the People's Republic of China (''PRC''). The period of review (''POR'') is January 1, 2010, through December 31, 2010. We preliminarily determine that New King Shan (Zhu Hai) Co., Ltd. (''NKS'') received countervailable subsidies during the POR. We are also rescinding this review for six other producers/exporters.

**DATE:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Meek or Mary Kolberg, Office of AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2778 and (202) 482–1785, respectively.

**Scope of the Order**

The scope of the order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens. The merchandise subject to the order is currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.40, 7321.90.60.90, 8418.99.80.60, 8419.90.95.20, 8516.90.80.00, and 8516.90.80.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description, available in *Countervailing Duty Order: Certain Kitchen Appliance Shelving and Racks From the People's Republic of China,* 74 FR 46973 (September 14, 2009) (''*CVD Order*''), remains dispositive.

**Partial Rescission of the Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to the following parties because the review requests were timely withdrawn: Asia Pacific CIS (Wuxi) Co., Ltd.; Guangdong Wireking Co., Ltd. (formerly known as Foshun Shunde Wireking Housewares & Hardware); Hangzhou Dunli Import & Export Co., Ltd. and Hangzhou Dunli Industry Co., Ltd.; Hengtong Hardware Manufacturing (Huizhou) Co., Ltd.; Jiangsu Weixi Group Co.; and Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia).

**Methodology**

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

In making these findings, we have relied, in part, on facts available and, because one or more respondents did not act to the best of their ability to respond to the Department's requests for information, we have drawn an adverse

[7] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

inference in selecting from among the facts otherwise available. *See* sections 776(a) and (b) of the Act.

For a full description of the methodology underlying our conclusions, please *see* ''Decision Memorandum for Preliminary Results for the Countervailing Duty Administrative Review of Kitchen Appliance Shelving and Racks from the People's Republic of China,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated October 1, 2012, and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine a net subsidy rate of 12.06 percent for New King Shan (Zhu Hai) Co. Ltd. for the period January 1, 2010, through December 31, 2010.

**Disclosure and Public Comment**

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[1] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[2] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce within 30 days after the date of publication of this notice.[3] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[4] Parties should confirm by telephone the date, time, and location of the hearing.

Parties are reminded that briefs and hearing requests are to be filed electronically using IA ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

**Cash Deposit Instructions**

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: October 1, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

**List of Topics Discussed in the Preliminary Decision Memorandum**

1. Background
2. Scope of the Order
3. Use of Facts Otherwise Available and Adverse Inferences
4. Subsidies Valuation Information
5. Analysis of Programs

[FR Doc. 2012–24850 Filed 10–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* 19 CFR 351.224(b).

[2] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[3] *See* 19 CFR 351.310(c).

[4] *See* 19 CFR 351.310.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–955]**

### Certain Magnesia Carbon Bricks From the People's Republic of China: 2010 Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain magnesia carbon bricks (MCBs) from the People's Republic of China (PRC), covering the period of review (POR) of August 2, 2010, through December 31, 2010. The Department has preliminarily applied adverse facts available (AFA) to the two mandatory respondents who both failed to cooperate to the best of their ability in this proceeding. The Department also intends to rescind the review of seven companies that certified that they had no shipments of subject merchandise to the United States during the POR.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Toni Page or Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1398 or (202) 482–0197, respectively.

**Scope of the Order**

The merchandise subject to the order includes certain magnesia carbon bricks. Certain magnesia carbon bricks that are the subject of this order are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in *Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order,* 75 FR 57442 (September 21, 2010), remains dispositive.

**Partial Rescission of the Administrative Review**

On September 30, 2011, we received timely requests for an administrative review of this countervailing duty order from Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi), and U.S. importer Vesuvius USA Corporation for subject merchandise it imported from PRC exporter, Yingkou Bayuquan Refractories Co., Ltd. (BRC).[1] Also, on September 30, 2011, the Department received a timely request, in accordance with 19 CFR 351.213(b), for an administrative review of 129 companies from Resco Products, Inc. (Petitioner).[2] The Petitioner's request included Fengchi and BRC. On October 31, 2011, the Department published a notice of initiation of administrative review.[3] Fengchi and BRC timely withdrew their self-request for reviews on January 27, 2012, and January 30, 2012, respectively.[4] On February 21, 2012, we selected Fengchi and BRC as mandatory respondents in this review.[5] Petitioner filed a letter on March 28, 2012, untimely withdrawing its request for all companies, except the two mandatory respondent companies (Fengchi and BRC), for which it requested reviews.[6]

Pursuant to section 351.213(d)(1) of the Department's regulations, a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review.[7] The regulation provides that the Department may extend this time if it is reasonable to do so.[8] In the *Initiation Notice,* interested parties were advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request.[9] Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis. Because Petitioner did not demonstrate that extraordinary circumstances prevented it from timely withdrawing its requests for review, the Department has rejected Petitioner's untimely request for withdrawal.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective POR. In the *Initiation Notice,* the Department stated that any company named in the notice of initiation that had no exports, sales, or entries during the period of review should notify the Department within 60 days of publication of the notice in the **Federal Register**.[10]

The Department subsequently received timely no shipment certifications from the following companies: ANH (Xinyi) Refractories (ANH); RHI-Refractories Asia Pacific Pte. Ltd., RHI Refractories (Dalian) Co. Ltd., RHI Refractories Liaoning Co., Ltd., RHI Trading Shanghai Branch, and RHI Trading (Dalian) Co., Ltd. (RHI companies); Fengchi; and Yingkou New Century Refractories Ltd.(NCR).[11] With the exception of Fengchi, because there is no evidence on the record to indicate that these companies had sales of subject merchandise during the POR, pursuant to 19 CFR 351.213(d)(3), the Department intends to rescind the review with respect to ANH, the five RHI companies, and NCR. A final decision regarding whether to rescind the review with respect to these companies will be made in the final results of this review. Information on the record shows that Fengchi did have sales of subject merchandise during the POR.[12] Therefore, we are not rescinding the review with respect to Fengchi.

**Methodology**

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs under review, we preliminarily determine that there are countervailable subsidies, *i.e.,* there is a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity. In making these findings, we have relied on adverse facts available for the two mandatory respondents because these respondents did not act to the best of their ability to respond to the Department's requests for information; as such, we have drawn an adverse inference in selecting from among the facts otherwise available. *See* sections 776(a) and (b) of the Act. With respect to the remaining companies for which we initiated reviews and that did not file no-shipment certifications, we will assign to entries made by such companies the all-others rate from the investigation. Accordingly, and consistent with section 705(c)(5)(A)(ii), we have relied upon the all-others rate from the investigation because the rates calculated for mandatory respondents in the preliminary results of this review are based entirely upon facts available. We consider the use of the all-others rate from the investigation, which was based upon a calculated rate for one of the mandatory respondents in the investigation, to be a ''reasonable method'' for calculating the all-others rate because it represents the only rate in the history of the CVD order on MCBs from the PRC that is not zero, *de*

[1] *See* Letter to the Department from Fengchi ''Certain Magnesia Carbon Bricks from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order (8/2/10–12/31/10)'' Re: Review Initiation Request, dated September 30, 2011; *see also* Letter to the Department from BRC ''Certain Magnesia Carbon Bricks from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order (8/2/10–12/31/10),'' dated September 30, 2011.

[2] *See* Letter to the Department from Petitioner ''Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Administrative Review'' Re: Review Initiation Request, dated September 30, 2011.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 67133 (October 31, 2011) (*Initiation Notice*).

[4] *See* Letter to the Department from Fengchi ''Certain Magnesia Carbon Bricks from the People's Republic of China: Withdrawal of Request for CVD Administrative Review (08/02/10–12/31/10),'' dated January 27, 2012; *see also* Letter to the Department from BRC ''Certain Magnesia Carbon Bricks from the People's Republic of China: Withdrawal of Request for CVD Administrative Review (08/02/10–12/31/10),'' dated January 30, 2012.

[5] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks (MCBs) from the People's Republic of China: Respondent Selection Memorandum,'' dated February 21, 2012.

[6] *See* Letter to the Department from Petitioner ''Administrative Review of Countervailing Duty Orders on Certain Magnesia Carbon Bricks from the People's Republic of China (8/2/2010–12/31/2010): Withdrawal of Request for Review,'' dated March 28, 2012.

[7] *See also Initiation Notice* at 67133.

[8] *See* 19 CFR 351.213(d)(1).

[9] *See Initiation Notice,* 76 FR at 67133.

[10] *See Id.*

[11] *See* Letter to the Department from ANH ''Administrative Review of Countervailing Duty Order on Magnesia Carbon Bricks from the People's Republic of China: Notification of No Shipments During the Period of Review,'' dated November 29, 2011; *see also* Letter to the Department from RHI ''Magnesia Carbon Bricks from China: Rebuttal Comments on CBP Data,'' dated December 13, 2011; *see also* Letter to the Department from Fengchi ''Certain Magnesia Carbon Bricks from the People's Republic of China, Case No. C–570–955: Certification of No Shipments,'' dated December 20, 2011; *see also* Letter to the Department from NCR ''Administrative Review of Countervailing Duty Order on Magnesia Carbon Bricks from the People's Republic of China: Notification of No Shipments During the Period of Review,'' dated December 23, 2011.

[12] *See* Memorandum to the File ''Certain Magnesia Carbon Bricks from the People's Republic of China: Customs Data of U.S. Imports of Certain Magnesia Carbon Bricks,'' dated November 22, 2011.

*minimis,* or based entirely upon facts available.

For a full description of the methodology underlying our conclusions, please see ''Decision Memorandum for Preliminary Results for the Countervailing Duty Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China,'' (Preliminary Decision Memorandum) to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Preliminary Results of Review**

We preliminarily determine that the following margins exist for the period August 2, 2010, through December 31, 2010:

| Company | *Ad valorem* net subsidy rate (percent) |
|---|---|
| Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi) | 262.80 |
| Yingkou Bayuquan Refractories Co. Ltd. | 262.80 |
| All Others Rate Applicable to the Remaining Companies Under Review | 24.24 |

**Disclosure and Public Comment**

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[13] Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department.[14] Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15]

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[16] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[17] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

**Assessment Rates and Cash Deposit Requirements**

In accordance with 19 CFR 351.221(b)(4)(i), we assigned a subsidy rate for each producer/exporter subject to this administrative review. Upon issuing the final results of the review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review if any individual assessment rate calculated in the final results of this review is above *de minimis.* For the companies that certified no shipments, the Department will instruct CBP to assess countervailing duties at the rate entered. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at the rate of 262.80 percent *ad valorem* of the entered value on shipments of the subject merchandise produced and exported by Fengchi and BRC, and entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. Furthermore, for the remaining companies subject to this review, the cash deposit rate will be the all others rate from the investigation. We intend to instruct CBP to continue to collect cash deposits for non-reviewed companies at the applicable company-specific countervailing duty rate for the most recent period or at the all-others rate established in the investigation, as appropriate. These deposit rates, when imposed, shall remain in effect until further notice.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 1, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix I**

List of Topics Discussed in the Decision Memorandum for Preliminary Results

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
5. Conclusion

[FR Doc. 2012–24803 Filed 10–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See* 19 CFR 351.224(b).

[14] *See* 19 CFR 351.309(c)(1)(ii).

[15] *See* 19 CFR 351.309(c)(2), (d)(2).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310.

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Sunshine Act Meeting Notice

The National Civilian Community Corps Advisory Board gives notice of the following meeting:

**DATE AND TIME:** Tuesday, October 16, 2012, 2:30 p.m.–4 p.m.

**PLACE:** Conference room #8312, 8th floor, Corporation for National and Community Service Headquarters, 1201 New York Avenue NW., Washington, DC 20525.

**CALL–IN INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 888–790–1955; conference call access code number, ''NCCC'' (6222). Kate Raftery will be the lead on the call. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 866–396–6249 and passcode: 5749. The end replay date: November 16, 2012, 9:59 p.m. (CT).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

I. Meeting Convenes:
  a. Call to Order, Welcome, and Preview of Today's Meeting Agenda
  b. Introduction & Acknowledgements
II. Approval of Previous Meeting's Minutes
III. Director's Report
IV. Area Reports:
- Recruitment, Selection and Placement
- Projects and Partnerships
- Policy and Operations
- Member Training and Development

V. Public Comment

**ACCOMMODATIONS:** Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Tuesday, October 9, 2012.

**CONTACT PERSON FOR MORE INFORMATION:** Erma Hodge, NCCC, Corporation for National and Community Service, 9th Floor, Room 9802B, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–6696. Fax (202) 606–3459. TTY: (800) 833–3722. Email: *ehodge@cns.gov.*

Dated: September 23, 2012.

**Valerie E. Green,**

*General Counsel.*

[FR Doc. 2012–24919 Filed 10–4–12; 4:15 pm]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2012–OS–0123]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Public Affairs, DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Public Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 10, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense for Public Affairs, Community and Public Outreach Division, ATTN: Adrien Starks, 1400 Defense Pentagon, Washington, DC 20301–1400, or call OASD(PA)/CPO, at 703–695–6290.

*Title; Associated Form; and OMB Number:* Checklist for Requesting Approval of Still and Motion Imagery of Military Personnel and Equipment for Commercial Purposes; DD Form x633; OMB Control Number 0704–TBD.

*Needs and Uses:* The information collection requirement is necessary to collect information from those who seek DoD approval prior to the use of still or motion imagery of military personnel and equipment for commercial purposes. The form prescribes processes/standards that have been established for granting image use approval, when requested. It further allows DoD a duty of care to military members to not approve commercial uses of imagery that infringe their rights.

*Affected Public:* Business or other for profit; Not-for-profit institutions.

*Annual Burden Hours:* 350.

*Number of Respondents:* 350.

*Responses per Respondent:* 6.

*Average Burden per Response:* 10 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

### Summary of Information Collection

Respondents are members of non-profit organizations wanting to use the military in their promotional and/or fund raising material. Respondents may also be marketing and advertising professionals who provide military or patriotic-themed exhibits, promotional material, web page designs, and advertisements for their business clients and require DoD approval for use of military imagery as part of their standard operating procedure. The completed form allows the respondents to acknowledge and comply with the DoD guidelines for granting military image use approval in their products. The completed form is included with the final mock-up of the proposed commercial use product and serves as notification that the respondent has complied with the DoD guidelines. If the form is not submitted or is incomplete, individuals reviewing the military imagery in the proposed commercial use product must contact the respondent and convey the requested changes in order to obtain DoD approval. Having the marketing, advertising, and non-profit organization professionals complete the form will educate the community of respondents about DoD guidelines, reduce the response time to their requests, and increase efficiency for those reviewing the requests.

Dated: October 3, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2012–24737 Filed 10–5–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Change of Public Meeting Location for the Draft Legislative Environmental Impact Statement for the Proposed Renewal of the Chocolate Mountain Aerial Gunnery Range Land Withdrawal, California

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The location of one of the four public meetings on the Draft LEIS is being changed. The October 25, 2012 public meeting will now be held at the Oceanside City Council Chambers and Lobby, 330 North Coast Highway, Oceanside, CA. Each of the four public meetings will be conducted in an open house meeting format from 5:30 p.m. to 8 p.m. A Notice of Public Meetings (NOPMs) for the Draft LEIS was published in the **Federal Register** on Friday, August 31, 2012 (**Federal Register**/Vol. 77, No. 170, page 53189).

**FOR FURTHER INFORMATION CONTACT:** CMAGR LEIS Project Manager (Attn: Ms. Kelly Finn), NAVFAC Southwest, 1220 Pacific Highway, Building 1 Central IPT, San Diego, CA 92132–5190; phone 619–532–4452. Additional supplementary information regarding the Chocolate Mountain Aerial Gunnery Range (CMAGR) Draft LEIS is available at *www.chocolatemountainrenewal.com.*

**SUPPLEMENTARY INFORMATION:** The Department of the Navy, in cooperation with the Bureau of Land Management and Bureau of Reclamation, has prepared and filed with the U.S. Environmental Protection Agency a Draft Legislative Environmental Impact Statement (LEIS) that evaluates the potential environmental consequences that may result from renewing the withdrawal of approximately 228,465 acres of public land for continued use as part of the CMAGR in Imperial and Riverside counties, California. A Notice of Availability and NOPMs for the Draft LEIS were published in the **Federal Register** on Friday, August 31, 2012 (**Federal Register**/Vol. 77, No. 170, pages 53189 and 53198).

Each of the four public meetings will be conducted in an open house meeting format. The public meetings will be held from 5:30 p.m. to 8 p.m. on the following dates and at the following locations:

1. October 22, 2012 at the Yuma County Library, 2951 S. 21st Drive, Rooms B–C, Yuma, AZ.

2. October 23, 2012 at the Southwest High School, 2001 Ocotillo Dr., El Centro, CA.

3. October 24, 2012 at the Mizell Senior Center, 480 South Sunrise Way, Palm Springs, CA.

4. October 25, 2012 at the City Council Chambers and Lobby, 330 North Coast Highway, Oceanside, CA.

Please submit requests for special assistance, sign language interpretation for the hearing impaired, or other auxiliary aids needed at the public meetings to the LEIS Project Manager at least five business days before the meeting date.

Attendees will be able to submit written comments at the public meetings. A court reporter will be available to accept oral comments. Equal weight will be given to oral and written statements. Comments on the Draft LEIS may be submitted by: (1) Attending one of the public hearings and providing oral or written comments, (2) completing the comment form on the project's public Web site at *www.chocolatemountainrenewal.com/Comment/Default.aspx*, or (3) by sending a letter to the CMAGR LEIS Project Manager (Attn: Ms. Kelly Finn), NAVFAC Southwest, 1220 Pacific Highway, Building 1 Central IPT, San Diego, CA 92132–5190. All comments must be postmarked or electronically dated no later than November 30, 2012 to ensure 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 LEIS and will be addressed in the Final LEIS. Before including your address, telephone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including any personal identifying information—may be made publicly available at any time. Although requests can be made to withhold personal identifying information from public review, it may not be possible to keep this information from disclosure.

Dated: September 28, 2012.

**D.G. Zimmerman,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2012–24749 Filed 10–5–12; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 7,603,251: MAGNETIC ANOMALY SENSING SYSTEM FOR DETECTION, LOCALIZATION AND CLASSIFICATION OF A MAGNETIC OBJECT IN A CLUTTERED FIELD OF MAGNETIC ANOMALIES//Patent No. 7,621,410: REMOVABLE EXTERNALLY MOUNTED BRIDGE CRANE FOR SHIPPING CONTAINERS//Patent No. 7,637,224: COMMAND INFLATABLE BOAT STOPPING BARRIER//Patent No. 7,654,262: SYSTEM FOR REDUCING HYDROSTATIC LOAD IMBALANCES IN A DRIVERS' OPEN-CIRCUIT BREATHING APPARATUS//Patent No. 7,688,072: PORTABLE MAGNETIC SENSING SYSTEM FOR REAL-TIME POINT-BY-POINT DETECTION, LOCALIZATION AND CLASSIFICATION OF MAGNETIC OBJECTS//Patent No. 7,712,727: AIR CUSHION VEHICLE BOW SKIRT RETRACTION SYSTEM//Patent No. 7,712,429: LAUNCH AND RECOVERY SYSTEM FOR UNMANNED UNDERSEA VEHICLES//Patent No. 7,721,666: HULL-MOUNTED LINE RETRIEVAL AND RELEASE SYSTEM//Patent No. 7,721,669: COMMON PAYLOAD RAIL FOR UNMANNED VEHICLES//Patent No. 7,726,497: REMOVABLE EXTERNALLY MOUNTED SLEWING CRANE FOR SHIPPING CONTAINERS//Patent No. 7,730,843: HULL-MOUNTED LINE RETRIEVAL AND RELEASE SYSTEM//Patent No. 7,735,781: METHOD AND SYSTEM FOR DEPLOYMENT OF ORDNANCE FROM AN AIRCRAFT IN MID-FLIGHT//Patent No. 7,753,319: ADJUSTABLE CABLE HANGER FOR SECURING CABLES EXTERNALLY//Patent No. 7,760,438: AIR-TO-WATER DE-ANAMORPHOSER AND METHOD OF AIR-TO-WATER DE-ANAMORPHOSIS.//

**ADDRESSES:** Requests for copies of the patents cited should be directed to Office of Counsel, Naval Surface Warfare Center Panama City Division,

110 Vernon Ave., Panama City, FL 32407–7001.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Shepherd, Patent Counsel, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001, telephone 850–234–4646.

**Authority:** 35 U.S.C. 207, 37 CFR Part 404.

Dated: September 28, 2012.

**D.G. Zimmerman,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2012–24769 Filed 10–5–12; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review; Office of Postsecondary Education; Survey of Post-Graduate Outcomes for International Education Fellowship Recipients

**SUMMARY:** This survey will focus on the post-graduate outcomes of students who received international education fellowships. The Higher Education Opportunity Act of 2008, Section 601 requires that: ''The Secretary shall assist grantees in developing a survey to administer to students who have completed programs under this title to determine postgraduate employment, education, or training. All grantees, where applicable, shall administer such survey once every two years and report survey results to the Secretary.''

**DATES:** Interested persons are invited to submit comments on or before November 8, 2012.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–OPE–0034 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Room 2E117, Washington, DC 20202–4537.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Survey of Post-Graduate Outcomes for International Education Fellowship Recipients.

*OMB Control Number:* Pending.

*Type of Review:* New.

*Total Estimated Number of Annual Responses:* 4,555.

*Total Estimated Number of Annual Burden Hours:* 791.

*Abstract:* The first cohort of students to be surveyed will be the Foreign Language and Area Studies fellows and the Institute for International Public Policy fellows. The survey will be expanded to other grantees in subsequent years. This is a longitudinal survey that will be conducted every two years for a total of eight years for each cohort. Grantees will administer the survey to all fellows in these selected programs after they have graduated from the degree program they were enrolled in when they received their fellowship. Grantees will submit the results of the survey to the International for Foreign Language Education (IFLE) office within the U.S. Department of Education. IFLE will analyze the data and provide a report that will be available to the public. The results will be used to assess program impact.

Dated: October 3, 2012.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2012–24789 Filed 10–5–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC12–134–000.

*Applicants:* NRG Energy, Inc, GenOn Energy, Inc.

*Description:* NRG Energy, Inc, *et al.* submits additional information.

*Filed Date:* 9/28/12.

*Accession Number:* 20120928–5331.

*Comments Due:* 5 p.m. ET 10/9/12.

*Docket Numbers:* EC12–151–000.

*Applicants:* FirstEnergy Service Company.

*Description:* Application Pursuant to FPA Section 203(A)(1) for Approval of Revised Allocations Under the Facilities Lease and Assignment Agreement, Request for Waivers of Filing Requirements, and Request for Expedited Disposition of FirstEnergy Service Company.

*Filed Date:* 9/28/12.

*Accession Number:* 20120928–5333.

*Comments Due:* 5 p.m. ET 10/19/12.

*Docket Numbers:* EC13–1–000.

*Applicants:* Alta Wind VII, LLC, Alta Wind IX, LLC, MidAmerican Energy Holdings Company.

*Description:* Joint Application for Authorization under Section 203, and Request for Expedited Treatment and Shortened Comment Period of Alta Wind VII, LLC, *et al.*

*Filed Date:* 10/1/12.

*Accession Number:* 20121001–5294.

*Comments Due:* 5 p.m. ET 10/22/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13–1–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Ministerial Filing of PJM OATT Att DD 5.10 re previously accepted language to be effective 10/1/2012.

*Filed Date:* 10/1/12.

*Accession Number:* 20121001–5099.

*Comments Due:* 5 p.m. ET 10/22/12.

*Docket Numbers:* ER13–2–000.

*Applicants:* Southern California Edison Company.

*Description:* SGIA and Distribution Service Agreement with RE Rio Grande, LLC to be effective 10/2/2012.

*Filed Date:* 10/1/12.

*Accession Number:* 20121001–5198.

*Comments Due:* 5 p.m. ET 10/22/12.

*Docket Numbers:* ER13–3–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc. Resource Termination Filing.
*Filed Date:* 10/1/12.
*Accession Number:* 20121001–5280.
*Comments Due:* 5 p.m. ET 10/22/12.

*Docket Numbers:* ER13–4–000.
*Applicants:* Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Rate Schedule No. 219 of Florida Power Corporation to be effective 12/30/2012.
*Filed Date:* 10/1/12.
*Accession Number:* 20121001–5334.
*Comments Due:* 5 p.m. ET 10/22/12.

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: October 01, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–24735 Filed 10–5–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC12–150–000.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Application for Authorization for Disposition of Jurisdictional Facilities Pursuant to Federal Power Act Section 203 of Wisconsin Electric Power Company, *et al.*
*Filed Date:* 9/28/12.
*Accession Number:* 20120928–5325.
*Comments Due:* 5 p.m. ET 10/19/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1945–002; ER10–1946–002; ER10–1942–006; ER10–2042–008; ER10–1936–002; ER10–1892–002; ER10–1886–002; ER10–1872–002; ER10–1871–002; ER10–1863–002; ER10–1859–002.
*Applicants:* Auburndale Peaker Energy Center, LLC, Broad River Energy LLC, Calpine Construction Finance Company, LP, Calpine Energy Services, L.P., Carville Energy LLC, Columbia Energy LLC, Decatur Energy Center, LLC, Mobile Energy, LLC, Morgan Energy Center, LLC, Pine Bluff Energy, LLC, Santa Rosa Energy Center, LLC.
*Description:* Notification of Change in Status of Auburndale Peaker Energy Center, L.L.C., *et al.*
*Filed Date:* 9/28/12.
*Accession Number:* 20120928–5328.
*Comments Due:* 5 p.m. ET 10/19/12.

*Docket Numbers:* ER12–1938–001; ER11–3069–003; ER11–3545–002; ER11–3141–003; ER11–3098–003; ER12–1769–003; ER12–75–004; ER12–2251–001; ER12–2252–002; ER12–2253–001.
*Applicants:* Fairpoint Energy, LLC, Viridian Energy, Inc., Viridian Energy NY LLC, Cincinnati Bell Energy LLC, FTR Energy Services, LLC, Viridian Energy PA, LLC, Public Power, LLC, Public Power & Utility of NY, Inc, Public Power (PA), LLC, Public Power & Utility of Maryland, LLC.
*Description:* Notice of Non-Material Change in Status of Crius Entities.
*Filed Date:* 9/28/12.
*Accession Number:* 20120928–5327.
*Comments Due:* 5 p.m. ET 10/19/12.

*Docket Numbers:* ER12–2492–000; ER12–2493–000; ER12–2494–000; ER12–2495–000; ER12–2496–000.
*Applicants:* Emera Energy Services Subsidiary No. 6 LLC, Emera Energy Services Subsidiary No. 7 LLC, Emera Energy Services Subsidiary No. 8 LLC, Emera Energy Services Subsidiary No. 9 LLC, Emera Energy Services Subsidiary No. 10 LLC.
*Description:* Emera Energy Services Subsidiary No. 6 LLC, *et. al.* supplements their Application for Market Based Authority.
*Filed Date:* 9/27/12.
*Accession Number:* 20120927–5191.
*Comments Due:* 5 p.m. ET 10/18/12.

*Docket Numbers:* ER12–2704–000.
*Applicants:* San Diego Gas & Electric Company.
*Description:* San Diego Gas & Electric Company submits request for authorization to recover transmission related cancelled project cost for the TL6942 Sycamore Project.
*Filed Date:* 9/28/12.
*Accession Number:* 20120928–0201.
*Comments Due:* 5 p.m. ET 10/19/12.

*Docket Numbers:* ER12–2705–000.
*Applicants:* New England Power Pool Participants Committee.
*Description:* Oct 2012 Membership Filing to be effective 10/1/2012.
*Filed Date:* 9/28/12.
*Accession Number:* 20120928–5232.
*Comments Due:* 5 p.m. ET 10/19/12.

*Docket Numbers:* ER12–2706–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* 9–28–12 RAR Gap Filing to be effective 11/28/2012.
*Filed Date:* 9/28/12.
*Accession Number:* 20120928–5248.
*Comments Due:* 5 p.m. ET 10/19/12.

*Docket Numbers:* ER12–2707–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Notice of Cancellation of Service Agreement No. 3163 Docket No. ER12–826–000 to be effective 8/23/2012.
*Filed Date:* 9/28/12.
*Accession Number:* 20120928–5251.
*Comments Due:* 5 p.m. ET 10/19/12.

*Docket Numbers:* ER12–2708–000.
*Applicants:* PJM Interconnection, L.L.C., Potomac-Appalachian Highline Transmission.
*Description:* PATH submits revisions to its Formula Rate for recovery of RTEP abandonment cost to be effective 12/1/2012.
*Filed Date:* 9/28/12.
*Accession Number:* 20120928–5257.
*Comments Due:* 5 p.m. ET 10/19/12.

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: October 01, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–24736 Filed 10–5–12; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS12–20]**

### Appraisal Subcommittee; Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of meeting.

*Description:* In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

*Location:* OCC—250 E Street SW., Room 8C, Washington, DC 20219.

*Date:* October 10, 2012.

*Time:* Immediately following the ASC open session.

*Status:* Closed.

*Matters To Be Considered:*

September 27, 2012 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: October 2, 2012.

**James R. Park,**

*Executive Director.*

[FR Doc. 2012–24806 Filed 10–5–12; 8:45 am]

**BILLING CODE 6700–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHS–OS–16703–30D]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**ACTION:** Notice of 30-day.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, will submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

*Deadline:* Comments on the ICR must be received within 30 days of the issuance of this notice.

**ADDRESSES:** Submit your comments, including the Information Collection Request Title and document identifier HHS–OS–16703–30D, to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806. Copies of the supporting statement and any related forms may be requested via email to *Information.Collection Clearance@hhs.gov* or by calling (202) 690–6162.

*Information Collection Request Title:* OS Think Cultural Health.

*Abstract:* The Office of Minority Health (OMH), Office of the Secretary (OS), Department of Health and Human Services (DHHS) is requesting approval from OMB for the Think Cultural Health (TCH) Web site. The Web site is used to post information such as cultural competency, language access and health disparities articles, and notices of health disparities conferences for visitors to the site. The TCH Web site is unlike other government sites, in that it offers users the ability to gain cultural health competency credits through on-line training and resources in addition to offering users the option of receiving a newsletter.

It supports the Office of Minority Health within the Office of the Secretary of the Department of Health and Human Services (HHS/OS/OMH) in complying with the cultural competency requirements of the Patient Protection and Affordable Care Act of 2010 (ACA) (Pub. L.111–148), as well as the Secretary's Plan to Reduce Racial and Ethnic Health Disparities, the National Stakeholder Strategy for Achieving Health Equity, Healthy People 2020, the Secretary's Strategic Plan priorities, and the Assistant Secretary for Health's Public Health Quality agenda.

**Estimated Annualized Burden Table**

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (hours) | Total burden (hours) |
|---|---|---|---|---|---|
| Think Cultural Health Registration Form. | Physician | 27,477 | 1 | 3/60 | 1,373.85 |
| | Nurse | 44,723 | 1 | 3/60 | 2,236.15 |
| | Physician Assistant | 1,882 | 1 | 3/60 | 94.10 |
| | Dentist | 377 | 1 | 3/60 | 18.85 |
| | Dental Professional | 39 | 1 | 3/60 | 1.95 |
| | Social Worker | 1,733 | 1 | 3/60 | 86.65 |
| | Public Health | 186 | 1 | 3/60 | 9.30 |
| | General Healthcare Worker | 12,635 | 1 | 3/60 | 631.75 |
| | Psychologist/Psychiatrist | 189 | 1 | 3/60 | 9.45 |
| | Mental Health Professional | 180 | 1 | 3/60 | 9.00 |
| | Pharmacist, RPH | 750 | 1 | 3/60 | 37.50 |
| | Emergency Medical Technician | 492 | 1 | 3/60 | 24.60 |
| | Administrator or Hospital Executive | 151 | 1 | 3/60 | 7.55 |
| | Policymaker or Public Official | 17 | 1 | 3/60 | 0.85 |

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

| Form name | Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (hours) | Total burden (hours) |
|---|---|---|---|---|---|
| | Teacher | 424 | 1 | 3/60 | 21.20 |
| | Lawyer | 107 | 1 | 3/60 | 5.35 |
| | Bachelors | 3,753 | 1 | 3/60 | 187.65 |
| | Masters | 4,063 | 1 | 3/60 | 203.15 |
| | Doctorate | 1,130 | 1 | 3/60 | 56.50 |
| | Student | 7,504 | 1 | 3/60 | 375.20 |
| | Other | 10,880 | 1 | 3/60 | 544.00 |
| | Total | 118,692 | 1 | 3/60 | 5,934.60 |

**Keith A. Tucker,**

*Information Collection Clearance Officer, Department of Health and Human Services.*

[FR Doc. 2012–24729 Filed 10–5–12; 8:45 am]

**BILLING CODE 4150–29–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: HHS–EGOV–17342–30D]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Electronic Government Office (EGOV), Department of Health and Human Services, will submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 4040–0005, scheduled to expire on October 31, 2012. The ICR also requests categorizing the form as a common form, meaning HHS will only request approval for its own use of the form rather than aggregating the burden estimate across all Federal Agencies as was done for previous actions on this OMB control number. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

*Deadline:* Comments on the ICR must be received within 30 days of the issuance of this notice.

**ADDRESSES:** Submit your comments, including the OMB control number 4040–0005 and document identifier HHS–EGOV–17342–30D, to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806. Copies of the supporting statement and any related forms may be requested via email to *Information.Collection Clearance@hhs.gov* or by calling (202) 690–6162.

*Information Collection Request Title:* SF–424 Individual.

*Abstract:* The SF–424 Individual form is the standard Federal form for grant applications for individuals. It replaced numerous agency-specific forms.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

HHS estimates that the SF–424 Individual form will take 1 hour to complete. We expect that 1 respondent will use this form.

Once OMB approves the use of this common form, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| SF–424 Individual | 1 | 1 | 1 | 1 |
| Total | | | | |

**Keith A. Tucker,**

*Information Collection Clearance Officer, Department of Health and Human Services.*

[FR Doc. 2012–24730 Filed 10–5–12; 8:45 am]

**BILLING CODE 4151–AE–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day-12–12PK]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Standardized National Hypothesis Generating Questionnaire—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

It is estimated that each year roughly 1 in 6 Americans get sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases. CDC and partners ensure rapid and coordinated surveillance, detection, and response to multistate outbreaks, to limit the number of illnesses, and to learn how to prevent similar outbreaks from happening in the future.

Conducting interviews during the initial hypothesis-generating phase of multistate foodborne disease outbreaks presents numerous challenges. In the U.S. there is not a standard, national form or data collection system for illnesses caused by many enteric pathogens. Data elements for hypothesis generation must be developed and agreed upon for each investigation. This process can take several days to weeks and may cause interviews to occur long after a person becomes ill.

CDC requests OMB approval to collect standardized information, called the Standardized National Hypothesis-Generating Questionnaire, from individuals who have become ill during a multistate foodborne disease event. Since the questionnaire is designed to be administered by public health officials as part of multistate hypothesis-generating interview activities, this questionnaire is not expected to entail significant burden to respondents.

The Standardized National Hypothesis-Generating Core Elements Project was established with the goal to define a core set of data elements to be used for hypothesis generation during multistate foodborne investigations. These elements represent the minimum set of information that should be available for all outbreak-associated cases identified during hypothesis generation. The core elements would ensure that similar exposures would be ascertained across many jurisdictions, allowing for rapid pooling of data to improve the timeliness of hypothesis-generating analyses and shorten the time to pinpoint how and where contamination events occur.

The Standardized National Hypothesis Generating Questionnaire was designed as a data collection tool for the core elements, to be used when a multistate cluster of enteric disease infections is identified. The questionnaire is designed to be administered over the phone by public health officials to collect core elements data from case-patients or their proxies. Both the content of the questionnaire (the core elements) and the format were developed through a series of working groups comprised of local, state, and federal public health partners.

Burden hours are calculated by approximately 4,000 individuals identified during the hypothesis-generating phase of outbreak investigations × 45 minutes/response. There are no costs to respondents other than their time. The total estimated annualized burden is 3,000 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs) |
|---|---|---|---|---|
| Ill individuals identified as part of an outbreak investigation. | Standardized National Hypothesis Generating Questionnaire (Core Elements). | 4,000 | 1 | 45/60 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science, Office of the Directors, Centers for Disease Control and Prevention.*

[FR Doc. 2012–24757 Filed 10–5–12; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day–13–0835]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Assessing the Safety Culture of Underground Coal Mining (0920–0835 Expiration 12/31/2012)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NIOSH, under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct

research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

This research relates to occupational safety and health problems in the coal mining industry. In recent years, coal mining safety has attained national attention due to highly publicized disasters. Despite these threats to worker safety and health, the U.S. relies on coal mining to meet its electricity needs. For this reason, the coal mining industry must continue to find ways to protect its workers while maintaining productivity. One way to do so is through improving the safety culture at coal mines. In order to achieve this culture, operators, employees, the inspectorate, etc. must share a fundamental commitment to it as a value. This type of culture is known in other industries as a ''safety culture.'' Safety culture can be defined as the characteristics of the work environment, such as the norms, rules, and common understandings that influence employees' perceptions of the importance that the organization places on safety.

NIOSH requests OMB approval to collect safety culture data from underground coal mine employees over a three-year period to continue the assessment of the current safety culture of underground coal mining in order to identify recommendations for promoting and ensuring the existence of a positive safety culture across the industry. Up to four underground coal mines will be studied for this assessment in an attempt to study mines of different characteristics. Small, medium, and large unionized as well as nonunionized mines will be recruited to diversify the research sample. Data will be collected one time at each mine; this is not a longitudinal study. The assessment includes the collection of data using several diagnostic tools: functional analysis, structured interviews, behavioral observations, and surveys.

It is estimated that across the four mines, approximately 1,144 respondents will be surveyed. The exact number of interviews conducted will be based upon the number of individuals in the mine populations, but it is estimated that, across the four mines, approximately 201 interviews will be conducted. An exact number of participants is unavailable at this time because not all mine sites have been selected.

The use of multiple methods to assess safety culture is a key aspect to the methodology. After all of the information has been gathered, a variety of statistical and qualitative analyses are conducted on the data to obtain conclusions with respect to the mine's safety culture. The results from these analyses will be presented in a report describing the status of the behaviors important to safety culture at that mine.

Data collection for this project had previously taken place between the dates of January 1, 2010 and May 1, 2012. During this time period, safety culture assessments were conducted at five underground coal mines, including one small, two medium, and two large mines located in the Northern Appalachian, Central Appalachian, Southern Appalachian, and Western coal regions. One of the assessments was conducted at a unionized mine and the four other assessments were conducted at non-union mines. Data were collected from 274 interview participants and 1,356 survey respondents.

From this previous data collection, some trends are beginning to emerge. These include safety culture characteristic differences depending on the size of the mine and also differences between union and non-union mines. However, the sample of participating mines from the previous data collection is not sufficient for conclusions to be drawn regarding these emerging trends. Therefore, the need for continuation of data collection is needed in order to include additional union mines and small mines into the study sample.

Upon completion, this project will provide recommendations for the enactment of new safety practices or the enhancement of existing safety practices across the underground coal mining industry. This final report will present a generalized model of a positive safety culture for underground coal mines that can be applied at individual mines. In addition, all study measures and procedures will be available for mines to use in the future to evaluate their own safety cultures. There is no cost to respondents other than their time. The total estimated annualized burden hours are 582.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Underground Coal Mine Employees | Safety Culture Survey | 1144 | 1 | 20/60 |
| | Behavioral Anchored Rating Scale Interview | 201 | 1 | 1 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director Centers for Disease Control and Prevention.*

[FR Doc. 2012–24755 Filed 10–5–12; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–13–12GF]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Adoption, Health Impact and Cost of Smoke-Free Multi-Unit Housing—New—National Center for Chronic

Disease Prevention and Health Promotion (NCCDPHP) and National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The health risks associated with cigarette smoking and exposure to Secondhand Smoke (SHS) are well established. In 2006, the Surgeon General's report documented that over the past two decades, the scientific, engineering and medical literature have established a wide range of adverse health effects from SHS. The Surgeon General's report concluded that there is no safe level of exposure to SHS.

Approximately 85 million Americans reside in multi-unit housing (MUH) facilities, which comprise nearly 30% of all housing in the U.S. Although residents may choose not to smoke, they may still be exposed to SHS through the routine operation of facility-wide heating, ventilating and air conditioning systems.

The private sector has begun to institute smoke-free policies in MUH on a voluntary basis through changes in leasing agreements and advertising, however, smoking restrictions in MUH have largely been limited to common areas and spaces, not individual dwelling units. There are no studies that have examined the impact of smoke free policies by comparing pre- and post SHS exposure and changes in health outcomes after local governments adopt regulatory policies that protect residents from the effects of exposure to SHS in their housing units.

CDC proposes to conduct a study to address the gap in scientific evidence about the impact of jurisdiction-wide strategies (hereafter known as smoke-free MUH policies) to protect individuals from SHS in MUH settings. Through the collection and analysis of environmental and biometric data, the study will demonstrate how SHS exposure can be measured and will quantify how exposure changes when smoke-free policies are implemented. In addition, the study will examine barriers and facilitators to implementation of smoke-free policies in MUH and the cost-effectiveness of these policies. CDC is authorized to conduct this investigation by the Public Health Service Act. The activities are funded through the Prevention and Public Health Fund of the Patient Protection and Affordable Care Act.

The proposed study consists of two components. The first component involves data collection in Los Angeles County, California, and includes a number of ''intervention'' communities that have adopted, or are scheduled to adopt, smoke-free MUH laws by mid-2012, as well as ''comparison'' communities that have not adopted laws regulating SHS in MUH. Communities being considered for participation in the study as intervention communities include Sierra Madre, Lawndale, Culver City, El Monte, Artesia, San Fernando, San Gabriel, Hawthorne, Carson, Huntington Park, South Pasadena, and Compton. Communities being considered for participation in the study as comparison communities include Lomita, Lynwood, Monrovia, Montebello, Alhambra, LaPuente, Monterey Park, Inglewood, Gardena, Maywood, El Segundo, and South Gate.

The availability of both intervention and comparison communities will enable use of a quasi-experimental, baseline and follow-up study design for examining the impact of smoke-free policies in MUH. Over a period of two years, a sample of 500 MUH residents and 130 MUH operators will be selected from intervention cities and a comparable sample of 500 MUH residents and 130 MUH operators will be selected from comparison cities. Baseline and follow-up surveys will be conducted involving MUH operators, MUH residents, and parents of children who reside in MUH facilities. Also, MUH residents will be recruited to collect environmental air quality data, and both parents and children who reside in MUH facilities will be recruited to provide saliva samples. These samples will be analyzed for the presence of cotinine, a biomarker of exposure to SHS.

The second component of the study will involve focus groups in Maine, Minnesota, and Florida—states have adopted and implemented smoke-free MUH policies for a longer period of time, either as a response to local regulations or voluntarily. A one-time survey of MUH operators will be conducted, and a sample of 12 MUH operators will be selected from communities in Minnesota, Maine, and Florida. In addition, a total of 120 residents will be selected to participate in short focus groups, with a maximum of 4 focus groups per state. The primary data sources for this component of the study will be (a) quantitative data obtained from interviews with 12 MUH operators (4 operators in the three study locations, using the same questionnaire as Los Angeles County); (b) qualitative data from participants from up to 12 focus groups (an expected total of 120 residents); and (c) quantitative data on the same residents from pre-focus group questionnaires. Results from studies in these three geographic areas and from cities in LA County, will provide insights more useful at the national population level than results based solely on information collected in LA County.

OMB approval is requested for two years. Participation is voluntary. The only cost to respondents is their time. The total estimated annualized burden hours are 1,920.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) |
|---|---|---|---|---|
| MUH Operators in Los Angeles County | Telephone Script for Recruitment of MUH Operators in LA County. | 173 | 1 | 5/60 |
| | MUH Operator Baseline Survey | 130 | 1 | 75/60 |
| | MUH Operator Post-Intervention Survey | 130 | 1 | 75/60 |
| MUH Operators in Minnesota, Maine, and Florida. | Telephone Script for Recruitment of MUH Operators in MN, ME, FL. | 6 | 1 | 5/60 |
| | MUH Operator Baseline Survey | 6 | 1 | 75/60 |
| | MUH Operator Post-Intervention Survey | 6 | 1 | 75/60 |
| Adult MUH Residents in Los Angeles County | Resident Survey—Baseline: Screening Eligibility. | 833 | 1 | 5/60 |
| | Resident Survey—Baseline: Core | 500 | 1 | 45/60 |
| | Resident Survey—Baseline: Children's Module. | 250 | 1 | 15/60 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) |
|---|---|---|---|---|
| | Resident Survey—Post Intervention: Core | 500 | 1 | 45/60 |
| | Resident Survey—Post Intervention: Children's Module. | 250 | | 15/60 |
| | Protocol for Saliva Collection (Adult) | 1,000 | 1 | 10/60 |
| | Airborne Particle Monitoring Diary | 200 | 1 | 90/60 |
| Child MUH Residents in LA County | Protocol for Saliva Collection (Child) | 500 | 1 | 10/60 |
| MUH Residents in Minnesota, Maine and Florida. | Resident Focus Group Telephone Screening Interview Script. | 60 | 1 | 5/60 |
| | Resident Pre-Focus Group Demographic and Attitudinal Survey. | 60 | 1 | 5/60 |
| | MUH Resident Focus Group Guide—Process Oriented. | 30 | 1 | 1 |
| | MUH Resident Focus Group Guide—Outcome Oriented. | 30 | 1 | 1 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI) Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–24767 Filed 10–5–12; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day–13–12SF]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery—NEW—Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH).

As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the CDC has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

To request additional information, please contact Kimberly S. Lane, Reports Clearance Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** on December 22, 2010 (75 FR 80542).

This is a new collection of information. Respondents will be screened and selected from Individuals and Households, Businesses, Organizations, and/or State, Local or Tribal Government. Below we provide CDC's projected annualized estimate for the next three years. There is no cost to respondents other than their time. The estimated annualized burden hours for this data collection activity are 28,750.

| Type of collection | Average number of respondents per activity | Annual frequency per response | Average number of activities | Average hours per response |
|---|---|---|---|---|
| Online surveys, Telephone Surveys, Focus Groups, In person observation/testing | 14,350 | 1 | 4 | 30/60 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–24766 Filed 10–5–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–13–12MQ]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Evaluation of the Young Sisters Initiative: A Guide to A Better You! Program—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

In 2010, the Centers for Disease Control and Prevention (CDC) launched the three-year Breast Cancer in Young Women (BCYW) project to raise awareness about these issues among young breast cancer survivors (YBCS) and to provide psychosocial and reproductive health support to women who are diagnosed before age 45. A key component of the BCYW program is the design, testing, implementation and evaluation of the Young Sisters Initiative: A Guide to a Better You (YSI) program. The YSI program is a web-based intervention designed to provide African American YBCS with culturally tailored psychosocial and reproductive health information to support their needs as cancer survivors.

CDC plans to conduct a process evaluation of YSI program implementation in conjunction with Sisters Network Inc. (SNI), a partner organization, and ICF International, an evaluation contractor. Information will be collected to assess whether the YSI program can be implemented with fidelity; reach its target audience of African American YBCS; and deliver effective psychosocial and reproductive health information and support. The process evaluation will also collect information to improve understanding of facilitators and barriers to YSI program recruitment and implementation, and to assess how the program might be adapted for use with other audiences.

Primary information collection will consist of two Web-based surveys of YSI program users, conducted before and after exposure to YSI program materials. The initial five-minute demographic screener will be conducted when users encounter the YSI Web site. Respondents will be asked to provide demographic and health information necessary for identifying members of the target YSI program audience, and to indicate their willingness to complete a brief online post-use survey one to two weeks after their initial YSI program Web site visit. The post-use survey will be conducted after YSI Web site users have time to review the site and materials. The estimated burden for the post-use survey is 20 minutes. Respondents will be asked questions about the usefulness of resources posted on the YSI Web site and satisfaction with the site. No personally identifiable information will be collected.

Two secondary sources of information will be used to supplement the process evaluation data collection, but will not impose burden on YSI Web site users. First, CDC's evaluation contractor will use information obtained through Google Analytics to assess how visitors (particularly the target audience) navigate and use the YSI Web site. In addition, the evaluation contractor will conduct a limited number of telephone interviews with SNI staff and SNI-identified recruitment partners before and after the YSI implementation to assess fidelity to the YSI program core components and identify any facilitators and/or barriers experienced during program implementation.

CDC will use the results of the process evaluation to inform future efforts to support and educate YBCS in vulnerable/minority populations. OMB approval is requested for one year. Participation in the information collection is voluntary, and there are no costs to respondents other than their time. The total estimated annualized burden hours are 142.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) |
|---|---|---|---|---|
| YSI Web Site Users | YSI Program Demographic Screener | 500 | 1 | 5/60 |
| | YSI Program Post-Use Survey | 300 | 1 | 20/60 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–24765 Filed 10–5–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day–13–0212]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, at 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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. Written comments should be received within 60 days of this notice.

**Proposed Project**

The National Hospital Care Survey (NHCS)—Revision Exp. 4/30/2014—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. This three-year clearance request for the National Hospital Care Survey includes data collection from hospital inpatient departments; hospital ambulatory departments including emergency departments (ED), outpatient departments (OPD), and ambulatory surgery locations (ASLs); and freestanding ambulatory surgery centers (ASCs).

The National Center for Health Statistics' (NCHS) surveys on hospital care include the National Hospital Discharge Survey (NHDS) (OMB No.0920–0212) and the National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB No. 0920–0234). NHDS, between 1965 and 2010, provided critical information on the utilization of the nation's non-Federal short-stay hospitals and on the nature and treatment of illness among the inpatient hospitalized population. NHAMCS has provided data annually since 1992 concerning the nation's use of hospital emergency and outpatient departments. Beginning in 2009 NHAMCS collected data on hospital based ambulatory surgery locations, and in 2010 began collection of data from free-standing ambulatory surgery centers. NHAMCS data have been extensively used for monitoring changes and analyzing the types of outpatient care provided in the nation's hospitals.

The Drug Abuse Warning Network (DAWN) (OMB No. 0930–0078, expired 12/31/2011) collected specific information on drug-related visits to the ED. DAWN was previously funded by the Center for Behavioral Health Statistics & Quality (CBHSQ) of the Substance Abuse & Mental Health Services Administration (SAMHSA), DHHS.

NCHS is integrating the data collected from NHDS, NHAMCS, and DAWN into one survey called the National Hospital Care Survey (NHCS). This integration will increase the wealth and depth of data on health care utilization and allow for linkages to other data sources such as the National Death Index and data from Centers for Medicare and Medicaid Services (CMS).

Since May 2011, a sample of 500 hospitals drawn for NHCS is being recruited, and participating hospitals are submitting inpatient level data in the form of electronic Uniform Bill (UB–04) administrative claims data as well as facility level data. This activity continues in 2013 in addition to the sampled hospitals being asked to provide data on the utilization of health care provided in their EDs, OPDs and ASLs, thus integrating the NHDS, NHAMCS, and DAWN into NHCS. If funding becomes available, a new sample of freestanding ASCs will be recruited sometime within the 3-year clearance period.

NHCS will replace NHDS, NHAMCS, and DAWN, but continue to provide nationally representative data on utilization of hospital care and general purpose health care statistics on inpatient care as well as care delivered in EDs, OPDs, ASLs, and freestanding ASCs.

Facility-level, patient-level, discharge-level, and visit-level, data items will be collected from the recruited hospitals and freestanding ASCs in NHCS. Facility- level data items will include ownership, number of staffed beds, clinical capabilities, financial information, and electronic health record adoption. Patient-level data items will be collected for both inpatient and ambulatory components and include basic demographic information, personal identifiers, name, address, social security number (if available), and medical record number (if available). For the inpatient component, discharge-level data will be collected through the UB–04 claims and will include: admission and discharge dates, diagnoses, diagnostic services, and surgical and non-surgical procedures. For the ambulatory component, visit-level data will be collected through the UB–04 claims as well as through abstraction of a sample of medical records, which includes reason for visit, diagnosis, procedures, medications, and patient disposition.

We expect that the users of NHCS will be similar to the users of NHDS, NHAMCS, and DAWN data. These users include but are not limited to CDC, Congressional Research Office, Office of the Assistant Secretary for Planning and Evaluation (ASPE), National Institutes of Health, American Health Care Association, Centers for Medicare & Medicaid Services (CMS), Bureau of the Census, Office of National Drug Control Policy, state and local governments, and nonprofit organizations. Other users of these data include universities, research organizations, many in the private sector, foundations, and a variety of users in the print media.

Data collected through NHCS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. Historically, NHDS and NHAMCS data have been used extensively in the development and monitoring of goals

for the Year 2000, 2010, and 2020 Healthy People Objectives.

There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Form | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| **HOSPITAL** | | | | | |
| Hospital CEO/CFO | Hospital Eligibility Questions | 500 | 1 | 1 | 500 |
| Hospital CEO/CFO | Recruitment Survey Presentation | 167 | 1 | 1 | 167 |
| Hospital CEO/CFO | Annual Hospital Interview (includes inpatient and ambulatory). | 500 | 1 | 2 | 1000 |
| Medical and Health Services Manager. | Ambulatory Unit Induction | 2,000 | 1 | 15/60 | 500 |
| Department of Health Information Management (DHIM) or Health Information Technology (DHIT) staff. | Prepare and transmit UB–04 (2013–2015) for inpatient and ambulatory. | 500 | 4 | 1 | 2,000 |
| Medical Record Clerk | Pulling and re-filing Patient Records (ED, OPD, and ASL). | 1,125 | 100 | 1/60 | 1,875 |
| **FREESTANDING AMBULATORY SURGERY CENTERS (FSASC)** | | | | | |
| FSASC Chief Executive Officer | Annual FSACS Interview | 250 | 1 | 30/60 | 125 |
| FSASC DHIM or DHIT | Prepare and transmit UB–04 (2013–2015). | 250 | 4 | 1 | 1000 |
| FSASC Medical Record Clerk | Pulling and re-filing Patient Records | 125 | 100 | 1/60 | 208 |
| Total | | | | | 7,375 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–24761 Filed 10–5–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day–13–0728]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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. Written comments should be received within 60 days of this notice.

**Proposed Project**

Title: National Notifiable Disease Surveillance System (NNDSS), OMB Control No. 0920–0728, Revision Exp. 01/31/2014, Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Public Health Surveillance and Informatics Program Office (PHSIPO) {Proposed} Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Public Health Services Act (*42 U.S.C. 241*) authorizes CDC to disseminate nationally notifiable condition information. CDC's *Morbidity and Mortality Weekly Report* publishes incidence and prevalence tables for nationally notifiable conditions for the reporting of case notification data from 57 reporting jurisdictions (50 states, 2 cities, and 5 territorial health departments) using the National Electronic Disease Surveillance System (NEDSS) umbrella of systems and including the National Electronic Telecommunications System for Surveillance (NETSS) and other surveillance data sources to NNDSS. Each year, the Council of State and Territorial Epidemiologists (CSTE) establishes the public health surveillance priorities and policies for the nation which are voted on by the Chief Epidemiologist in each U.S. State and Territory. In 2012, CSTE members voted to have Leptospirosis added to the CSTE List of Notifiable Conditions. In response to this CSTE position statement, the CDC Leptospirosis Program is requesting a change to NNDSS to include Leptospirosis on the NNDSS list so that reporting jurisdictions can start submitting core surveillance data to CDC. The annualized burden hours and cost to reporting jurisdictions to submit this data to CDC will not change significantly.

| Type of respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| **Weekly Reporting** | | | | |
| States | 50 | 52 | 3 | 7,800 |
| Territories | 5 | 52 | 1.5 | 390 |
| Cities | 2 | 52 | 3 | 312 |
| **Annual Reporting** | | | | |
| States | 50 | 1 | 16 | 800 |
| Territories | 5 | 1 | 10 | 50 |
| Cities | 2 | 1 | 16 | 32 |
| Total | | | | 9,384 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–24756 Filed 10–5–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day–13–0941]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, at 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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. Written comments should be received within 60 days of this notice.

### Proposed Project

Evaluation of Dating Matters: Strategies to Promote Healthy Teen Relationships™ (0920–0941, Expiration 6/13/2015)—REVISION—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Dating Matters: Strategies to Promote Healthy Teen Relationships™ is the Centers for Disease Control and Prevention's new teen dating violence prevention initiative.

To address the gaps in research and practice, CDC has developed *Dating Matters,* teen dating violence prevention program that includes programming for students, parents, educators, as well as policy development. Dating Matters is based on the current evidence about what works in prevention and focuses on high-risk, urban communities where participants include: middle school students age 11 to 14 years; middle school parents; brand ambassadors; educators; school leadership; program implementers; community representatives; and local health department representatives in the following communities: Alameda County, California; Baltimore, Maryland; Broward County, Florida; and Chicago, Illinois.

The primary goal of the current proposal is to expand and add instruments to the approved outcome and implementation evaluation of Dating Matters in the four metropolitan cities to determine its feasibility, cost, and effectiveness. In the evaluation, a standard model of TDV prevention (Safe Dates administered in 8th grade) will be compared to a comprehensive model (programs administered in 6th, 7th, and 8th grade as well as parent, educator, policy, and communications interventions).

*Population.* The study population includes students in 6th, 7th and 8th grades at 44 schools in the four participating sites. At most, schools are expected to have 6 classrooms per grade, with an average of 30 students per classroom yielding a population of 23,760 students (44 schools × 3 grades × 6 classrooms per grade × 30 students per classroom). All student evaluation activities will take place during the school year. The sampling frame for parents, given that we would only include one parent per student, is also 23,760 for the three years of data collection covered by this package. If we assume 40 educators per school, the sampling frame for the educator sample is 1,760.

*Students:* In each year of data collection, we will recruit 11,880 students (30 students per classroom × 3 classrooms per grade × 3 grades × 44 schools). We assume a 95% participation rate (n = 11,286) for the baseline student survey and 90% participation rate (n = 10,692) at follow-up survey. In this revision, we request to drop the mid-term survey to reduce burden on schools.

*Parents:* We will recruit a sample of 2,020 parents. We expect that 95% of the 2,020 parents will agree to participate at baseline (n = 1,919) and 90% will participate in the follow-up survey (n = 1,818) parents.

*Educators:* We will attempt to recruit all educators in each school (44 schools × 40 educators per school = 1,760). We expect a 95% participation rate for an estimated sample of 1,672 educators at baseline and 90% participation rate at follow-up for an estimated sample of 1,584.

*School data extractors:* We will attempt to recruit one data extractor per 44 schools to extract school data to be

used in conjunction with the outcome data for the students. Data extractors in each school will access individual school-level data for those students in their school who consented and participated in the baseline student survey (3 × 4 × 30 × 95% = 342).

*Implementation Evaluation*

For the *student focus groups,* we will recruit groups of 10 students per group. Two groups will be held per each of the 4 sites (10 × 2 × 4 = 80 total student participants).

*Student implementer focus groups* will be organized by site, with two annual focus groups per site with 10 implementers in each group (10 × 2 × 4 = 80 total student program implementer participants).

*Communications focus groups will be organized by site with up to* four groups per site (4 × 4 × 6 = 96 total student participants).

*Parent program implementer focus groups* will be organized by site, with two annual focus groups per site with 10 implementers in each group (10 × 2 × 4 = 80 total parent program implementer participants).

*School leadership:* based on the predicted number of two school leadership per comprehensive school (21 schools), the number of respondents will be 42.

*Local Health Department representative:* based on the predicted number of four communities/sites and four local health department representatives working on Dating Matters per community, the number of respondents will be 16.

*Community Advisory Board Representative:* based on the predicted number of 20 community representatives per 4 communities/sites, the number of respondents will be 80.

*Parent Program Manager:* With a maximum of one parent program manager per community/site, the number of program manager respondents will be 4. It is anticipated that they will receive up to 50 TA requests per year and complete the form 50 times.

*Student Program Master Trainer TA Form:* With a maximum of 3 master trainers per community. There will be 12 master trainers. It is anticipated that they will receive up to 50 TA requests per year and complete the form 50 times.

*Parent Curricula Implementers:* it is expected that each school implementing the comprehensive approach (n = 21) will have two implementers (or 42 parent program implementer respondents). Please note that on the burden table the number of respondents is multiplied by the number of sessions in each parent program.

*Student Curricula Implementers:* based on the predicted number of 20 student curricula implementers per grade per site that will be completing fidelity instruments, the total number of respondents will be 80 per grade (20 × 4).

*Brand Ambassadors:* The Brand Ambassador Implementation Survey will be provided to each brand ambassador (n = 20) in each community with a maximum of 80 brand ambassadors.

*Communications Implementers (''Brand Ambassador Coordinators''):* The Communications Campaign Tracking form will be provided to each brand ambassador coordinator in each community. With a maximum of one brand ambassador coordinator per community (n = 4), the feedback form will be collected from a total of 4 brand ambassador coordinators.

*Parent Program Participants:* The 6th and 7th grade parent satisfaction questionnaires will be completed by parent participating in the parent program in each community. There is a maximum number of parent respondents of 1,890 (18 × 5 × 21) for the 6th grade satisfaction questionnaire and 1,890 for the 7th grade satisfaction questionnaire.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (hours) | Total burden (hours) |
|---|---|---|---|---|---|
| Student Program Participant. | Student Outcome Survey Baseline—Attachment D. | 11,286 | 1 | 45/60 | 8465 |
| Student Program Participant. | Student Outcome Survey Follow-up—Attachment E. | 10,692 | 1 | 45/60 | 8019 |
| School data extractor | School Indicators—Attachment G | 44 | 342 | 15/60 | 3762 |
| Parent Program Participant. | Parent Outcome Baseline Survey—Attachment H. | 1,919 | 1 | 1 | 1919 |
| Parent Program Participant. | Parent Outcome Follow-up Survey—Attachment EEEE. | 1,818 | 1 | 1 | 1818 |
| Educator | Educator Outcome Survey (baseline)—Attachment I. | 1,672 | 1 | 30/60 | 836 |
| Student Brand ambassador. | Brand Ambassador Implementation Survey—Attachment J. | 80 | 2 | 20/60 | 53 |
| School leadership | School Leadership Capacity and Readiness Survey—Attachment K. | 42 | 1 | 1 | 42 |
| Parent Curricula Implementer. | Parent Program Fidelity 6th Grade Session 1–Session 6—Attachment L–Q. | 210 | 3 | 15/60 | 158 |
| Parent Curricula Implementer. | Parent Program Fidelity 7th Grade Session 1, 3, 5—Attachment R–T. | 126 | 3 | 15/60 | 95 |
| Student Curricula Implementer. | Student Program Fidelity 6th Grade Session 1–Session 6—Attachment U–Z. | 480 | 1 | 15/60 | 120 |
| Student Curricula Implementer. | Student Program Fidelity 7th Grade Session 1–Session 7—Attachment AA–GG. | 560 | 1 | 15/60 | 140 |
| Student Curricula Implementer. | Student Program Fidelity 8th Grade Session 1–Session 10 (comprehensive)—Attachment HH–QQ. | 800 | 1 | 15/60 | 200 |
| Communications Coordinator. | Communications Campaign Tracking—Attachment RR. | 4 | 4 | 20/60 | 5 |

ESTIMATED ANNUALIZED BURDEN—Continued

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (hours) | Total burden (hours) |
|---|---|---|---|---|---|
| Local Health Department Representative. | Local Health Department Capacity and Readiness—Attachment SS. | 16 | 1 | 2 | 32 |
| Student Program Participant. | Student participant focus group guide (time spent in focus group)—Attachment ZZ. | 80 | 1 | 1.5 | 120 |
| Student Curricula Implementer. | Student curricula implementer focus group guide (time spent in focus group)—Attachment AAA. | 80 | 1 | 1 | 80 |
| Parent Curricula Implementer. | Parent curricula implementer focus group guide (time spent in focus group)—Attachment BBB. | 80 | 1 | 1 | 80 |
| Student Curricula Implementer. | Safe Dates 8th Grade Session 1–Session 10 (standard)—Attachment CCC–LLL. | 800 | 1 | 15/60 | 200 |
| Student Master Trainer .. | Student program master trainer TA form—Attachment DDDD. | 12 | 50 | 10/60 | 100 |
| Educator ..... | Educator Outcome Survey (follow-up)—Attachment IIII. | 1584 | 1 | 30/60 | 792 |
| Community Advisory Board Member. | Community Capacity/Readiness Assessment—Attachment JJJJ. | 80 | 1 | 1 | 80 |
| Students ..... | Communications Focus Groups—Attachment KKKK. | 96 | 1 | 1.5 | 144 |
| Parent Program Manager. | Parent Program Manager TA Tracking Form—Attachment LLLL. | 4 | 50 | 10/60 | 33 |
| Parent Program Participant. | 6th Grade Curricula Parent Satisfaction Questionnaire—Attachment MMMM. | 1890 | 1 | 10/60 | 315 |
| Parent Program Participant. | 7th Grade Curricula Parent Satisfaction Questionnaire—Attachment NNNN. | 1890 | 1 | 10/60 | 315 |
| Total ..... | ..... | ..... | ..... | ..... | 27923 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–24754 Filed 10–5–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day–13–12QI]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

EHS-Net National Voluntary Environmental Assessment Information System (NVEAIS)—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The CDC is requesting OMB approval for a National Voluntary Environmental Assessment Information System to collect data from foodborne illness outbreak environmental assessments routinely conducted by local, state, territorial, or tribal food safety programs during outbreak investigations. Environmental assessment data are not currently collected at the national level. The data reported through this information system will provide timely data on the causes of outbreaks, including environmental factors associated with outbreaks, and are essential to environmental public health regulators' efforts to respond more effectively to outbreaks and prevent future, similar outbreaks.

The information system was developed by the Environmental Health Specialists Network (EHS-Net), a collaborative project of federal and state public health agencies. The EHS-Net has developed a standardized instrument for reporting data relevant to foodborne illness outbreak environmental assessments.

State, local, tribal, and territorial food safety programs are the respondents for this data collection. Although it is not possible to determine how many programs will choose to participate, as NVEAIS is voluntary, the maximum potential number of program respondents is approximately 3,000.

These programs will be reporting data on outbreaks, not their programs or personnel. It is not possible to determine exactly how many outbreaks will occur in the future, nor where they will occur. However, we can estimate, based on existing data, that a maximum of 1,400 foodborne illness outbreaks will occur annually. Only programs in the jurisdictions in which these outbreaks occur would report to NVEAIS. Consequently, we have based our respondent burden estimate on the number of outbreaks likely to occur each year. Assuming each outbreak occurs in a different jurisdiction, there will be one respondent per outbreak.

There are three activities associated with NVEAIS that require a burden estimate. The first activity is the manager interview that will be conducted at each establishment associated with an outbreak. Most outbreaks are associated with only one establishment; however, some are associated with multiple

establishments. We estimate that a maximum average of 4 manager interviews will be conducted per outbreak. Each interview will take about 20 minutes.

The second activity is entering all requested environmental assessment data into NVEAIS. This will be done once for each outbreak. This will take approximately 2 hours per outbreak.

Additionally, all food safety program personnel participating in NVEAIS will also have to take training on how to conduct environmental assessments, how to enter data into NVEAIS, and how to conduct the manager interview. We estimate the burden of this training to be a maximum of 12 hours. Respondents will only have to take this training one time. Assuming a maximum number of outbreaks of 1,400, the estimated burden for this training is 16,800.

The total estimated annual burden is 21,467 hours (see Table). There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Food safety program personnel | Manager interview | 1,400 | 4 | 20/60 |
| Food safety program personnel | NVEAIS Data Reporting Instrument | 1,400 | 1 | 2 |
| Food safety program personnel (No form used). | Food safety program personnel training | 1,400 | 1 | 12 |

Dated: October 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–24758 Filed 10–5–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[CFDA NUMBER: 93.297]**

### Announcement of the Award of Single-Source Expansion Supplement Grants to Nine Personal Responsibility Education Program Innovative Strategies (PREIS) Grantees

**AGENCY:** Family and Youth Services Bureau, ACYF, ACF, HHS.

**ACTION:** Notice of the award of single-source expansion supplement grants to nine Personal Responsibility Education Program Innovative Strategies (PREIS) grantees to support the expansion of program services necessary to meet the requirements for reporting performance measures, conducting evaluation-related activities, and strengthening program outcomes for youth participants.

**SUMMARY:** The Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Adolescent Development and Support (DADS) announces the award of single-source expansion supplement grants to nine PREIS grantees for the purpose of expanding program participation and/or sites to support the increase of data necessary to determine the level of program effectiveness. In FY 2010, FYSB awarded thirteen cooperative agreement grants under Funding Opportunity Announcement (FOA) number: OPHS/OAH/TPP PREP Tier 2–2010. Under this FOA a total of $9.7 million was made available on a competitive basis to implement and test innovative strategies.

Single-source program expansion supplement awards are made to the following PREIS grantees:

| Grantee organization | City | State | Supplement award amount |
|---|---|---|---|
| Child & Family Resources, Inc | Tucson | AZ | $171,981.00 |
| Children's Hospital Los Angeles | Los Angeles | CA | 92,000.00 |
| Cicatelli Associates Inc | New York | NY | 65,000.00 |
| Education Development Center, Inc | Newton | MA | 50,954.00 |
| Lighthouse Outreach | Hampton | VA | 78,769.00 |
| Oklahoma Institute for Child Advocacy | Oklahoma City | OK | 110,815.00 |
| Philadelphia Health Management Corporation | Philadelphia | PA | 61,068.00 |
| Teen Outreach Pregnancy Services | Tucson | AZ | 49,880.00 |
| The Village for Families & Children, Inc | Hartford | CT | 78,409.00 |

**DATES:** September 30, 2012–September 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** Marc Clark, Program Director, Adolescent Pregnancy Prevention Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 1250 Maryland Avenue SW. Suite 800, Washington, DC 20024. Telephone: 202–205–8496; Email: *marc.clark@acf.hh.gov*.

**SUPPLEMENTARY INFORMATION:** The award of nine single source expansion supplement grants to PREIS grantees is required because of the necessary expansion of the original scope of approved activities. In reviewing grantees' aggressive program and evaluation plans, combined with recruitment efforts to date, FYSB has determined that that these nine grantees

would be required to increase the number of program participants and/or sites for program implementation. Increased funding will help the grantee programs increase recruitment and retention strategies for program participants that will allow grantees to obtain the minimal statistical power required to report significant outcome data. Outcome data will determine the effectiveness of the implemented pregnancy prevention models used in the program. Thus, the increased number of program participants supports the evaluation requirements outlined in the FOA and the ACA.

Additionally, grantees are required to report on performance measures that were specifically defined by FYSB. The data collection will require additional grantee staff time and other resources to compile and report on performance indicators. Performance indicators are based upon the performance measures established by HHS to include: (a) The number of youth served and hours of service delivery; (b) fidelity to the program model, or adaptation of the program model for the target population; (c) community partnerships and competence in working with the target population; (d) reported gains in knowledge and intentions, and changes in self-reported behaviors of participants; and (e) community data, such as birth rates and the incidence of sexually transmitted infections.

Award amounts for the nine single source expansion supplement grants total $758,876 and will support activities from September 30, 2012 through September 29, 2013.

**Statutory Authority:** Section 2953 of the Patient Protection and Affordable Care Act of 2010, Pub. L. 111–148, which adds a new Section 513 to Title V of the Social Security Act, to be codified at 42 U.S.C. § 713, authorizing the Personal Responsibility Education Program.

**Bryan Samuels,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 2012–24764 Filed 10–5–12; 8:45 am]

BILLING CODE 4184–37–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–D–0375 (Formerly 2007D–0395)]**

### Guidance for Industry on Acute Bacterial Sinusitis: Developing Drugs for Treatment; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Acute Bacterial Sinusitis: Developing Drugs for Treatment.'' This guidance addresses FDA's current thinking regarding the overall development program and clinical trial designs for drugs to support an indication for the treatment of acute bacterial sinusitis (ABS). This guidance finalizes the revised draft guidance of the same name issued on October 30, 2007.

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

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the 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.

**FOR FURTHER INFORMATION CONTACT:** Joseph G. Toerner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6244, Silver Spring, MD 20993–0002, 301–796–1300.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of a guidance for industry entitled ''Acute Bacterial Sinusitis: Developing Drugs for Treatment.'' The purpose of this guidance is to assist sponsors in the overall clinical development program of drugs to support an indication for the treatment of ABS. This guidance finalizes the revised draft guidance published on October 30, 2007, which in turn revised the draft guidance for industry, entitled ''Acute Bacterial Sinusitis—Developing Antimicrobial Drugs for Treatment,'' published in 1998. Changes from the revised draft guidance are incorporated in the appropriate sections of the guidance and are based on comments submitted to the docket for the draft guidance. In addition, developments in scientific and medical information and technology in the treatment of ABS are reflected in this guidance. This guidance fulfills the requirement set forth in the Food and Drug Administration Amendments Act of 2007 that directed FDA to update the ABS guidance within 5 years.[1] This guidance also responds to the requirement set forth in the Food and Drug Administration Safety and Innovation Act that FDA review guidances for the conduct of clinical trials with respect to antibacterial and antifungal drugs, and revise such guidances as appropriate.[2]

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on developing drugs for the treatment of ABS. 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 statutes and regulations.

#### II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under 0910–0014 and 0910–0001, respectively.

#### III. Comments

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

#### IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/*

[1] See Title IX, section 911, of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85).

[2] See Title VIII, section 804(a)(1), of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144).

*Guidances/default.htm* or *http://www.regulations.gov*.

Dated: October 3, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–24748 Filed 10–5–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel; Addressing Needs of Informal Caregivers of Individuals with Alzheimer's Disease in the Context of Sociodemographic Factors.

*Date:* November 7, 2012.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24684 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group Function, Integration, and Rehabilitation Sciences Subcommittee.

*Date:* November 2, 2012.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Anne Krey, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24685 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Population Educational Training.

*Date:* November 2, 2012.

*Time:* 1:00 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Carla T. Walls, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6898, *wallsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24686 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Maternofetal Signaling and Lifelong Consequences.

*Date:* November 2, 2012.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24687 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel.

*Date:* October 30, 2012.

*Time:* 3:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Peter Zelazowski, Ph.D., Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute Of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, peter.zelazowski@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24688 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special, Emphasis Panel, Global Health.

*Date:* October 29, 2012.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Michele C. Hindi-Alexander, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24689 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

*Date:* November 29–30, 2012.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Mayflower Renaissance, Washington, DC 20036.

*Contact Person:* Marita R. Hopmann, Ph.D., Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute Of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24691 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

*Date:* November 1, 2012.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Carla T. Walls, Ph.D., Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24692 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

*Date:* October 12, 2012.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Express, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–2717, *leszcyd@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24695 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

*Date:* October 29–30, 2012.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24693 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group; Pediatrics Subcommittee.

*Date:* October 19, 2012.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Rita Anand, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–496–1487, *anandr@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24694 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Transcatheter Cerclage Mitral Valve Amuloplasty for Secondary Mitral Regulation.

*Date:* November 2, 2012.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Stephanie J Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 2, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–24696 Filed 10–5–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2012–0026]**

### Committee Name: Homeland Security Academic Advisory Council

**AGENCY:** Department of Homeland Security.

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Academic Advisory Council (HSAAC) will meet on October 24, 2012 in Washington, DC. The meeting will be open to the public.

**DATES:** The HSAAC will meet Wednesday, October 24, 2012, from 10:00 a.m. to 4:00 p.m. Please note that the meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at Ronald Reagan International Trade Center, 1300 Pennsylvania Avenue NW., Floor B, Room B1.5–10, Washington, DC 20004. All visitors to the Ronald Reagan International Trade Center must bring a Government-issued photo ID. Please use the main entrance on 14th Street, NW.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, send an email to *AcademicEngagement@hq.dhs.gov* or contact Lindsay Burton at 202–447–4686 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Comments must be submitted in writing no later than Tuesday, October 16, 2012, and must be identified by DHS–2012–0026 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: AcademicEngagement@hq.dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–447–3713.
- *Mail:* Academic Engagement; MGMT/Office of Academic Engagement/Mailstop 0440; Department of Homeland Security; 245 Murray Lane SW., Washington, DC 20528–0440.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

*Docket:* For access to the docket, to read background documents or comments received by the Homeland Security Academic Advisory Council, go to *http://www.regulations.gov*.

Two fifteen-minute public comment periods will be held during the meeting on October 24, 2012, the first occurring between approximately 11:00 a.m. and 12:30 p.m.; the second occurring between approximately 2:30 p.m. and 4:00 p.m. Speakers will be requested to

limit their comments to three minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the Office of Academic Engagement as indicated below to register as a speaker.

**FOR FURTHER INFORMATION CONTACT:** Lindsay Burton, Office of Academic Engagement/Mailstop 0440; Department of Homeland Security; 245 Murray Lane SW., Washington, DC 20528–0440, email: *AcademicEngagement@hq.dhs.gov,* tel: 202–447–4686 and fax: 202–447–3713.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The HSAAC provides advice and recommendations to the Secretary and senior leadership on matters relating to student and recent graduate recruitment; international students; academic research; campus and community resiliency, security and preparedness; and faculty exchanges.

## Agenda

The five HSAAC subcommittees (Student and Recent Graduate Recruitment, Homeland Security Academic Programs, Academic Research and Faculty Exchange, International Students, and Campus Resilience) will give progress reports and may present draft recommendations for action in response to initial taskings issued by Secretary Napolitano at the March 20, 2012 full committee meeting, including: how to attract student interns, student veterans, and recent graduates to jobs at DHS; how to use social media and other means of communication to most effectively reach this audience; how to ensure that students and recent graduates of Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, and other Minority Serving Institutions know of and take advantage of DHS internship and job opportunities; how to define the core elements of a homeland security degree at the associate's, bachelor's and master's levels; how to apply the TSA Associates Program model to other segments of the DHS workforce who wish to pursue a community college pathway; how to form relationships with 4-year schools so that DHS employees' credits transfer towards a higher level degree; how to enhance existing relationships between FEMA's Emergency Management Institute and the higher education community to support Presidential Policy Directive 8 (PPD–8): National Preparedness, expand national capability, and support a whole community approach; how to expand DHS cooperation with the Department of Defense academies and schools to provide DHS' current employees with educational opportunities; how academic research can address DHS' biggest challenges; how DHS operational Components can form lasting relationships with universities to incorporate scientific findings and R&D into DHS' operations and thought processes; how universities can effectively communicate to DHS the universities' emerging scientific findings and technologies that will make DHS operations more effective and efficient; how to create a robust staff/faculty exchange program between academe and DHS; how DHS can improve its international student processes and outreach efforts; how DHS can better communicate its regulatory interpretations, policies and procedures to the academic community; how DHS can accommodate and support emerging trends in international education; how colleges and universities use specific capabilities, tools, and processes to enhance campus and community resilience as well as the cyber and physical infrastructure; how DHS' grant programs may be adjusted to support resiliency-related planning and improvements; how campuses can better integrate with community planning and response entities; how to implement the whole community approach and preparedness culture within student and neighboring communities; how to strengthen ties between DHS' Federal Law Enforcement Training Center and campus law enforcement professionals; and how DHS can better coordinate with individual campus IT departments on the risks towards and attacks on computer systems and networks.

## Responsible DHS Official

Lauren Kielsmeier, *AcademicEngagement@hq.dhs.gov,* 202–447–4686.

Dated: October 3, 2012.

**Lauren Kielsmeier,**

*Executive Director for Academic Engagement.*

[FR Doc. 2012–24841 Filed 10–5–12; 8:45 am]

**BILLING CODE 9110–9B–P**

# DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[Docket No. USCG–2010–0164]**

## National Boating Safety Advisory Council

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The National Boating Safety Advisory Council (NBSAC) and three of its subcommittees will meet on November 9–11, 2012, in Watsonville, CA, to discuss issues relating to recreational boating safety. The meetings will be open to the public.

**DATES:** NBSAC will meet Friday, November 9, 2012, from 8:30 a.m. to 11:45 a.m. and Sunday, November 11, 2012, from 9 a.m. to 1:30 p.m. The Boats and Associated Equipment Subcommittee will meet on Friday, November 9, 2012 from 1:15 p.m. to 5 p.m., the Prevention through People Subcommittee will meet on Saturday, November 10, 2012 from 9 a.m. to 12:30 p.m., and the Recreational Boating Safety Strategic Planning Subcommittee will meet on Saturday, November 10, 2012 from 1:45 p.m. to 5 p.m. Please note that the meetings may conclude early if NBSAC has completed all business.

All written materials, comments, and requests to make oral presentations at the meeting should reach Mr. Jeff Ludwig, Assistant Designated Federal Officer (ADFO) for NBSAC by October 26, 2012. For contact information please see the **FOR FURTHER INFORMATION CONTACT** section below. Any written material submitted by the public will be distributed to the committee and become part of the public record.

**ADDRESSES:** The meeting will be held in the Boathouse Room of the West Marine Watsonville Support Center, located at 500 Westridge Dr., Watsonville, CA 95076.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Jeff Ludwig as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing no later than October 26, 2012, and must be identified by (USCG–2010–0164) and may be submitted by *one* of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* (202) 372–1908.

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

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

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*Docket:* For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* and use ''USCG–2010–0164'' as your search term.

Opportunities for public comment will be held during the meeting concerning the matters being discussed. Public comments will be limited to three minutes per speaker. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Ludwig, ADFO for NBSAC, COMDT (CG–BSX–21), 2100 2nd Street SW., Stop 7581, Washington, DC 20593; (202) 372–1061; *jeffrey.a.ludwig@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:** Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix 2. Congress established NBSAC in the *Federal Boat Safety Act of 1971* (Pub. L. 92–75). NBSAC currently operates under the authority of 46 U.S.C. 13110, which requires the Secretary of Homeland Security and the Commandant of the Coast Guard by delegation to consult with NBSAC in prescribing regulations for recreational vessels and associated equipment, and on other major safety matters. *See* 46 U.S.C. 4302(c) and 13110(c).

**Meeting Agenda**

The agenda for NBSAC meeting is as follows:

*Friday, November 9, 2012*

(1) Opening Remarks—Mr. James P. Muldoon, NBSAC Chairman and RDML Joseph Servidio, Assistant Commandant for Prevention Policy (Invited);

(2) Swearing-in of Newly Appointed Members

(3) Receipt and discussion of the following reports:

(a) Chief, Office of Auxiliary and Boating Safety, Update on the Coast Guard's implementation of NBSAC Resolutions and Recreational Boating Safety Program report.

(b) Assistant Designated Federal Officer's report concerning Council administrative and logistical matters.

(4) Presentation on the Coast Guard's progress in implementing NBSAC's Recommendation Regarding the Development of New Life Jacket Standards and Approval Processes for Life Jackets.

(5) Public comment.

*Sunday, November 11, 2012*

(1) Receipt and Discussion of the Strategic Planning, Boats & Associated Equipment, and Prevention through People Subcommittees reports.

(2) Public comment period. Members of the public will have an opportunity to provide comments on each subcommittee's report prior to the NBSAC members taking action on each report.

A more detailed agenda can be found at: *http://homeport.uscg.mil/NBSAC,* no later than October 25, 2012.

Dated: September 24, 2012.

**Paul F. Thomas,**

*Captain, U.S. Coast Guard, Director of Inspections and Compliance.*

[FR Doc. 2012–24752 Filed 10–5–12; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Adjustment of Disaster Grant Amounts

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice of an increase of the maximum amount for Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2012.

**DATES:** *Effective Date:* October 1, 2012, and applies to major disasters declared on or after October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** William Roche, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5121–5207, prescribes that FEMA must annually adjust the maximum grant amount made under section 422, Simplified Procedures, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the maximum amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under section 422 of the Stafford Act, to $67,500 for all disasters declared on or after October 1, 2012.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.7 percent for the 12-month period ended in August 2012. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 14, 2012.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–24671 Filed 10–5–12; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Adjustment of Statewide Per Capita Impact Indicator

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2012, will be increased.

**DATES:** *Effective Date:* October 1, 2012, and applies to major disasters declared on or after October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** William Roche, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be increased to $1.37 for all disasters declared on or after October 1, 2012.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.7 percent for the 12-month period ended in August 2012. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 14, 2012.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–24673 Filed 10–5–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4078–DR; Docket ID FEMA–2012–0002]**

### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–4078–DR), dated August 22, 2012, and related determinations.

**DATES:** *Effective Date:* September 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident for this disaster has been expanded to include the Noble Wildfire.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–24715 Filed 10–5–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4077–DR; Docket ID FEMA–2012–0002]**

### Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–4077–DR), dated August 20, 2012, and related determinations.

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

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 20, 2012.

Vinton and Wyandot Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–24701 Filed 10–5–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4081–DR; Docket ID FEMA–2012–0002]**

### Mississippi; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4081–DR), dated August 29, 2012, and related determinations.

**DATES:** *Effective Date:* September 28, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 29, 2012.

Copiah, Franklin, Jefferson, and Lamar Counties for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

Jones County for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Clarke County for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–24698 Filed 10–5–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4083–DR; Docket ID FEMA–2012–0002]**

### Washington; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4083–DR), dated September 25, 2012, and related determinations.

**DATES:** *Effective Date:* September 25, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 25, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from a severe storm, straight-line winds, and flooding on July 20, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth K. Suiso, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Ferry and Okanogan Counties and the Confederated Tribes of the Coleville Reservation for Public Assistance.

All counties and Indian Tribes in the State of Washington are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–24714 Filed 10–5–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Maximum Amount of Assistance Under the Individuals and Households Program

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice of the maximum amount for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2012.

**DATES:** *Effective Date:* October 1, 2012, and applies to emergencies and major disasters declared on or after October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Michael Grimm, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 212–1000.

**SUPPLEMENTARY INFORMATION:** Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5174, prescribes that FEMA must annually adjust the maximum amount for assistance provided under the Individuals and Households (IHP) Program. FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Stafford Act with respect to any single emergency or major disaster is $31,900. The increase in award amount as stated above is for any single emergency or major disaster declared on or after October 1, 2012. In addition, in accordance with 44 CFR 61.17(c), this adjustment includes the maximum amount of available coverage under any Group Flood Insurance Policy (GFIP) issued for those disasters.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.7 percent for the 12-month period ended in August 2012. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 14, 2012.

(Catalog of Federal Domestic Assistance No. 97.048, Federal Disaster Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–24675 Filed 10–5–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–R–2012–N171; 1265–0000–10137–S3]**

### Rose Atoll National Wildlife Refuge, American Samoa; Draft Comprehensive Conservation Plan and Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; announcement of meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of our Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for the Rose Atoll National Wildlife Refuge (NWR/refuge) for public review and comment. In the Draft CCP/EA, we present two alternatives for managing this refuge for the next 15 years, as well as related compatibility determinations for the preferred alternative.

**DATES:** To ensure consideration, please send your written comments by November 9, 2012. We will hold public meetings; see *Public Meetings* under **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

**ADDRESSES:** You may submit comments or view or obtain copies of the Draft CCP/EA by any of the following methods. You may request a hard copy or CD–ROM.

*Agency Web site: www.fws.gov/pacific/planning or http://www.fws.gov/roseatoll/planning.html.*

*Email: FW1PlanningComments@fws.gov.* Include ''Rose Atoll National Wildlife Refuge Draft CCP/EA'' in the subject line of the message.

*Mail:* Rose Atoll National Wildlife Refuge/Marine National Monument, c/o National Park Service, Pago Pago, AS 96799.

*Fax:* Attn: Refuge/Monument Manager, 684–699–3986.

*In-Person Viewing or Pickup:* Rose Atoll National Wildlife Refuge/Marine National Monument, c/o National Park Service, Pago Pago, AS 96799.

For more information on locations for viewing or obtaining documents, *see Public Availability of Documents* under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Frank Pendleton, Refuge/Monument Manager, (684) 633–7082, ext. 15.

**SUPPLEMENTARY INFORMATION:**

### Introduction

With this notice, we announce the availability of our Draft CCP/EA for Rose Atoll NWR. We started this process through a notice of intent (NOI) in the **Federal Register** (74 FR 57701; November 9, 2009).

Rose Atoll NWR is located in American Samoa and was established in 1973 to conserve and protect fish and wildlife resources.

### Background

*The CCP Process*

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (together referred to as the Refuge Administration Act), 16 U.S.C. 668dd–668ee, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the National Wildlife Refuge System mission, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

*Public Outreach*

We began the public scoping phase of the CCP planning process by publishing the NOI, which was followed by a series of public open houses in November 2009. Simultaneously, we released Planning Update 1, which identified initial issues for scoping. Planning Update 2 was released in May 2011 and identified the issues raised during public scoping that would be considered in the CCP process. We also met individually with partner agencies, elected officials, and others in the community. We considered all of the public comments received to date during development of the Draft CCP/EA.

### Draft CCP Alternatives We Are Considering

During our CCP planning process, we identified several issues. To address these issues, we developed and evaluated the following alternatives in our Draft CCP/EA.

*Alternative A (No Action)*

Under Alternative A, existing refuge management activities would continue, including protection, maintenance, and restoration of habitats that support priority species, such as seabirds, shorebirds, turtles, native plants, reef fish, invertebrates, and coralline algae. Management activities include monitoring, pest species management, and restoration projects, such as the removal of debris from a 1993 shipwreck. The refuge is closed to the general public, and entry is limited to those who have been issued a special use permit (SUP).

*Alternative B (Preferred Alternative)*

Under Alternative B, enhanced habitat restoration, monitoring, and outreach are proposed. Increasing the frequency of management trips to the refuge and fortifying close partnerships with the American Samoa Government, National Oceanic and Atmospheric Administration, National Park Service, U.S. Geological Survey, and other partners are key to this alternative. A remote sensing system would be set up to monitor nesting seabirds, turtles, and other wildlife. Restoration of the littoral forest on Rose Island by extirpating introduced ants and the scale insect (*Pulvenaria urbicola*), and propagating native forest trees would be explored. More frequent visits would allow for improved law enforcement oversight and compliance, and remote sensing would also provide better management and documentation of any unauthorized entry into the refuge. The refuge would remain closed to the general public, with entry only allowed via SUP.

Refuge staff would provide outreach and interpretation opportunities and develop an environmental education program focusing on ''bringing the refuge to the people.'' Appropriate cultural practices would also be facilitated through expanding refuge management activities related to cultural resources (e.g., working with the American Samoa Historical Preservation Office and other partners to conduct archaeological surveys at Rose Atoll NWR, integrating cultural resources into interpretation, and increasing dialogue with the Office of Samoan Affairs and local villagers).

### Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at the Feleti Barstow Public Library, Ofu Community Center, and other places of public access (e.g., stores on Ta'ū) in American Samoa.

**Public Meetings**

We will hold the following public meetings: October 16, 2012, at Sadie's by the Sea at 2 p.m.; October 23, 2012, at the Ofu Community Center at 9 a.m.; October 23, 2012, at the Ta'ū High School gym at 2 p.m. For more information on the meeting(s), contact the person under **FOR FURTHER INFORMATION CONTACT**.

**Next Steps**

After this comment period ends, the planning team will evaluate your comments and consider their incorporation into the final CCP.

**Public Availability of Comments**

Before including your address, telephone number, email address, or other personal identifying information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Dated: August 9, 2012.

**Richard Hannan,**

*Acting Regional Director, Pacific Region, Portland, Oregon, U.S. Fish and Wildlife Service.*

[FR Doc. 2012–24597 Filed 10–5–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAK927000 L54200000 FR0000 LVDIL110470; AA–92408]**

### Notice of Application for a Recordable Disclaimer of Interest for Lands Underlying the Kisaralik River System, Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The State of Alaska has filed an application with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest from the United States in those lands underlying the Kisaralik River System (including Kisaralik Lake) in western Alaska. The State asserts that the Kisaralik River System was navigable and unreserved at the time of statehood; therefore, title to the submerged lands passed to the State at the time of statehood (1959). This river system is within the exterior boundaries of the Yukon Delta National Wildlife Refuge, created by the Alaska National Interest Lands Conservation Act of 1980, and administered by the U.S. Fish and Wildlife Service.

**DATES:** All comments to this action should be received on or before January 7, 2013.

**ADDRESSES:** Comments on the State of Alaska's application or the BLM Draft Summary Report must be filed with the BLM Chief, Branch of Survey Planning and Preparation (AK–9270), Division of Cadastral Survey. You may submit comments by any of the following methods:

- *Email: cfrichtl@blm.gov;*
- *Fax:* 907–271–4193; or
- *Mail:* 222 W. 7th Avenue, #13, Anchorage, AK 99513–7504

**FOR FURTHER INFORMATION CONTACT:** Angie Nichols, Program Manager, telephone: 907–271–3359; address: 222 W. 7th Avenue, #13, Anchorage, AK 99513–7504; Email: *anichols@blm.gov;* or visit the BLM Recordable Disclaimer of Interest Web site at *http://www.blm.gov/ak/st/en/prog/rdi.html*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** On November 30, 2010, the State of Alaska filed an application for a Recordable Disclaimer of Interest pursuant to Section 315 of the Federal Lands Policy and Management Act of 1976 and the regulations contained in 43 CFR subpart 1864 for the lands underlying the Kisaralik River (AA–92408). A Recordable Disclaimer of Interest, if issued, will confirm that the United States has no valid interest in the subject lands. The notice is intended to notify the public of the pending application and the State's grounds for supporting it. The State asserts that this river system was navigable and unreserved at the time of statehood; therefore, under the Equal Footing Doctrine, the Submerged Lands Act of 1953, the Alaska Statehood Act, the Alaska Right of Way Act of 1898, and other title navigability law, ownership of these lands underlying the river automatically passed from the United States to the State at the time of statehood in 1959.

The State's application, AA–92408, is for ''submerged lands and bed up to and including the ordinary high water line of Kisaralik Lake within Township 3 North, Range 58 West, Seward Meridian and for the submerged lands and bed of the Kisaralik River lying between the ordinary high water lines of the right and left banks of that river from the outlet of Kisaralik Lake within Township 3 North, Range 58 West, Seward Meridian, Alaska, downstream to the location where the river enters the Kuskokuak Slough within Township 9 North, Range 67 West, Seward Meridian, Alaska. This includes the submerged lands and beds of all sloughs, braids, and channels that carry water from the navigable Kisaralik River and thus are part of the navigable river and all lands within the river system permanently or periodically covered by tidal waters up to the line of mean high tide.'' The State identified the Kokarmiut Corporation, Calista Corporation, and the U.S. Fish and Wildlife Service as possible interested parties of the affected lands.

A final decision on the merits of the application will not be made before January 7, 2013. During the 90-day period, interested parties may comment on the State's application, AA–92408, and supporting evidence. The State's application and the BLM Draft Summary Report may be viewed on the BLM's Recordable Disclaimer of Interest Web site at *http://www.blm.gov/ak/st/en/prog/rdi.html,* or in the BLM Public Room located at 222 West 7th Avenue, #13, Anchorage, AK 99513–7504. Interested parties may also comment during this time on the BLM's Draft Summary Report by using one of the methods listed in the **ADDRESSES** section above.

Comments filed with the Division of Cadastral Survey, including names and street addresses of commenters, will be available for public inspection at the Alaska State Office (see **ADDRESSES** above), during regular business hours from 8 a.m. to 4 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.

If no valid objection is received, a Disclaimer of Interest may be approved, if all else is proper, stating that the

United States does not have a valid interest in these lands.

**Craig Frichtl,**

*Chief, Branch of Survey Planning and Preparation.*

[FR Doc. 2012–24834 Filed 10–5–12; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZ956000.L14200000.BJ0000.241A]**

### Notice of Filing of Plats of Survey; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Survey; Arizona.

**SUMMARY:** The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

**SUPPLEMENTARY INFORMATION:**

*The Gila and Salt River Meridian, Arizona:*

The plat representing the dependent resurvey of a portion of the west boundary, the survey of a portion of the subdivisional lines and the subdivision of certain sections, Township 30 North, Range 20 East, accepted September 24, 2012, and officially filed September 26, 2012, for Group 1098, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

**FOR FURTHER INFORMATION CONTACT:** These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. 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.

**Stephen K. Hansen,**

*Chief Cadastral Surveyor of Arizona.*

[FR Doc. 2012–24762 Filed 10–5–12; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NERO–STSP–11397; PPNESTSP00]**

### Notice of Meeting for Star-Spangled Banner National Historic Trail Advisory Council

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** As required by the Federal Advisory Committee Act, the National Park Service (NPS) is hereby giving notice that the Advisory Committee on the Star-Spangled Banner National Historic Trail will hold a meeting. Designated through an amendment to the National Trails System Act (16 U.S.C. 1241), the trail consists of ''water and overland routes totaling approximately 290 miles, extending from Tangier Island, Virginia, through southern Maryland, the District of Columbia, and northern Virginia, in the Chesapeake Bay, Patuxent River, Potomac River, and north to the Patapsco River, and Baltimore, Maryland, commemorating the Chesapeake Campaign of the War of 1812 (including the British invasion of Washington, District of Columbia, and its associated feints, and the Battle of Baltimore in summer 1814).'' This meeting is open to the public. Pre-registration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should register via email at *Christine_Lucero@nps.gov* or telephone: (757) 258–8914. For those wishing to make comments, please provide a written summary of your comments prior to the meeting. The Designated Federal Official for the Advisory Council is John Maounis, Superintendent, Star Spangled Banner National Historic Trail, telephone: (410) 260–2471.

**DATES:** The Star-Spangled Banner National Historic Trail Advisory Council will meet from 10:00 a.m. to 4:00 p.m. on Tuesday, October 17, 2012, (EASTERN).

*Location:* The meeting will be held at King's Landing Park, 3255 King's Landing Road, Huntingtown, MD 20639. For more information, please contact the NPS Chesapeake Bay Office, 410 Severn Avenue, Suite 314, Annapolis, Maryland 21403.

**FOR FURTHER INFORMATION CONTACT:** John Maounis, Superintendent, Star-Spangled Banner National Historic Trail, telephone: (410) 260–2471.

**SUPPLEMENTARY INFORMATION:** Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Star-Spangled Banner National Historic Trail Advisory Council. Topics to be discussed include setting priorities for implementation of the Comprehensive Management Plan and collaborative education projects. Members of the public who would like to make comments to the Committee should preregister via email at *Christine_Lucero@nps.gov* or telephone: (757) 258–8914; a written summary of comments should be provided prior to the meeting. Comments will be taken for 30 minutes at the end of the meeting (from 3:30 p.m. to 4:00 p.m.). Before including your address, telephone number, email address, or other personal indentifying 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. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: October 1, 2012.

**John Maounis,**

*Superintendent, Star-Spangled Banner National Historic Trail.*

[FR Doc. 2012–24723 Filed 10–5–12; 8:45 am]

**BILLING CODE 4310–EE–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

**TIME AND DATE:** 10 a.m., Tuesday, October 16, 2012.

**PLACE:** U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Approval of August 21, 2012 minutes; reports from the Chairman, the Commissioners, and senior staff; Mental Health Docket, and Short-Term Intervention for Success (SIS) update.

**CONTACT PERSON FOR MORE INFORMATION:** Patricia W. Moore, Staff Assistant to the

Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: October 3, 2012.

**Rockne Chickinell,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 2012–24917 Filed 10–4–12; 4:15 pm]

**BILLING CODE 4410–31–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

**TIME AND DATE:** 11:30 a.m., Tuesday, October 16, 2012.

**PLACE:** U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Determination on two original jurisdiction cases.

**CONTACT PERSON FOR MORE INFORMATION:** Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: October 3, 2012.

**Rockne Chickinell,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 2012–24918 Filed 10–4–12; 4:15 pm]

**BILLING CODE 4410–31–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Agency Information Collection Activities: Announcement of the Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice; announcement of OMB approval of information collection requirements.

**SUMMARY:** The Occupational Safety and Health Administration announces that the Office of Management and Budget (OMB) extended its approval for a number of information collection requirements found in sections of 29 CFR parts 1902, 1904, 1905, 1908, 1910, 1915, 1917, 1926, 1952, 1953, 1954, 1955, and 1956. OSHA sought approval of these requirements under the Paperwork Reduction Act of 1995 (PRA–95), and, as required by that Act, is announcing the approval numbers and expiration dates for these requirements.

**DATES:** This notice is effective October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Todd Owen or Theda Kenney, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 693–2222.

**SUPPLEMENTARY INFORMATION:** In a series of **Federal Register** notices, the Agency announced its requests to OMB to renew its current extensions of approvals for various information collection (paperwork) requirements in its safety and health standards and regulations pertaining to consultation agreements, general industry, shipyard employment, marine terminals, and the construction industry (i.e., 29 CFR parts 1908, 1910, 1915, 1917, and 1926), regulations for State plans (i.e., 29 CFR parts 1902, 1952, 1953, 1954, 1955, and 1956), regulations for variances (part 1905), and regulations for recording and reporting injuries (part 1904). In these **Federal Register** announcements, the Agency provided 60-day comment periods for the public to respond to OSHA's burden hour and cost estimates.

In accordance with PRA–95 (44 U.S.C. 3501–3520), OMB renewed its approval for these information collection requirements, and assigned OMB control numbers to these requirements. The table below provides the following information for each of these information collection requirements approved by OMB: The title of the **Federal Register** notice; the **Federal Register** reference (date, volume, and leading page); OMB's Control Number; and the new expiration date.

| Title of the information collection request | Date of **Federal Register** publication, **Federal Register** Reference, and OSHA Docket No. | OMB Control No. | Expiration date |
|---|---|---|---|
| Acrylonitrile Standard (29 CFR 1910.1045) | 12/12/2011, 76 FR 77267, Docket No. OSHA–2011–0195. | 1218–0126 | 03/30/2015 |
| Asbestos in Construction Standard (29 CFR 1926.1101). | 01/25/2012, 77 FR 3798, Docket No. OSHA–2012–0002. | 1218–0134 | 06/30/2015 |
| Blasting and the Use of Explosives (29 CFR part 1926, subpart U). | 02/17/2012, 77 FR 9703, Docket No. OSHA–2011–0747. | 1218–0217 | 08/31/2015 |
| Bloodborne Pathogens Standard (29 CFR 1910.1030) | 11/01/2011, 76 FR 67478, Docket No. OSHA–2010–0047. | 1218–0180 | 03/31/2015 |
| Cadmium in Construction Standard (29 CFR 1926.1127). | 03/16/2012, 77 FR 13357, Docket No. OSHA–2012–0004. | 1218–0186 | 08/31/2015 |
| Cadmium in General Industry (29 CFR 1910.1027) | 03/16/2012, 77 FR 13359, Docket No. OSHA–2012–0005. | 1218–0185 | 08/31/2015 |
| Coke Oven Emissions (29 CFR 1910.1029) | 08/22/2011, 76 FR 52350, Docket No. OSHA–2011–0181. | 1218–0128 | 02/20/2015 |
| Commercial Diving Operations Standard (29 CFR part 1910, subpart T). | 02/22/2011, 76 FR 9817, Docket No. OSHA–2011–0008. | 1218–0069 | 06/30/2015 |
| Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits (29 CFR 1926.50 and 1926.250). | 02/15/2011, 76 FR 8778, Docket No. OSHA–2011–0032. | 1218–0093 | 08/31/2014 |
| Cotton Dust (29 CFR 1910.1043) | 10/05/2011, 76 FR 61752, Docket No. OSHA–2011–0194. | 1218–0061 | 03/31/2015 |
| Electrical Standards for Construction (29 CFR part 1926, subpart K) and for General Industry (29 CFR part 1910, subpart S). | 11/10/2011, 76 FR 70166, Docket No. OSHA–2011–0187. | 1218–0130 | 03/31/2015 |
| Excavations (Design of Cave-in Protection Systems) (29 CFR part 1926, subpart P). | 04/06/2011, 76 FR 19129, Docket No. OSHA–2011–0057. | 1218–0137 | 12/31/2014 |
| Fire Brigades (20 CFR 1910.156) | 01/26/2011, 76 FR 4735, Docket No. OSHA–2011–0009. | 1218–0075 | 03/31/2014 |

| Title of the information collection request | Date of **Federal Register** publication, **Federal Register** Reference, and OSHA Docket No. | OMB Control No. | Expiration date |
|---|---|---|---|
| Fire Protection in Shipyard Employment (29 CFR part 1915, subpart P). | 01/19/2011, 76 FR 3178, Docket No. OSHA–2011–0197. | 1218–0248 | 08/31/2014 |
| Forging Machines (29 CFR 1910.218) | 05/24/2011, 76 FR 30200, Docket No. OSHA–2011–0064. | 1218–0228 | 01/31/2015 |
| Grain Handling Facilities, (29 CFR 1910.272) | 02/22/2011, 76 FR 9815, Docket No. OSHA–2011–0028. | 1218–0206 | 08/31/2014 |
| Marine Terminals (29 CFR part 1917) and Longshoring (29 CFR part 1918). | 04/26/2012, 77 FR 24990, Docket No. OSHA–2012–0016. | 1218–0196 | 08/31/2015 |
| Material Hoists, Personnel Hoists, and Elevators (29 CFR 1926.552). | 12/03/2010, 75 FR 75500, Docket No. OSHA–2010–0052. | 1218–0231 | 08/31/2014 |
| Methylene Chloride (29 CFR 1910.1052) | 09/09/2011, 76 FR 55949, Docket No. OSHA–2011–0060. | 1218–0179 | 03/31/2015 |
| Occupational Exposure to Hazardous Chemicals in Laboratories (29 CFR 1910.1450). | 05/04/2011, 76 FR 25376, Docket No. OSHA–2011–0059. | 1218–0131 | 03/31/2015 |
| Occupational Safety and Health Act Variance Regulations (29 CFR 1905.10, 1095.11, and 1905.12). | 02/08/2010, 75 FR 6220, Docket No. OSHA–2009–0024. | 1218–0265 | 03/31/2015 |
| Occupational Safety and Health, Onsite Consultation Agreements (29 CFR part 1908). | 06/22/2011, 76 FR 36579, Docket No. OSHA–2011–0125. | 1218–0110 | 03/31/2015 |
| Occupational Safety and Health, State Plans | 11/28/2011, 76 FR 72980, Docket No. OSHA–2011–0197. | 1218–0247 | 06/30/2015 |
| Permit-Required Confined Spaces (29 CFR 1910.146) | 12/04/2011, 76 FR 77850, Docket No. OSHA–2011–0858. | 1218–0203 | 06/30/2015 |
| Powered Industrial Trucks Standard (29 CFR 1910.178). | 04/20/2011, 76 FR 22154, Docket No. OSHA–2011–0062. | 1218–0242 | 09/30/2014 |
| Powered Platforms for Building Maintenance (29 CFR 1910.66). | 01/07/2011, 76 FR 1192, Docket No. OSHA–2010–0048. | 1218–0121 | 07/31/2014 |
| Recording and Reporting Occupational Injuries and Illnesses (29 CFR part 1904). | 01/13/2011, 76 FR 2418, Docket No. OSHA–2010–0055. | 1218–0176 | 05/31/2014 |
| Respiratory Protection Standard (29 CFR 1910.134) | 03/14/2011, 76 FR 13668, Docket No. OSHA–2011–0027. | 1218–0099 | 01/31/2015 |
| Servicing Multi-Piece and Single Piece Rim Wheels, (29 CFR 1910.177). | 09/08/2011, 76 FR 55708, Docket No. OSHA–2011–0189. | 1218–0219 | 03/31/2015 |
| Shipyard Employment Standards (29 CFR part 1915) | 10/12/2011, 76 FR 63327, Docket No. OSHA–2011–0190. | 1218–0220 | 03/31/2015 |
| Slings (29 CFR 1910.184) | 05/11/2011, 76 FR 27367, Docket No. OSHA–2011–0063. | 1218–0223 | 03/31/2015 |
| Standard on the Control of Hazardous Energy (Lockout/Tagout) (29 CFR 1910.147). | 02/15/2011, 76 FR 8780, Docket No. OSHA–2011–0033. | 1218–0150 | 08/31/2014 |
| Steel Erection (29 CFR part 1926, subpart R) | 03/02/2011, 76 FR 11516, Docket No. OSHA–2011–0055. | 1218–0241 | 08/31/2014 |
| Subpart A (General Provisions) and subpart B (Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment) (29 CFR part 1915). | 03/29/2011, 76 FR 17448, Docket No. OSHA–2011–0034. | 1218–0011 | 01/31/2015 |
| Telecommunication (29 CFR 1910.268) | 10/25/2011, 76 FR 66087, Docket No. OSHA–2010–0057. | 1218–0225 | 03/31/2015 |
| The 13 Carcinogens Standard (29 CFR 1910.1003, 1915.1003, and 1926.1103, et al.). | 12/08/2011, 76 FR 76768, Docket No. OSHA–2011–0860. | 1218–0085 | 06/30/2015 |
| Underground Construction Standard (29 CFR 1926.800). | 02/15/2011, 76 FR 8782, Docket No. OSHA–2011–0029. | 1218–0067 | 07/31/2014 |
| Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67). | 10/05/2011, 76 FR 61750, Docket No. OSHA–2011–0185. | 1218–0230 | 03/31/2015 |
| Vertical Tandem Lifts in Marine Terminals (29 CFR part 1917). | 07/12/2011, 76 FR 40935, Docket No. OSHA–2011–0066. | 1218–0260 | 02/28/2015 |
| Vinyl Chloride Standard (29 CFR 1910.1017) | 12/08/2011, 76 FR 76766, Docket No. OSHA–2011–0196. | 1218–0010 | 03/31/2015 |
| Voluntary Protection Programs Information | 03/22/2011, 76 FR 16000, Docket No. OSHA–2011–0056. | 1218–0239 | 09/30/2014 |

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid OMB control number and the agency informs respondents that they need not respond to the collection of information unless it displays a valid OMB control number.

## Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is 44 U.S.C. 3506 *et seq.* and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 2, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2012–24712 Filed 10–5–12; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2012–0034]**

### Hexavalent Chromium Standards; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Hexavalent Chromium Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126).

**DATES:** Comments must be submitted (postmarked, sent, or received) by December 10, 2012.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2012–0034, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number (OSHA–2012–0034) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Hexavalent Chromium (Cr(VI)) Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126) (the ''Standards'') protect workers from the adverse health effects that may result from occupational exposure to hexavalent chromium. The major information collection requirements in these Standards include conducting worker exposure monitoring, notifying workers of their chromium exposures, implementing medical surveillance of workers, providing examining physicians with specific information, implementing a respiratory protection program, demarcating regulated areas, implementing worker information and training programs, notifying laundry personnel of chromium hazards and maintaining workers' exposure monitoring and medical surveillance records for specific periods.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting an adjustment decrease in burden hours from 787,894 to 541,495 (a total decrease of 246,399 hours). The adjustment is primarily due to a reduction in plants and a decrease in covered workers, based on updated data.

*Type of Review:* Extension of a currently approved collection.

*Title:* Hexavalent Chromium (Cr(VI)) Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126).

*OMB Number:* 1218–0252.

*Affected Public:* Business or other for-profits; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 77,770.

*Frequency of Response:* On occasion; Quarterly; Semi-annually; Annually.

*Total Responses:* 1,086,390.

*Average Time per Response:* Time per response ranges from 5 minutes (.08 hour) to provide a copy of a written medical opinion to a worker to 4 hours for a worker to receive a comprehensive medical examination.

*Estimated Total Burden Hours:* 541,495.

*Estimated Cost (Operation and Maintenance):* $46,589,912.

**IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0034). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

**V. Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 2, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2012–24705 Filed 10–5–12; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 12–080]**

### NASA Advisory Council; Aeronautics Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

**DATES:** Thursday, October 25, 2012, 8 a.m. to 3 p.m.; and Friday, October 26, 2012, 8 a.m. to 12:15 p.m., Local Time.

**ADDRESSES:** Ohio Aerospace Institute (OAI); 22800 Cedar Point Road; Conference Room: The President's Room; Cleveland, OH 44142.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan L. Minor, Executive Secretary for the Aeronautics Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–0566, or *susan.l.minor@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by Webex and telephone should contact Ms. Susan L. Minor at (202) 358–0566 for the web link, toll-free number, and passcode. The agenda for the meeting includes the following topics:

- Glenn Research Center Overview
- NASA Aeronautics and National Research Council interactions
- Aviation Safety Research and Development
- Aeronautics Test Facilities Status
- Unmanned Aircraft Systems Subcommittee Outbrief
- Environmentally Responsible Aviation Phase 2 Status

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. For questions, please contact Brunilda DeJesus at (216) 433–2789 or *Brunilda.DeJesus@nasa.gov.*

**Susan M. Burch,**

*Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2012–24743 Filed 10–5–12; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Polar Programs (1130).

*Date/Time:* November 5, 2012, 10:00 a.m. to 5:00 p.m. and November 6, 8:30 a.m. to 2:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Dr. Fae Korsmo, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs, and activities on the polar research community, to provide advice to the Director of OPP on issues related to merit review and long-range planning.

*Agenda:* Staff presentations and discussion on opportunities and challenges for polar research, education and infrastructure; discussion of OPP Strategic Vision and Committee of Visitors process.

Dated: October 2, 2012.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2012–24717 Filed 10–5–12; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Name:* Site visit review of the Materials Research Science and Engineering Center (MRSEC) at Harvard University by the Division of Materials Research (DMR) #1203.

*Dates & Times:* Nov 14, 2012; 7:15 a.m.–6:45 p.m.; Nov 15, 2012; 8:00 a.m.–4:30 p.m.

*Place:* Harvard University, Cambridge, MA.

*Type of Meeting:* Part open.

*Contact Person:* Dr. Mary E. Galvin, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8562.

*Purpose of Meeting:* To provide advice and recommendations concerning further support of the MRSEC at Harvard University.

*Agenda:*

**Wednesday, Nov 14, 2012**

7:15 a.m.–8:20 a.m. Closed—Executive Session
8:20 a.m.–5:00 p.m. Open—Review of the MRSEC
5:00 p.m.–6:45 p.m. Closed—Executive Session

**Thursday, Nov 15, 2012**

8:00 a.m.–9:50 a.m. Closed—Executive Session
9:50 a.m.–4:30 p.m. Closed—Executive Session, Draft and Review Report

*Reason for Closing:* The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 2, 2012.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2012–24719 Filed 10–5–12; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Name:* Site visit review of the Materials Research Science and Engineering Center (MRSEC) at the University of Massachusetts Amherst by the Division of Materials Research (DMR) #1203.

*Dates & Times:* November 1, 2012; 7:15 a.m.–7:30 p.m.; November 2, 2012; 8:00 a.m.–4:45 p.m.

*Place:* University of MA, Amherst, MA.

*Type of Meeting:* Part open.

*Contact Person:* Dr. Sean L. Jones, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–2986.

*Purpose of Meeting:* To provide advice and recommendations concerning further support of the MRSEC at UMass.

*Agenda:*

**Thursday, November 1, 2012**

7:15 a.m.–3:45 p.m. Open—Review of the MRSEC
3:45 p.m.–5:30 p.m. Closed—Executive Session
6:00 p.m.–7:30 p.m. Open—Dinner

**Friday, November 2, 2012**

8:00 a.m.–9:00 a.m. Closed—Executive session
9:00 a.m.–10:45 a.m. Open—Review of the MRSEC
10:45 a.m.–4:45 p.m. Closed—Executive Session, Draft and Review Report

*Reason for Closing:* The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 2, 2012.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2012–24720 Filed 10–5–12; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0225]**

### Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; opportunity to comment, request a hearing and petition for leave to intervene, order.

**DATES:** Comments must be filed by November 8, 2012. A request for a hearing must be filed by December 10, 2012. Any potential party as defined in section 2.4 of Title 10 of the Code of Federal Regulations a(10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by October 19, 2012.

**ADDRESSES:** You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0225. 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–2012–0225. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2012–0225 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0225.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2012–0225 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* and enter the comment submissions into ADAMS, and 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

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

*Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing*

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final

determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to these amendment actions, see the applications for amendment which are available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, Maricopa County, Arizona*

*Date of amendment request:* August 10, 2012, as supplemented by letter dated September 4, 2012. Publicly available versions are in ADAMS at Accession Nos. ML12240A053 and ML12255A278, respectively.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the basis and description for Milestones 6 and 7 of the licensee's Cyber Security Plan (CSP) implementation schedule.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment revises the Implementation Schedule of the PVNGS CSP. Implementation of the CSP itself does not involve any modifications to the safety-related structures, systems, or components (SSCs). The Implementation Schedule for the CSP describes how the requirements of 10 CFR 73.54 are to be implemented. The revision to the CSP Implementation Schedule will have no appreciable negative effect on the ability to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The revision of the CSP Implementation Schedule will not alter previously evaluated Updated Final Safety Analysis Report (UFSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs as to how they are operated, maintained, modified, tested, or inspected.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This proposed revision to the CSP Implementation Schedule continues to provide assurance that safety-related SSCs are protected from cyber attacks. Implementation of 10 CFR 73.54 with a revision to the CSP Implementation Schedule does not result in the need for any new or different UFSAR design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed revision to the CSP Implementation Schedule is administrative in nature and would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The proposed change provides an acceptable, interim level of ''high assurance of adequate protection against cyber attacks.'' The proposed revision would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

*NRC Branch Chief:* Michael Markley.

*Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station (ONS), Units 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* July 31, 2012, with supplement dated September 5, 2012. Publicly available versions of the letters dated July 31 and September 5, 2012, are in ADAMS under Accession Nos. ML12262A372 and ML12251A010, respectively.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the license conditions associated with the implementation of the new fire protection program based on the National Fire Protection Association (NFPA) standard NFPA–805.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Operation of ONS in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. The Updated Final Safety Analysis Report (UFSAR) documents the analyses of design basis accidents (DBA) at ONS. The proposed amendment involves License Condition completion date changes only. It does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, and components (SSCs) to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown (SSD) condition will remain capable of performing their design functions.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

*Response:* No.

Operation of ONS in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with offsite dose was included in the evaluation of DBAs documented in the UFSAR. The proposed amendment involves License Condition completion date changes only. It does not alter the requirements or function for systems required during accident conditions, nor will it result in new or different accidents. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

*Response:* No.

Operation of ONS in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment involves License Condition completion date changes only. It does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202–1802.

*NRC Branch Chief:* Robert J. Pascarelli.

*Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of amendment request:* June 22, 2012. A publicly available version is in ADAMS under Accession No. ML12178A412.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Cyber Security Plan Implementation Schedule as approved in license amendment issued on August 19, 2011 (ADAMS Accession No. ML11152A011).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*NRC Branch Chief:* George Wilson.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, (Waterford 3), St. Charles Parish, Louisiana*

*Date of amendment request:* June 28, 2012. A publicly available version is in ADAMS under Accession No. ML12181A348.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise License Amendment No. 234 to the Facility Operating License dated July 20, 2011 (ADAMS Accession No. ML111800021), which approved the Waterford 3 Cyber Security Plan and associated implementation milestone schedule. The Cyber Security Plan Implementation Schedule contained in the licensee's letter dated April 4, 2011 (ADAMS Accession No. ML110950122), was utilized, as a portion of the basis for the NRC's safety evaluation report provided by Amendment No. 234. The proposed amendment does not change the Implementation Schedule date, but Entergy has proposed this amendment to implement the requirements of Implementation Schedule Milestone 6 in a slightly different manner than described in the approved Implementation Schedule.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

*NRC Branch Chief:* Michael T. Markley.

*Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Units 1 and 2, St. Lucie County, Florida*

*Date of amendment request:* June 21, 2012. A publicly available version is in ADAMS under Accession No. ML12178A384.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed changes would revise Cyber Security Plan (CSP) Implementation Schedule Milestone No. 6 and the existing license conditions in the renewed facility operating licenses for St. Lucie Plant, Units 1 and 2. The amendment would implement the requirements of Implementation Schedule Milestone 6 in a slightly different manner than described in the approved Implementation Schedule.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications that affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications that affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Acting Branch Chief:* Jessie F. Quichocho.

*Indiana Michigan Power Company (I&M), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment request:* September 11, 2012. A publicly available version is in ADAMS under Accession No. ML12262A480.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would make changes to the cyber security plan implementation schedule for Milestone 6 at the Donald C. Cook Nuclear Plant (CNP), Units 1 and 2. Indiana Michigan Power Company (I&M) is planning to implement the requirements of Cyber Security Plan Implementation Schedule Milestone 6, as approved by the NRC staff in a letter dated July 28, 2011

(Amendment Nos. 315 and 299, for CNP Units 1 and 2, respectively), in a slightly different manner than described in the approved Implementation Schedule. Although no change to the Implementation Schedule is proposed, the change to the description of the milestone activity is conservatively considered to be a change to the Implementation Schedule; therefore, in accordance with the provisions of 10 CFR 50.4 and 10 CFR 50.90, I&M is requesting an amendment to the Renewed Facility Operating Licenses for CNP Units 1 and 2, as it relates to the Physical Protection license condition associated with the CNP Cyber Security Plan.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as [a] result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* James M. Petro, Jr., Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

*NRC Acting Branch Chief:* Istvan Frankl.

*Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station (CNS), Nemaha County, Nebraska*

*Date of amendment request:* June 27, 2012. A publicly available version is in ADAMS under Accession No. ML12187A187.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise License Amendment No. 238 to the Renewed Facility Operating License for CNS, dated July 27, 2011 (ADAMS Accession No. ML111801081), which approved the CNS Cyber Security Plan and associated implementation milestone schedule. The Cyber Security Plan Implementation Schedule contained in the licensee's letter dated March 30, 2011 (ADAMS Accession No. ML110910061), was utilized as a portion of the basis for the NRC's safety evaluation report provided by Amendment No. 238. The proposed amendment does not change the Implementation Schedule date; however, the licensee has proposed to implement the requirements of Implementation Schedule Milestone 6 in a slightly different manner than described in the approved Implementation Schedule.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components (SSCs) relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the SSCs relied upon to mitigate the consequences of postulated accidents, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

*NRC Branch Chief:* Michael T. Markley.

*South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1 (VCSNS), Fairfield County, South Carolina*

*Date of amendment request:* August 30, 2012. A publicly available version is in ADAMS under Accession No. ML12248A270.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed license amendment includes a proposed deviation to the scope of a Cyber Security Plan Implementation Schedule milestone and a proposed revision to the VCSNS Facility Operating License to include the proposed deviation. Specifically, SCE&G proposes a change to the scope of Implementation Milestone 6 to apply to only technical cyber security controls.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident that has previously been evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

*NRC Branch Chief:* Robert J. Pascarelli.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama*

*Date of amendment request:* August 14, 2012. A publicly available version is in ADAMS under Accession No. ML12227A884.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendments would revise Technical Specification (TS) 5.6.5, ''Core Operating Limits Report (COLR),'' to reference and allow use of Westinghouse WCAP–16045–P–A, Addendum i-A, ''Qualification of the NEXUS Nuclear Data Methodology,'' (Reference 1 of Enclosure 1) to determine core operating limits.

The non-proprietary version is WCAP–16045–NP–A, Addendum i-A (Reference 2 of Enclosure 1).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed additional TS reference is not an accident initiator.

The assumed accident initiators are not changed by the introduction of the proposed TS reference. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability of an accident previously evaluated.

The use of the proposed method will not significantly impact the fission product inventory and transport assumptions in the current licensing basis analyses. Therefore, the radiological consequences of an accident previously evaluated will not increase.

The use of the proposed methods will not increase the consequences of an accident because Limiting Conditions for Operation will continue to restrict operation to within the regions that provide acceptable results, and Reactor Protective System trip setpoints will restrict plant transients so that the consequences of accidents will not exceed the safety analysis acceptance criteria.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This change does not alter the physical plant or modes of operation. The plant systems will not be operated outside of design limits, no different equipment will be operated, and system interfaces will not change. Thus, the proposed change does not adversely affect the design function or operation of any structures, systems, and components important to safety.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

All safety limit values and Limited Conditions of Operability values given in the COLR will be calculated based on NRC approved methodologies. These values ensure the plant is operating in accordance with the TS.

Therefore, it is concluded the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

*NRC Branch Chief:* Robert J. Pascarelli.

*Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation*

**Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona**

**Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina**

**Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

**Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, (Waterford 3), St. Charles Parish, Louisiana**

**Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

**Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan**

**Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska**

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina**

**Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 28th day of September 2012.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply). |
| 20 | Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2012–24509 Filed 10–5–12; 8:45 am]

**BILLING CODE 7590–01–P**

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–7025; NRC–2012–0224]**

## Acceptance of Application for Special Nuclear Materials License From Rensselaer Polytechnic Institute, Opportunity To Request a Hearing, and Petition for Leave To Intervene, and Commission Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Acceptance of a license application; opportunity to request a hearing and to petition for leave to intervene, and order.

**DATES:** Requests for a hearing and petitions for leave to intervene must be filed by December 10, 2012. Any potential party as defined in section 2.4 of Title 10 of the Code of Federal Regulations (10 CFR) who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by October 19, 2012.

**ADDRESSES:** Please refer to Docket ID NRC–2012–0224 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0224. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The Rensselaer Polytechnic Institute (RPI) application is available electronically under ADAMS Accession Number ML110610468. Supplemental Information is also available under ADAMS Accession Numbers ML12192A612 and ML121920731. The May 3, 2011, acceptance letter from NRC's staff may be found under ADAMS Accession Number ML111180242.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Diaz, Project Manager, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3172, email: *Marilyn.Diaz@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has accepted, for detailed technical review, a March 2, 2011, application for a new license for the possession and use of special nuclear material (SNM) for assaying spent nuclear fuel for fissile material inventory as part of their research program at the RPI. The applicant requested the new license for a term of 10 years. The license application (LA), if approved, would authorize the RPI to possess and use special nuclear material under 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material.''

### II. Discussion

The RPI requested a license to possess and use SNM as part of their research program to conduct tests for the purpose of demonstrating methods to assay spent nuclear fuel for fissile material inventory using a lead slowing down spectrometer. The original application was submitted on March 2, 2011. By letter dated May 3, 2011, the NRC staff informed the applicant that the staff found the LA acceptable to begin a detailed technical review. The NRC staff requested the applicant to provide additional information essential to conducting a detailed technical review. The applicant submitted additional information in letters dated June 30, 2011, September 30, 2011, and a revised LA, dated March 27, 2012. The application has been docketed in Docket No. 70–7025.

If the NRC approves the LA, the basis for approval will be documented in a Safety Evaluation Report (SER) supporting the issuance of a new NRC License. The SER would contain the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations, for issuing an SNM license. The SER would also include a determination of the need to complete an Environmental Assessment based on the proposed action.

### III. Opportunity To Request a Hearing and Leave To Intervene

Requirements for submitting hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). The NRC regulations are accessible electronically from the NRC Library on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

Pursuant to 10 CFR 2.309(a), any person whose interest may be affected by this proceeding, and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. Pursuant to 10 CFR 2.309(d), the petition must provide the name, address, and telephone number of the petitioner; and explain the reasons why intervention should be permitted with particular reference to: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest.

A request for hearing or petition for leave to intervene must also identify specific contentions that the petitioner seeks to have litigated in the proceeding. As required by 10 CFR 2.309(f), for each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. The petitioner also must demonstrate that the issue raised by each contention is within the scope of the proceeding, and is material to the findings that NRC must make to support the granting of a license in response to

the application. In addition, the petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner, and on which the petitioner intends to rely at the hearing—together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the LA that the petitioner disputes and the supporting reasons for each dispute; or, if the petitioner believes that the LA fails to contain information on a relevant matter as required by law, the identification of each failure, and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC's regulations, policies, and procedures. The Licensing Board will set the time and place for any pre-hearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene and requests for hearing, and motions for leave to file new or amended contentions that are filed after the deadline in 10 CFR 2.309(b) will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by December 10, 2012. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 2.309(h)(2) State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding.

## IV. Electronic Submissions (E-Filing)

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by Email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request: (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the petitioner/requestor, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding, if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary

that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of acceptance and opportunity to request a hearing, any potential party who believes access to SUNSI is necessary to respond to this Notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered, absent a showing of good cause for the late filing addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff; and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3), the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the Notice of Hearing or Opportunity for Hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC's staff, either after

[1] While a request for Hearing or Petition to Intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge, if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

a determination on standing and need for access or after a determination on trustworthiness and reliability, the NRC's staff shall immediately notify the requestor in writing, briefly stating the reason(s) for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff's determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff's determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff's determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for Protective Orders, in a timely fashion to minimize unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 2nd day of October, 2012.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/activity |
|---|---|
| 0 | Publication of **Federal Register** Notice of acceptance of application and opportunity to request a hearing, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to sensitive unclassified non-safeguards information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 25 | If NRC's staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC's staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC's staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for Protective Order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 60 | (Answer receipt +7) Petitioner/Intervener reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2012–24788 Filed 10–5–12; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0232]**

## Proposed Revision Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard review plan-draft section revision; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is soliciting public comment on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' on a proposed Revision 3 to its Standard Review Plan (SRP), Section 19.0, ''Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors.''

**DATES:** Submit comments by November 8, 2012. Comments received after this date will be considered, if it is practical to do so, but the Commission 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–2012–0232. You may submit comments by any of the following methods:

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff's determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0232. 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:** Ms. Amy E. Cubbage, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–2875 or email at *Amy.Cubbage@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Accessing Information and Submitting Comments

### *A. Accessing Information*

Please refer to Docket ID NRC–2012–0232 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–2012–0232.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The SRP, Section 19.0, is under ADAMS Accession No. ML12132A481.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2012–0232 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters 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 in their comment submissions that they do not want to be publicly disclosed. 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. Further Information

The Office of New Reactors and the Office of Nuclear Reactor Regulation are revising SRP Section 19.0, which updates Revision 2 (ADAMS Accession No. ML071700652) dated June 2007, to reflect the changes as listed in the description of changes. These changes include (1) incorporation of guidance previously contained in Interim Staff Guidance (ISG), DC/COL–ISG–003 (ADAMS Accession No. ML081430087) concerning the review of probabilistic risk assessment (PRA) information and severe accident assessments for new reactors submitted to support design certification (DC) and combined license (COL) applications, (2) incorporation of guidance previously contained in ISG DC/COL–ISG–020 (ADAMS Accession No. ML100491233) concerning review of information from PRA-based seismic margin analyses submitted in support of DC and COL applications, (3) incorporation of guidance previously contained in ISG DI&C/COL–ISG–003 (ADAMS Accession No. ML080570048) concerning review of digital instrumentation and control system PRAs, including common cause failures in PRAs and uncertainty analysis associated with new reactor digital systems, and (4) incorporation of additional procedures for review of PRA information and severe accident assessments developed during NRC reviews of DC and COL applications completed after ISG DC/COL–ISG–003 was issued. A redline document comparing Revision 2 and the current proposed Revision 3 can be found under ADAMS Accession No. ML12153A008.

The NRC staff issues **Federal Register** notices to facilitate timely implementation of the current staff guidance and to facilitate activities associated with the review of amendment applications. The NRC staff intends to incorporate the final approved guidance into the next revision of NUREG–0800, SRP Section 19.0 Revision 3.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 27th day of September 2012.

**Amy E. Cubbage,**

*Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.*

[FR Doc. 2012–24759 Filed 10–5–12; 8:45 am]

BILLING CODE 7590–01–P

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# NUCLEAR REGULATORY COMMISSION

## Seeks Qualified Candidates for the Advisory Committee on Reactor Safeguards

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Request for resumes.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) seeks qualified candidates for the Advisory Committee on Reactor Safeguards (ACRS). Submit resumes to Ms. Kendra Freeland, ACRS, Mail Stop T2E26, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or email *Kendra.Freeland@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The ACRS is a part-time advisory group, which is statutorily mandated by the Atomic Energy Act of 1954, as amended. ACRS provides independent expert advice on matters related to the safety of existing and proposed nuclear power plants and on the adequacy of proposed reactor safety standards. Of primary importance are the safety issues associated with the operation of 104 commercial nuclear power plants in the United States and regulatory initiatives, including risk-informed and performance-based regulation, license renewal, power uprates, and the use of mixed oxide and high burnup fuels. An increased emphasis is being given to safety issues associated with new reactor designs and technologies, including passive system reliability and thermal hydraulic phenomena, use of digital instrumentation and control,

international codes and standards used in multinational design certifications, materials, and structural engineering, nuclear analysis and reactor core performance, and nuclear materials and radiation protection. In addition, the ACRS may be requested to provide advice on radiation protection, radioactive waste management, and earth sciences in the agency's licensing reviews for fuel fabrication and enrichment facilities, and for waste disposal facilities. The ACRS also has some involvement in security matters related to the integration of safety and security of commercial reactors.

See NRC Web site at *http://www.nrc.gov/aboutnrc/regulatory/advisory/acrs.html* for additional information about ACRS. Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear reactor safety matters, the ability to solve complex technical problems, and the ability to work collegially on a board, panel, or committee. The Commission, in selecting its Committee members, considers the need for a specific expertise to accomplish the work expected to be before the ACRS. ACRS Committee members are appointed for four-year terms. The Commission looks to fill one vacancy as a result of this request. For this position, a candidate must have at least 10 years of broad experience in one or more of the following areas:

- Materials, metallurgy and reactor fuels.
- Fracture mechanics.
- Material degradation effects on reactor safety and operation.
- A distinguished record of achievement in one or more areas of nuclear science and technology.

Candidates with pertinent graduate level experience will be given additional consideration. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse backgrounds, so that the membership on the Committee is fairly balanced in terms of the points of view represented and functions to be performed by the Committee. Candidates will undergo a thorough security background check to obtain the security clearance that is mandatory for all ACRS members. The security background check will involve the completion and submission of paperwork to NRC. Candidates for ACRS appointments may be involved in or have financial interests related to NRC-regulated aspects of the nuclear industry. However, because conflict-of-interest considerations may restrict the participation of a candidate in ACRS activities, the degree and nature of any such restriction on an individual's activities as a member will be considered in the selection process. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities or discontinuance of certain contracts or grants. Information regarding these restrictions will be provided upon request. As a part of the Stop Trading on Congressional Knowledge Act of 2012, which bans insider trading by members of Congress, their staff, and other high-level federal employees, candidates for appointments will be required to disclose additional financial transactions.

A resume describing the educational and professional background of the candidate, including any special accomplishments, publications, and professional references should be provided. Candidates should provide their current address, telephone number, and email address. All candidates will receive careful consideration. Appointment will be made without regard to factors such as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 100 days per year to Committee business, but may not be compensated for more than 130 calendar days. Resumes will be accepted until January 11, 2013.

Dated: October 3, 2012.

**Andrew Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 2012–24800 Filed 10–5–12; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Nanoscale Science, Engineering and Technology Subcommittee Committee on Technology, National Science and Technology Council; Public Meetings

**AGENCY:** Executive Office of the President, Office of Science and Technology Policy.

**ACTION:** Notice of Public Meetings.

**SUMMARY:** The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC) and in collaboration with the European Commission, will hold the 2012 ''EU–U.S.: Bridging NanoEHS Research Efforts'' joint workshop on October 25–26, 2012 in Helsinki, Finland. The purpose of this workshop is to further promote and deepen the EU–U.S. collaboration on nanosafety research and to develop the Communities of Research (CoRs). The event is aimed at administrators, policy makers, decision makers, and scientists from the EU and the U.S.

NNCO and the European Commission will also host meetings for the CoRs on the topic of environmental, health, and safety issues related to nanomaterials between the publication date of this Notice and September 30, 2013. These CoRs will provide a platform for scientists from the U.S. and EU to develop a shared repertoire of protocols and methods to overcome research gaps and barriers. The co-chairs for each CoR will convene meetings and set meeting agendas with administrative support from the European Commission and the NNCO.

The CoRs directly address Goal 4.2 of the National Nanotechnology Initiative Strategic Plan: ''Develop tools and procedures for * * * international outreach and engagement to assist stakeholders in developing best practices for communicating and managing risks.'' However, the CoRs are not envisioned to provide any government agency with advice or recommendations.

The CoRs were proposed at the first U.S.-EU workshop on *Bridging NanoEHS Research Efforts,* which was held in Washington, DC in March 2011. Based on feedback from the workshop participants, the following six CoR themes were announced in 2012:

- Exposure through the Life Cycle, with Material Characterization.
- Ecotoxicity Testing and Predictive Models, with Material Characterization.
- Predictive Modeling for Human Health, with Material Characterization.
- Databases and Ontologies.
- Risk Assessment.
- Risk Management and Control.

The CoRs will hold several Webinars and/or conference calls between the publication date of this Notice and September 30, 2013. The envisioned end date for the CoRs is September 30, 2013.

**DATES:** The workshop will be held on Thursday, October 25, 2012 from 9:00 a.m. until 5:30 p.m. and on Friday, October 26, 2012 from 9:00 a.m. until 4:00 p.m. CoR meetings will take place periodically between the publication date of this Notice and September 30, 2013. Meeting dates and call-in information will be posted on the

Community of Research page at *http://us-eu.org/* as meetings are scheduled.

**ADDRESSES:** The workshop will be held at Finnish Institute of Occupational Health, Topeliuksenkatu 30, Helsinki, Finland. The CoRs will meet via teleconferences and Web meetings.

*Registration:* Due to space limitations, pre-registration for the workshop is required. Registration is on a first-come, first-served basis until capacity is reached. Individuals planning to attend the workshop should register online at *http://www.ttl.fi/partner/nanoehs_workshop/registration/sivut/default.aspx*. Written notices of participation by email should be sent to *sstandridge@nnco.nano.gov* or mailed to Stacey Standridge, 4201 Wilson Boulevard, Stafford II, Suite 405, Arlington, VA 22230. Individuals wishing to participate in any of the CoRs should send the participant's name, affiliation, and country of residence to Stacey Standridge at either of the addresses above. NNCO will collect email addresses from registrants to ensure that they are included in CoR conference calls and other meetings and that they receive information relevant to the CoR scope from other CoR members. Email addresses are submitted on a completely voluntary basis.

Those interested in presenting 3–5 minutes of public comments at the U.S.-EU workshop on *Bridging NanoEHS Research Efforts* or any of the CoR meetings should register for the appropriate event. For those who are unable to attend the workshop or CoR meetings in person, written or electronic comments should be submitted by email to *sstandridge@nnco.nano.gov* at least two business days prior to each meeting to provide time to copy and distribute the written comments to the participants.

*Meeting Accommodations:* Individuals requiring special accommodation to access these public meetings should contact Stacey Standridge (telephone 703–292–8103) at least ten business days prior to each meeting so that appropriate arrangements can be made.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice, please contact Stacey Standridge at National Nanotechnology Coordination Office, by telephone (703–292–8103) or email (*sstandridge@nnco.nano.gov*). Additional information about the workshop, including the agenda, is posted at *http://www.ttl.fi/partner/nanoehs_workshop/sivut/default.aspx*. Additional information about the CoRs and their upcoming meetings is posted at *http://us-eu.org/*.

**Ted Wackler,**

*Deputy Chief of Staff and Assistant Director.*

[FR Doc. 2012–24867 Filed 10–5–12; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 11, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 11, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 4, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24937 Filed 10–4–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67959; File No. SR–EDGX–2012–44]**

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to EDGX Rule 11.5 To Add a New Order Type

October 2, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 25, 2012, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 11.5(c) to add a new order type, the NBBO Offset Peg Order, to the rule. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add a new order type to Exchange Rule 11.5(c), the NBBO Offset Peg Order. While the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

NBBO Offset Peg Order would be available for all Users,[4] the Exchange believes it would be particularly useful for, and therefore used predominately, if not exclusively, by Members [5] acting as Market Makers [6] in accordance with applicable Exchange Rules.[7]

The NBBO Offset Peg Order would enable Users to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the National Best Bid (the ''NBB'') and National Best Offer (the ''NBO'', and together with the NBB, the ''NBBO''), respectively, while providing them full control over order origination and order marking. This retention of control, in turn, would enable Market Makers to comply independently with the requirements of Regulation SHO [8] under the Securities Exchange Act of 1934 (the ''Act'') and Rule 15c3–5 [9] under the Act (the ''Market Access Rule''), as described in more detail below.[10]

Background

The Market Access Rule requires that any broker-dealer with market access, or that provides a customer or any other person with market access, must establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks of this business activity. These controls include financial risk management controls reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer itself, and to prevent the entry of erroneous orders. In addition, the Market Access Rule requires certain regulatory risk management controls that, among other things, prevent the entry of orders unless compliance with applicable regulatory requirements has been satisfied on a pre-order entry basis, and restrict access to trading systems and technology that provide market access to persons and accounts that have been pre-approved and authorized by the broker-dealer. These regulatory risk management controls also include measures designed to prevent the entry of orders for a broker-dealer, customer or other person if such person is restricted from trading those securities, and to assure that appropriate surveillance personnel receive immediate, post-trade execution reports that result from market access.[11]

In addition to the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking orders to sell as ''long'', ''short'' or ''short exempt'', obtaining a ''locate'' for short sale orders, closing out fail to deliver positions and, where applicable, complying with the short sale price test.[12] While Regulation SHO provides certain exceptions when a market maker is engaged in *bona fide* market making activity,[13] the availability of those exceptions would be distinct and independent from whether a Market Maker submitted an NBBO Offset Peg Order.

NBBO Offset Peg Order

In an effort to simplify Members' compliance with the requirements of the Market Access Rule and Regulation SHO, the Exchange is proposing to adopt a new order type, the NBBO Offset Peg Order, and add it to Rule 11.5(c) as new subparagraph (15). An NBBO Offset Peg Order would be a one-sided limit order [14] and, similar to other pegged orders available to Users, it would be tied or ''pegged'' to a certain price.[15] An NBBO Offset Peg Order would not be eligible for routing pursuant to Rule 11.9(b)(2) and would always be displayed on the Exchange. It is expected that Members would perform the necessary checks to comply with applicable regulatory requirements, including the Market Access Rule and Regulation SHO, as discussed above, prior to the entry of an NBBO Offset Peg Order.

As noted above, while use of the NBBO Offset Peg Order would not be limited to Market Makers, the Exchange believes that Market Makers would likely be the predominant, if not exclusive, users of the order type. Thus, the NBBO Offset Peg Order is designed such that its price would be automatically set and adjusted, both upon entry and at any time thereafter, in order to comply with the Exchange's Market Maker quotation requirements.[16] Users may submit NBBO Offset Peg Orders to the Exchange starting at the beginning of the Pre-Opening Session,[17] but the order is not executable or automatically priced until the beginning of Regular Trading Hours [18] and expires at the end of Regular Trading Hours.

Specifically, upon entry and at any time the price of the order reached the ''Defined Limit'',[19] or moved a specified

[4] As defined in Exchange Rule 1.5(ee).

[5] As defined in Exchange Rule 1.5(n).

[6] As defined in Exchange Rule 1.5(l).

[7] *See* Exchange Rules 11.18 (Registration of Market Makers), 11.19 (Obligations of Market Maker Authorized Traders), 11.20 (Registration of Market Makers in a Security) and 11.21 (Obligations of Market Makers).

[8] 17 CFR 242.200 through 242.204.

[9] 17 CFR 242.15c3–5.

[10] The Exchange notes that the NBBO Offset Peg Order represents new functionality for the Exchange, which has not previously offered and does not currently offer any automated quote management (''AQ'') functionality, in contrast to other exchanges, such as The NASDAQ Stock Market LLC (''NASDAQ'') and BATS Exchange, Inc. (''BATS''), whose respective Market Maker Peg Orders replaced their previous AQ functionality.

[11] *See supra* note 9.

[12] 17 CFR 242.200 through 242.204.

[13] *See* 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO's ''locate'' requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in *bona fide* market making in the security at the time they effect the short sale are excepted from the ''locate'' requirement. *See also* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute *bona fide* market making for purposes of claiming the exception to Regulation SHO's ''locate'' requirement). *See also* Securities Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698–9 (October 17, 2008) (providing guidance regarding what is *bona fide* market making for purposes of complying with the market maker exception to Regulation SHO's ''locate'' requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, Market Makers would not be able to rely *solely* on quotations priced in accordance with the Designated Percentages under proposed Rule 11.5(c)(15) for eligibility for the *bona fide* market making exception to the ''locate'' requirement based on the criteria set forth by the Commission. It should also be noted that a determination of *bona fide* market making is relevant for purposes of a broker-dealer's close-out obligations under Rule 204 of Regulation SHO. *See also* 17 CFR 242.204(a)(3).

[14] The NBBO Offset Peg Order would be a one-sided order. Therefore, a Member acting as a Market Maker seeking to use the NBBO Offset Peg Order to comply with the Exchange's Market Maker quotation requirements would need to submit and maintain continuously both a bid and an offer using the order type.

[15] Rule 11.5(c)(6) defines ''Pegged Order''.

[16] Exchange Rule 11.21 describes the obligations of Members registered with the Exchange as Market Makers. Among other things, Market Makers are required to maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) of Rule 11.21, which generally states that such quotations must be priced within a designated percentage of the NBB for buy quotations, and the NBO for sell quotations.

[17] Rule 1.5(s) defines ''Pre-Opening Session''.

[18] Rule 1.5(y) defines ''Regular Trading Hours''.

[19] The ''Defined Limit'' is defined in Rule 11.21(d)(2)(F) to mean 9.5% for securities included in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock pause trigger under the applicable rules of a listing market (the ''Original Circuit Breaker Securities''). For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of a security's listing market, the Defined Limit is 21.5% for Original Circuit Breaker Securities. For all NMS securities that are not Original Circuit

number of percentage points away from the ''Designated Percentage'' [20] toward the then current NBB (for NBBO Offset Peg Orders to buy) or NBO (for NBBO Offset Peg Orders to sell), the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as the case may be. In the event that there was no NBB or NBO, the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless the User instructed the Exchange upon entry to cancel or reject the order under such circumstances. In the absence of an NBB or NBO and last reported sale, the order would be cancelled or rejected. Adjustment to the Designated Percentage would be designed to avoid an execution against an NBBO Offset Peg Order that would initiate an individual stock trading pause.

In the event that pricing an NBBO Offset Peg Order at the Designated Percentage away from the then current NBB or NBO, or, if no NBB or NBO, to the Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order would be cancelled or rejected.

In the event of an execution against an NBBO Offset Peg Order that reduced the size of the order below one round lot, a Member acting as a Market Maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy its obligations under Rule 11.21. A new timestamp would be created each time an NBBO Offset Peg Order was automatically adjusted.

Users utilizing the NBBO Offset Peg Order would have control over order origination, as required by the Market Access Rule, while also enabling them to satisfy their order marking and locate obligations prior to order entry, as required by Regulation SHO. Thus, Members would be in a position to comply with the Market Access Rule and Regulation SHO just as they would when placing any other order on the Exchange, while also enabling Members acting as Market Makers using coupled buy and sell NBBO Offset Peg Orders to satisfy their Exchange Market Making obligations.[21]

The Exchange intends to implement the proposed rule change on or about November 19, 2012, and will notify its Members and other market participants in an information circular to be posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [22] and furthers the objectives of Section 6(b)(5) of the Act,[23] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [24] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum Market Maker quotation requirements and Member obligations generally to comply with the requirements of the Market Access Rule and Regulation SHO.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from its Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) [26] 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 Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2012–44 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

Breaker Securities (''Non-Original Circuit Breaker Securities'') with a price equal to or greater than $1, the Defined Limit is 29.5%, and 31.5% for those with a price less than $1. *See* Rule 11.21(d)(2)(G).

[20] The ''Designated Percentage'' is defined in Rule 11.21(d)(2)(D) to mean 8% with respect to Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of a security's listing market, the Designated Percentage is 20% for Original Circuit Breaker Securities. For Non-Original Circuit Breaker Securities with a price equal to or greater than $1, the Designated Percentage is 28%, and 30% for those with a price less than $1. *See* Rule 11.21(d)(2)(E).

[21] In this regard, the NBBO Offset Peg Order would not ensure that the Member was satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–44. 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–EDGX–2012–44 and should be submitted on or before October 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24731 Filed 10–5–12; 8:45 am]

**BILLING CODE 8011–01–P**

[27] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67961; File No. SR–NASDAQ–2012–043]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish the Market Quality Program

October 2, 2012.

On March 23, 2012, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Market Quality Program. On March 29, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on April 12, 2012.[4] The Commission initially received fifteen comment letters on the proposed rule change.[5] On May 18, 2012, pursuant to Section 19(b)(2) of the Act,[6] the Commission extended the time period for Commission action on the proposed rule change to July 11, 2012.[7] The Commission subsequently received three additional comment letters on the proposed rule change and a response letter from the Exchange.[8] On July 11, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[9] The Commission thereafter received six comment letters and two response letters from the Exchange.[10]

Section 19(b)(2) of the Act[11] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on April 12, 2012. October 9, 2012 is 180 days from that date, and December 8, 2012 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been submitted in response to the proposed rule change, including comment letters submitted in response

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASDAQ made a technical amendment to Item I of Exhibit 1 to delete an erroneous reference to the NASDAQ Options Market and replace it with a reference to NASDAQ.

[4] Securities Exchange Act Release No. 66765 (April 6, 2012), 77 FR 22042.

[5] *See* Letter from Frank Choi, dated April 13, 2012; Letter from Christopher J. Csicsko, dated April 14, 2012; Letter from Jeremiah O'Connor III, dated April 14, 2012; Letter from Dezso J. Szalay, dated April 15, 2012; Letter from Kathryn Keita, dated April 18, 2012; Letter; Letter from Anonymous, dated April 18, 2012; Letter from Mark Connell, dated April 19, 2012; Letter from Timothy Quast, Managing Director, Modern Networks IR LLC, dated April 26, 2012; Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated April 26, 2012; Letter from Amber Anand, Associate Professor of Finance, Syracuse University, dated April 29, 2012; Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam, dated May 2, 2012; Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated May 2, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated May 3, 2012; Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012; and Letter from Leonard J. Amoruso, General Counsel, Knight Capital Group, Inc., dated May 4, 2012.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 67022 (May 18, 2012), 77 FR 31050 (May 24, 2012).

[8] *See* Letter from Gary L. Gastineau, Managing Member, ETF Consultants LLC, dated June 11, 2012; Letter from Rey Ramsey, President & CEO, TechNet, dated June 20, 2012; and Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, dated July 3, 2012. *See* Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ, dated July 6, 2012.

[9] *See* Securities Exchange Act Release No. 67411, 77 FR 42052 (July 17, 2012).

[10] *See* Letter from Joseph Cavatoni, Managing Director, and Joanne Medero, Managing Director, BlackRock, Inc., dated July 11, 2012; Letter from Stanislav Dolgopolov, Assistant Adjunct Professor, UCLA School of Law, dated August 15, 2012; Letter from James E. Ross, Global Head, SPDR Exchange Traded Funds, State Street Global Advisors, dated August 16, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated August 16, 2012; Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated August 16, 2012; and Letter from Andrew Stevens, Legal Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated August 16, 2012. *See* Letters from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX LLC, dated August 30, 2012 and Jurij Trypupenko, Esq., NASDAQ, dated September 7, 2012.

[11] 15 U.S.C. 78s(b)(2).

to the Order Instituting Proceedings, and the Exchange's responses to such comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates December 8, 2012 as the date by which the Commission should either approve or disapprove the proposed rule change (File Number SR–NASDAQ–2012–043).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67963; File No. SR–NYSEArca–2012–82]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of FlexShares Ready Access Variable Income Fund Under NYSE Arca Equities Rule 8.600

October 2, 2012.

### I. Introduction

On August 7, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of FlexShares Ready Access Variable Income Fund (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on August 23, 2012.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by FlexShares Trust (''Trust''), a statutory trust organized under the laws of Maryland and registered with the Commission as an open-end management investment company.[4] The investment adviser to the Fund will be Northern Trust Investments, Inc. (''Investment Adviser''). Foreside Fund Services, LLC will serve as the distributor for the Fund (''Distributor''). J.P. Morgan Chase Bank, N.A. will serve as the administrator, custodian, and transfer agent for the Fund (''Transfer Agent'').

The Investment Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. If a sub-adviser that is also affiliated with a broker-dealer is hired for the Fund, such sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Investment Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new manager, adviser, or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.[5]

The Fund will not be an index fund. The Fund will be actively managed and will not seek to replicate the performance of a specified index.

The Fund will seek maximum current income consistent with the preservation of capital and liquidity. The Fund will seek to achieve its investment objective by investing under normal circumstances[6] at least 65% of its total assets in a non-diversified portfolio[7] of fixed income instruments, including bonds, debt securities, and other similar instruments issued by U.S. and non-U.S. public and private sector entities.[8] Such issuers include, without limitation, U.S. and non-U.S. governments and their subdivisions, agencies, instrumentalities, or sponsored enterprises, U.S. state and local governments, international agencies and supranational entities, and U.S. and non-U.S. private-sector entities, such as corporations and banks. The average portfolio duration[9] of the Fund will vary based on The Northern Trust Company Investment Policy Committee's forecast for interest rates and will normally not exceed one year. The dollar-weighted average portfolio maturity of the Fund is normally not expected to exceed two years.

The Fund will invest in debt securities that are, at the time of investment, rated within the top four rating categories by a Nationally Recognized Statistical Rating Organization (''NRSRO'') or of comparable quality as determined by the Investment Adviser.[10] Subsequent to its purchase by the Fund, a rated security may cease to be rated or its rating may be reduced below investment grade or a security may no longer be considered to be investment grade. In such case, the Fund is not required to dispose of the security. The Investment Adviser will determine what action,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67682 (August 17, 2012), 77 FR 51081 (''Notice'').

[4] The Trust is registered under the 1940 Act (''1940 Act''). On June 28, 2012, the Trust filed with the Commission a post-effective amendment to Form N–1A under the Securities Act of 1933 (''1933 Act'') and the 1940 Act relating to the Fund (File Nos. 333–173967 and 811–22555) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30068 (May 22, 2012) (File No. 812–13868) (''Exemptive Order'').

[5] *See* NYSE Arca Equities Rule 8.600, Commentary .06.

[6] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[7] The Fund will be ''non-diversified'' under the 1940 Act and may invest more of its assets in fewer issuers than ''diversified'' funds.

[8] ''Fixed income instruments'' includes, but is not limited to: securities issued or guaranteed by the U.S. Government, its agencies, or government sponsored enterprises; corporate debt securities, including corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; bank capital and trust preferred securities; fixed and variable rate loan participations and assignments; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on fixed income instruments; and reverse repurchase agreements on fixed income instruments.

[9] Duration measures the price sensitivity of a fixed-income security to changes in interest rates. Interest rate changes have a greater effect on the price of fixed-income securities with longer durations.

[10] In determining whether a security is of ''comparable quality,'' the Investment Adviser may consider, for example, whether the issuer of the security has issued other rated securities, whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any), whether and (if applicable) how the security is collateralized, other forms of credit enhancement (if any), the security's maturity date, liquidity features (if any), relevant cash flow(s), valuation features, other structural analysis, macroeconomic analysis, and sector or industry analysis.

including potential sale, is in the best interest of the Fund.

The Fund may invest, without limitation, in fixed income instruments of foreign issuers in developed and emerging markets,[11] including, without limitation, debt securities of emerging-market foreign governments in the following regions: Asia and Pacific, Central and South America, Eastern Europe, Africa, and the Middle East. Within these regions, the Fund may invest in countries such as Brazil, Chile, China, Columbia, Czech Republic, Egypt, Hungary, India, Indonesia, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, and Turkey, although this list may change as market developments occur and may include additional emerging market countries that conform to selected ratings, liquidity, and other criteria. Notwithstanding the foregoing, the Fund will not invest more than 20% of its total assets in fixed income instruments of foreign issuers in emerging markets.[12]

Foreign debt securities include direct investments in non-U.S. dollar-denominated debt securities traded primarily outside of the United States and dollar-denominated debt securities of foreign issuers. The Fund will invest in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at the time of investment.[13] Foreign government obligations may include debt obligations of supranational entities, including international organizations (such as the European Coal and Steel Community and the International Bank for Reconstruction and Development, also known as the World Bank) and international banking institutions and related government agencies. The Fund also may invest in foreign time deposits and other short-term instruments. The Fund may invest a portion of its assets in the obligations of foreign banks and foreign branches of domestic banks.

The Fund may invest, without limitation, in mortgage- or asset-backed securities, other structured securities, including collateralized mortgage obligations (''CMOs''), and also including to-be-announced transactions (or ''TBA Transactions'').[14] A TBA Transaction is a method of trading mortgage-backed securities.[15] However, the Fund will not invest more than 10% of its total assets in non-agency[16] mortgage- or asset-backed securities.

The Fund may invest in variable and floating rate instruments. Variable and floating rate instruments have interest rates that periodically are adjusted either at set intervals or that float at a margin tied to a specified index rate. These instruments include variable amount master demand notes, long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date, and leveraged inverse floating rate instruments (''inverse floaters''). Some variable and floating rate instruments have interest rates that periodically are adjusted as a result of changes in inflation rates.

Because there is no active secondary market for certain variable and floating rate instruments, they may be more difficult to sell if the issuer defaults on its payment obligations or during periods when the Fund is not entitled to exercise its demand rights. In addition, variable and floating rate instruments are subject to changes in value based on changes in market interest rates or changes in the issuer's or guarantor's creditworthiness.

The Fund may borrow money and enter into reverse repurchase agreements in amounts not exceeding one-fourth of the value of its total assets (including the amount borrowed). To the extent consistent with its investment objective and strategies, the Fund may enter into repurchase agreements with financial institutions such as banks and broker-dealers that are deemed to be creditworthy by the Investment Adviser and may invest a portion of its assets in custodial receipts.

*Other Investments*

The Fund may engage in forward foreign currency transactions for hedging purposes in order to protect against uncertainty in the level of future foreign currency exchange rates, to facilitate local settlements, or to protect against currency exposure in connection

[11] While there is no universally accepted definition of what constitutes an ''emerging market,'' in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Investment Adviser will look at a variety of commonly-used factors when determining whether a country is an ''emerging'' market. In general, the Investment Adviser will consider a country to be an emerging market if:

(1) It is either (a) classified by the World Bank in the lower middle or upper middle income designation for one of the past 3 years (*i.e.,* per capita gross national product of less than U.S. $9,385), or (b) classified by the World Bank as high income in each of the last three years, but with a currency that has been primarily traded on a non-delivered basis by offshore investors (*e.g.,* Korea and Taiwan);

(2) The country's debt market is considered relatively accessible by foreign investors in terms of capital flow and settlement considerations; and

(3) The country has issued the equivalent of $5 billion in local currency sovereign debt.

The criteria used to evaluate whether a country is an ''emerging market'' will change from time to time based on economic and other events.

[12] The Fund may invest more than 25% of its total assets in fixed income securities and instruments of issuers in a single developed market country.

[13] The Fund will invest only in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally, a corporate bond must have $200 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 20% of its net assets in corporate bonds with less than $200 million par amount outstanding, including up to 5% of its assets in corporate bonds with less than $100 million par amount outstanding, if (i) the Investment Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of seeking maximum current income consistent with the preservation of capital and liquidity, and (iii) such investment is deemed by the Investment Adviser to be in the best interest of the Fund.

[14] In addition to credit and market risk, asset-backed securities may involve prepayment risk because the underlying assets (loans) may be prepaid at any time. Prepayment (or call) risk is the risk that an issuer will exercise its right to pay principal on an obligation held by the Fund (such as a mortgage-backed security) earlier than expected. This may happen during a period of declining interest rates. Under these circumstances, the Fund may be unable to recoup all of its initial investment and will suffer from having to reinvest in lower yielding securities. The loss of higher yielding securities and the reinvestment at lower interest rates can reduce the Fund's income, total return, and share price. The value of these securities also may change because of actual or perceived changes in the creditworthiness of the originator, the service agent, the financial institution providing the credit support, or the counterparty. Like other fixed-income securities, when interest rates rise, the value of an asset-backed security generally will decline. Credit supports generally apply only to a fraction of a security's value. However, when interest rates decline, the value of an asset-backed security with prepayment features may not increase as much as that of other fixed-income securities. In addition, non-mortgage asset-backed securities involve certain risks not presented by mortgage-backed securities. Primarily, these securities do not have the benefit of the same security interest in the underlying collateral. If the issuer of the security has no security interest in the related collateral, there is the risk that the Fund could lose money if the issuer defaults.

[15] In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to the settlement date.

[16] ''Non-agency'' securities are financial instruments that have been issued by an entity that is not a government-sponsored agency, such as the Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), Federal Home Loan Banks, or the Government National Mortgage Association (''Ginnie Mae'').

with its distributions to shareholders.[17] The Fund, however, does not expect to engage in currency transactions for speculative purposes (*e.g.,* for potential income or capital gain). A forward currency exchange contract is an obligation to exchange one currency for another on a future date at a specified exchange rate.

To the extent consistent with its investment policies, the Fund may hold up to 15% of its net assets in securities that are illiquid (calculated at the time of investment), including Rule 144A Securities and master demand notes. The aggregate value of all of the Fund's illiquid securities, Rule 144A Securities, master demand notes, fixed and variable rate loan participations and assignments, inverse floaters, and long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date shall not exceed 15% of the Fund's total assets. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

The Fund may purchase and sell securities on a when-issued, delayed delivery, or forward commitment basis. The Fund also may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts (such as buy backs or mortgage dollar rolls).

The Fund may temporarily hold cash and cash-like instruments or invest in short-term obligations pending investment or to meet anticipated redemption requests. The Fund also may hold up to 100% of its total assets in cash or cash-like instruments or invest in short-term obligations as a temporary measure mainly designed to limit the Fund's losses in response to adverse market, economic, or other conditions. The Fund may not achieve its investment objective when it holds cash or cash-like instruments, or invests its assets in short-term obligations or otherwise makes temporary investments. The Fund also may miss investment opportunities and have a lower total return during these periods.

The Fund may not purchase or sell physical commodities unless acquired as a result of ownership of securities or other instruments.

The Fund may not concentrate its investments (*i.e.,* invest 25% or more of its total assets in the securities of a particular industry or industry group). For purposes of this limitation, securities of the U.S. government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

The Fund may invest in the securities of other investment companies. Such investments will be limited so that, as determined after a purchase is made, either: (a) not more than 3% of the total outstanding stock of such investment company will be owned by the Fund, the Trust as a whole, and its affiliated persons (as defined in the 1940 Act); or (b)(i) not more than 5% of the value of the total assets of the Fund will be invested in the securities of any one investment company, (ii) not more than 10% of the value of its total assets will be invested in the aggregate securities of investment companies as a group, and (iii) not more than 3% of the outstanding voting stock of any one investment company will be owned by the Fund. These limits will not apply to the investment of uninvested cash balances in shares of registered or unregistered money market funds whether affiliated or unaffiliated. The foregoing exemption, however, only applies to an unregistered money market fund that (i) limits its investments to those in which a money market fund may invest under Rule 2a–7 of the 1940 Act, and (ii) undertakes to comply with all the other provisions of Rule 2a–7.

Investments by the Fund in other investment companies, including exchange-traded funds (''ETFs''),[18] will be subject to the limitations of the 1940 Act except as expressly permitted by Commission orders. The Fund also may invest in other types of U.S. exchange-traded products, such as Exchange-Traded Notes.[19]

The Fund intends to qualify as a regulated investment company under Subchapter M of Subtitle A, Chapter 1, of the Internal Revenue Code.

The Fund will not invest in any non-U.S registered equity securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's benchmark (*i.e.,* the Citigroup 3-Month Treasury Bill Index).

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Investment Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[20] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), will be made available to all market participants at the same time.

[17] Liquid assets equal to the amount of the Fund's assets that could be required to consummate forward contracts will be segregated except to the extent the contracts are otherwise ''covered.'' The segregated assets will be valued at market or fair value. If the market or fair value of such assets declines, additional liquid assets will be segregated daily so that the value of the segregated assets will equal the amount of such commitments by the Fund. A forward contract to sell a foreign currency is ''covered'' if the Fund owns the currency (or securities denominated in the currency) underlying the contract, or holds a forward contract (or call option) permitting the Fund to buy the same currency at a price that is (i) no higher than the Fund's price to sell the currency or (ii) greater than the Fund's price to sell the currency provided the Fund segregates liquid assets in the amount of the difference. A forward contract to buy a foreign currency is ''covered'' if the Fund holds a forward contract (or call option) permitting the Fund to sell the same currency at a price that is (i) as high as or higher than the Fund's price to buy the currency or (ii) lower than the Fund's price to buy the currency provided the Fund segregates liquid assets in the amount of the difference.

[18] For purposes of this proposed rule change, ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3), 8.100, and 8.600.

[19] For purposes of this proposed rule change, Exchange Traded Notes are securities registered under the 1933 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6).

[20] 17 CFR 240.10A–3.

Additional information regarding the Trust, Fund, Shares, Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[21]

## III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[22] and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[24] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[25] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[26] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[27] The NAV of the Fund will normally be determined as of the close of the regular trading session (ordinarily 4:00 p.m., Eastern Time) on the New York Stock Exchange (''NYSE'') on each business day. Further, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, price information for the debt securities, fixed income instruments, and other investments, including forwards and securities of other investment companies, held by the Fund will be available through major market data vendors and/or the securities exchange on which they are listed and traded. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[28] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[29] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[30] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Investment Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio.[31] Moreover, the

[21] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[22] 15 U.S.C. 78f.

[23] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[26] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[27] On a daily basis, the Fund will disclose for each portfolio security and other financial instrument of the Fund the following information on the Trust's Web site: ticker symbol (if applicable), name of securities and financial instruments, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the securities and financial instruments in the portfolio. The Web site information will be publicly available at no charge.

[28] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[29] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[30] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii). The Exchange represents that, consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Investment Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio.

[31] *See supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Investment Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be

Exchange represents that it is able to obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[32] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will invest in debt securities that are, at the time of investment, rated within the top four rating categories by an NRSRO.

(7) The Fund will invest only in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally, a corporate bond must have $200 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment.

(8) The Fund will not invest: (a) More than 20% of its total assets in fixed income instruments of foreign issuers in emerging markets; (b) more than 10% of its total assets in non-agency mortgage- or asset-backed securities; (c) consistent with the Exemptive Order, in options contracts, futures contracts, or swap agreements; and (d) in any non-U.S. registered equity securities.

(9) The aggregate value of all of the Fund's illiquid securities, Rule 144A Securities, master demand notes, fixed and variable rate loan participations and assignments, inverse floaters, and long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date shall not exceed 15% of the Fund's total assets.

(10) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(11) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[33] and the rules and regulations thereunder applicable to a national securities exchange.

consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[32] 17 CFR 240.10A–3.

[33] 15 U.S.C. 78f(b)(5).

## IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NYSEArca–2012–82) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24738 Filed 10–5–12; 8:45 am]

**BILLING CODE 8011–01–P**

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67965; SR–NYSEArca–2012–28]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the JPM XF Physical Copper Trust Pursuant To NYSE Arca Equities Rule 8.201

October 2, 2012.

On April 2, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of JPM XF Physical Copper Trust (''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on April 20, 2012.[3]

The Commission initially received one comment letter, which opposed the proposed rule change.[4] On May 30, 2012, the Commission extended the time period for Commission action to July 19, 2012.[5] On June 19, 2012, NYSE Arca submitted a letter in support of its proposal.[6] On July 13, 2012, V&F submitted a second comment letter

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772.

[4] *See* letter from Vandenberg & Feliu, LLP (''V&F''), received May 9, 2012. All of the comment letters received by the Commission are available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml.*

[5] *See* Securities Exchange Act Release No. 67075, 77 FR 33258 (June 5, 2012).

[6] *See* letter from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated June 19, 2012.

opposing the proposed rule change.[7] On July 16, 2012, United States Senator Carl Levin submitted a comment letter opposing the proposed rule change.[8] Additionally, on July 19, 2012, the Commission received a comment letter from another party opposing the proposed rule change.[9]

The Commission initiated proceedings on July 19, 2012, to determine whether to approve or disapprove the proposed rule change.[10] In the Order Instituting Proceedings, the Commission solicited responses to specified questions.[11] The initial comments for the proceeding were due on August 24, 2012, and the Commission received four comment letters;[12] rebuttal comments were due on September 10, 2012, and the Commission received two comment letters.[13] The Commission received an additional comment letter on September 12, 2012.[14]

Section 19(b)(2) of the Act [15] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on April 20, 2012. The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is October 17, 2012.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in response to the proposed rule change, including comment letters submitted in response to the Order Instituting Proceedings, and the Exchange's responses to such comments. The Commission also finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the data that has been provided by the commenters to support their positions.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[16] designates December 14, 2012, as the date by which the Commission should either approve or disapprove the proposed rule change (SR–NYSEArca–2012–28).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24740 Filed 10–5–12; 8:45 am]

**BILLING CODE 8011–01–P**

[7] *See* letter from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012.

[8] *See* letter from U.S. Senator Carl Levin, to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2012.

[9] *See* web comment from Suzanne H. Shatto.

[10] *See* Securities Exchange Act Release No. 67470, 77 FR 43620 (July 25, 2012) (''Order Instituting Proceedings'').

[11] *See id.* at 43626–28.

[12] *See* letters from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated August 23, 2012; Joe Williamson, Senior Vice President, Strategic Sourcing, Southwire Company; Janet Sander, Vice President, Director of Purchasing, Encore Wire Corporation; Ron Beal, Executive Vice President, Tubes Division, Luvata; and Mark Woehnklar, President, Amrod Corp., to Elizabeth M. Murphy, Secretary, Commission, dated August 23, 2012; Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012; and John G. Crowley, Davis Polk & Wardwell LLP (''DP''), to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012.

[13] *See* letter from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012; and letter from John G. Crowley, DP, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012.

[14] *See* letter from John G. Crowley, DP, to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012.

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67967; File No. SR–BX–2012–062]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Members the Ability To Pay a Regulatory Fine Pursuant to an Installment Plan

October 2, 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 September 24, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change to offer members the ability to pay a regulatory fine pursuant to an installment plan, under certain conditions. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

BX is proposing to amend Rule 8320 governing ''Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay'' to offer members the ability to pay a regulatory fine pursuant to an installment plan, under certain conditions. In order for a member to be eligible to pay a regulatory fine via an installment plan, the fine under the applicable letter of acceptance, waiver, and consent (''AWC'') [3] must be $50,000 or more. A fine of less than $50,000 is not eligible for the installment plan. When submitting its AWC, the member must check the installment plan option on the election of payment form included with the AWC. A sample election of payment form and AWC are included in Exhibit 3 [4] to this proposed rule change. A down payment of twenty-five percent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BX Rule 9216(a).

[4] The Commission notes that Exhibit 3 is an exhibit to the proposed rule change, not to this Notice.

(25%) or more of the total fine must be submitted with the signed AWC.

After receipt of the AWC and down payment, an installment package, including a promissory note and payment schedule, will be mailed to the member. A sample promissory note and payment schedule are included in Exhibit 3 to this proposed rule change. The member must then submit an executed (signed and notarized) promissory note for the unpaid balance of the fine, along with its first installment payment. The term of the installment plan may not exceed four years after the execution of the AWC. The member may elect monthly or quarterly payments.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, BX believes that the proposed rule change is consistent with the provisions of Section 6(b)(6) and 6(b)(7) of the Act,[7] which require an exchange to provide fair procedures for the disciplining of members and persons associated with members. Specifically, BX believes that the proposal will promote the settlement of disciplinary cases by allowing members to make installment payments. BX believes that settlement is a beneficial method of disciplining members because it imposes meaningful sanctions on the member while avoiding the cost and uncertainty of a protracted disciplinary proceeding. BX further believes that affording members with the opportunity to pay a regulatory fine over a period of time may allow BX to impose higher fines in appropriate circumstances and diminish the risk that sanctioned members will fail to pay.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6) and (b)(7).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 [8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that BX may offer members that are contemplating the execution of an AWC the option of entering into an installment arrangement as soon as possible. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will provide members the option of paying large fines in installments. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[12]

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For the purposes of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–062 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–062, and should be submitted on or before October 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24742 Filed 10–5–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67966; File No. SR–Phlx–2012–117]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Members and Member Organizations the Ability To Pay a Regulatory Fine Pursuant to an Installment Plan

October 2, 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 September 26, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change to offer members and member organizations the ability to pay a regulatory fine pursuant to an installment plan, under certain conditions. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx,* [sic] at the Exchange's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Phlx is proposing to amend Rule 52 governing ''Fees, Dues and Other Charges'' to offer members and member organizations the ability to pay a regulatory fine pursuant to an installment plan, under certain conditions. In order for a member or member organization to be eligible to pay a regulatory fine via an installment plan, the fine under the applicable offer of settlement[3] must be $50,000 or more. A fine of less than $50,000 is not eligible for the installment plan. When submitting its offer of settlement, the member or member organization must check the installment plan option on the election of payment form included with the offer of settlement. A sample election of payment form and offer of settlement are included in Exhibit 3[4] to this proposed rule change. A down payment of twenty-five percent (25%) or more of the total fine must be submitted with the signed offer of settlement.

After receipt of the offer of settlement and down payment, an installment package, including a promissory note and payment schedule, will be mailed to the member or member organization. A sample promissory note and payment schedule are included in Exhibit 3 to this proposed rule change. The member or member organization must then submit an executed (signed and notarized) promissory note for the unpaid balance of the fine, along with its first installment payment. The term of the installment plan may not exceed four years after the execution of the offer of settlement. The member or member organization may elect monthly or quarterly payments.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Phlx believes that the proposed rule change is consistent with the provisions of Section 6(b)(6) and 6(b)(7) of the Act,[7] which require an exchange to provide fair procedures for the disciplining of members and persons associated with members. Specifically, Phlx believes that the proposal will promote the settlement of disciplinary cases by allowing members and member organizations to make installment payments. Phlx believes that settlement is a beneficial method of disciplining members and member organizations because it imposes meaningful sanctions on the member while avoiding the cost and uncertainty of a protracted disciplinary proceeding. Phlx further believes that affording members and member organizations with the opportunity to pay a regulatory fine over a period of time may allow Phlx to impose higher fines in appropriate circumstances and diminish the risk that sanctioned members or member organizations will fail to pay.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx Rule 960.7.

[4] The Commission notes that Exhibit 3 is an exhibit to the proposed rule change, not to this Notice.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6) and (b)(7).

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[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that Phlx may offer members that are contemplating the execution of an offer of settlement the option of entering into an installment arrangement as soon as possible. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will provide members the option of paying large fines in installments. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[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.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–117 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–Phlx–2012–117. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–117, and should be submitted on or before October 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24741 Filed 10–5–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For the purposes of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67964; File No. SR–ICC–2012–15]**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Schedule 502 of the ICC Rules for the September 20, 2012 and September 27, 2012 Scheduled Index Series Listings

October 2, 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 September 24, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(i)[4] thereunder, so the rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of proposed rule change is to update Schedule 502 of the ICC Rules in order to be consistent with the scheduled index series listings occurring on September 20, 2012 and September 27, 2012.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i).

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of proposed rule change is to update Schedule 502 of the ICC Rules in order to be consistent with the scheduled index series listings occurring on September 20, 2012 and September 27, 2012. The North American credit default swap indices scheduled to be listed (the ''Scheduled Indices'') are: Investment Grade, Series 19, 5- and 10-year to be listed on September 20, 2012; Emerging Markets, Series 18, 5-year to be listed on September 20, 2012; and High Yield, Series 19, 5-year to be listed on September 27, 2012. The Scheduled Indices update does not require any changes to the body of the ICC Rules. Also, the Scheduled Indices update does not require any changes to the ICC risk management framework. The only change being submitted is the update to the Scheduled Indices in Schedule 502 of the ICC Rules.

ICC believes that the update to the three Scheduled Indices is consistent with the purposes and requirements of Section 17A of the Act [5] and the rules and regulations thereunder applicable to ICC because it will facilitate the prompt and accurate settlement of derivatives agreements.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

**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) [6] of the Act and Rule 19b–4(f)(4)(i) [7] thereunder because by updating the three Scheduled Indices, it effects a change in an existing service of ICC that does not adversely affect the safeguarding of securities or funds in the custody or control of ICC or for which it is responsible, and does not significantly affect the respective rights or obligations of ICC or the persons using it. 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2012–15 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–ICC–2012–15. 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 Section, 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_091212b.pdf.*

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–ICC–2012–15 and should be submitted on or before October 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24739 Filed 10–5–12; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(4)(i).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67962; File No. SR–NYSEArca–2012–37]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Proposing a Pilot Program To Create a Lead Market Maker Issuer Incentive Program for Issuers of Certain Exchange-Traded Products Listed on NYSE Arca, Inc.

October 2, 2012.

On April 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to create and implement, on a pilot basis, a Lead Market Maker (''LMM'') Issuer Incentive Program (''Fixed Incentive Program'') for issuers of certain exchange-traded products (''ETPs'') listed on the Exchange. The proposed rule change was published for comment in the **Federal Register** on May 17, 2012.[3] The Commission initially received two comment letters on the proposal.[4] On June 20, 2012, pursuant to Section 19(b)(2) of the Act,[5] the Commission extended the time

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66966 (May 11, 2012), 77 FR 29419.

[4] *See* Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated June 7, 2012; and Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated June 7, 2012.

[5] 15 U.S.C. 78s(b)(2).

period for Commission action on the proposed rule change to August 15, 2012.[6] The Commission subsequently received one additional comment letter on the NYSE Arca Proposal.[7] On July 11, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8] The Commission thereafter received six comment letters and a response letter from the Exchange.[9]

Section 19(b)(2) of the Act [10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on May 17, 2012. November 13, 2012 is 180 days from that date, and January 12, 2013 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been submitted in response to the proposed rule change, including comment letters submitted in response to the Order Instituting Proceedings, and the Exchange's responses to such comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates January 12, 2013 as the date by which the Commission should either approve or disapprove the proposed rule change (File Number SR–NYSEArca–2012–37).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24734 Filed 10–5–12; 8:45 am]

**BILLING CODE 8011–01–P**

[6] *See* Securities Exchange Act Release No. 67222 (June 20, 2012), 77 FR 38116 (June 26, 2012).

[7] *See* Letter from John T. Hyland, CFA, Chief Investment Officer, United States Commodity Funds LLC, dated June 27, 2012.

[8] *See* Securities Exchange Act Release No. 67411, 77 FR 42052 (July 17, 2012).

[9] *See* Letter from Joseph Cavatoni, Managing Director, and Joanne Medero, Managing Director, BlackRock, Inc., dated July 11, 2012; Letter from Stanislav Dolgopolov, Assistant Adjunct Professor, UCLA School of Law, dated August 15, 2012; Letter from James E. Ross, Global Head, SPDR Exchange Traded Funds, State Street Global Advisors, dated August 16, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated August 16, 2012; Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated August 16, 2012; and Letter from Andrew Stevens, Legal Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated August 16, 2012. *See* Letter from Jane McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, dated August 14, 2012.

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67960; File No. SR–EDGA–2012–44]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to EDGA Rule 11.5 To Add a New Order Type

October 2, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 25, 2012, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.5(c) to add a new order type, the NBBO Offset Peg Order, to the rule. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add a new order type to Exchange Rule 11.5(c), the NBBO Offset Peg Order. While the NBBO Offset Peg Order would be available for all Users,[4] the Exchange believes it would be particularly useful for, and therefore used predominately, if not exclusively, by Members [5] acting as Market Makers [6] in accordance with applicable Exchange Rules.[7]

The NBBO Offset Peg Order would enable Users to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the National Best Bid (the ''NBB'') and National Best Offer (the ''NBO'', and together with the NBB, the ''NBBO''), respectively, while providing them full control over order origination and order marking. This retention of control, in turn, would enable Market Makers to comply independently with the requirements of Regulation SHO [8] under the Securities Exchange Act of 1934 (the ''Act'') and Rule 15c3–5 [9] under the Act (the ''Market Access Rule''), as described in more detail below.[10]

Background

The Market Access Rule requires that any broker-dealer with market access, or that provides a customer or any other person with market access, must establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks of this

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] As defined in Exchange Rule 1.5(ee).

[5] As defined in Exchange Rule 1.5(n).

[6] As defined in Exchange Rule 1.5(l).

[7] *See* Exchange Rules 11.18 (Registration of Market Makers), 11.19 (Obligations of Market Maker Authorized Traders), 11.20 (Registration of Market Makers in a Security) and 11.21 (Obligations of Market Makers).

[8] 17 C.F.R. 242.200 through 242.204.

[9] 17 CFR 242.15c3–5.

[10] The Exchange notes that the NBBO Offset Peg Order represents new functionality for the Exchange, which has not previously offered and does not currently offer any automated quote management (''AQ'') functionality, in contrast to other exchanges, such as The NASDAQ Stock Market LLC (''NASDAQ'') and BATS Exchange, Inc. (''BATS''), whose respective Market Maker Peg Orders replaced their previous AQ functionality.

business activity. These controls include financial risk management controls reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer itself, and to prevent the entry of erroneous orders. In addition, the Market Access Rule requires certain regulatory risk management controls that, among other things, prevent the entry of orders unless compliance with applicable regulatory requirements has been satisfied on a pre-order entry basis, and restrict access to trading systems and technology that provide market access to persons and accounts that have been pre-approved and authorized by the broker-dealer. These regulatory risk management controls also include measures designed to prevent the entry of orders for a broker-dealer, customer or other person if such person is restricted from trading those securities, and to assure that appropriate surveillance personnel receive immediate, post-trade execution reports that result from market access.[11]

In addition to the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking orders to sell as ''long'', ''short'' or ''short exempt'', obtaining a ''locate'' for short sale orders, closing out fail to deliver positions and, where applicable, complying with the short sale price test.[12] While Regulation SHO provides certain exceptions when a market maker is engaged in *bona fide* market making activity,[13] the availability of those exceptions would be distinct and independent from whether a Market Maker submitted an NBBO Offset Peg Order.

NBBO Offset Peg Order

In an effort to simplify Members' compliance with the requirements of the Market Access Rule and Regulation SHO, the Exchange is proposing to adopt a new order type, the NBBO Offset Peg Order, and add it to Rule 11.5(c) as new subparagraph (15). An NBBO Offset Peg Order would be a one-sided limit order[14] and, similar to other pegged orders available to Users, it would be tied or ''pegged'' to a certain price.[15] An NBBO Offset Peg Order would not be eligible for routing pursuant to Rule 11.9(b)(2) and would always be displayed on the Exchange. It is expected that Members would perform the necessary checks to comply with applicable regulatory requirements, including the Market Access Rule and Regulation SHO, as discussed above, prior to the entry of an NBBO Offset Peg Order.

As noted above, while use of the NBBO Offset Peg Order would not be limited to Market Makers, the Exchange believes that Market Makers would likely be the predominant, if not exclusive, users of the order type. Thus, the NBBO Offset Peg Order is designed such that its price would be automatically set and adjusted, both upon entry and at any time thereafter, in order to comply with the Exchange's Market Maker quotation requirements.[16] Users may submit NBBO Offset Peg Orders to the Exchange starting at the beginning of the Pre-Opening Session,[17] but the order is not executable or automatically priced until the beginning of Regular Trading Hours[18] and expires at the end of Regular Trading Hours.

Specifically, upon entry and at any time the price of the order reached the ''Defined Limit'',[19] or moved a specified number of percentage points away from the ''Designated Percentage''[20] toward the then current NBB (for NBBO Offset Peg Orders to buy) or NBO (for NBBO Offset Peg Orders to sell), the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as the case may be. In the event that there was no NBB or NBO, the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless the User instructed the Exchange upon entry to cancel or reject the order under such circumstances. In the absence of an NBB or NBO and last reported sale, the order would be cancelled or rejected. Adjustment to the Designated Percentage would be designed to avoid an execution against an NBBO Offset Peg Order that would initiate an individual stock trading pause.

In the event that pricing an NBBO Offset Peg Order at the Designated Percentage away from the then current NBB or NBO, or, if no NBB or NBO, to the Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order would be cancelled or rejected.

In the event of an execution against an NBBO Offset Peg Order that reduced the

[11] *See supra* note 9.

[12] 17 CFR 242.200 through 242.204.

[13] *See* 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO's ''locate'' requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in *bona fide* market making in the security at the time they effect the short sale are excepted from the ''locate'' requirement. *See also* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute *bona fide* market making for purposes of claiming the exception to Regulation SHO's ''locate'' requirement). *See also* Securities Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698–9 (October 17, 2008) (providing guidance regarding what is *bona fide* market making for purposes of complying with the market maker exception to Regulation SHO's ''locate'' requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, Market Makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 11.5(c)(15) for eligibility for the *bona fide* market making exception to the ''locate'' requirement based on the criteria set forth by the Commission. It should also be noted that a determination of *bona fide* market making is relevant for purposes of a broker-dealer's close-out obligations under Rule 204 of Regulation SHO. *See also* 17 CFR 242.204(a)(3).

[14] The NBBO Offset Peg Order would be a one-sided order. Therefore, a Member acting as a Market Maker seeking to use the NBBO Offset Peg Order to comply with the Exchange's Market Maker quotation requirements would need to submit and maintain continuously both a bid and an offer using the order type.

[15] Rule 11.5(c)(6) defines ''Pegged Order''.

[16] Exchange Rule 11.21 describes the obligations of Members registered with the Exchange as Market Makers. Among other things, Market Makers are required to maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) of Rule 11.21, which generally states that such quotations must be priced within a designated percentage of the NBB for buy quotations, and the NBO for sell quotations.

[17] Rule 1.5(s) defines ''Pre-Opening Session''.

[18] Rule 1.5(y) defines ''Regular Trading Hours''.

[19] The ''Defined Limit'' is defined in Rule 11.21(d)(2)(F) to mean 9.5% for securities included in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock pause trigger under the applicable rules of a listing market (the ''Original Circuit Breaker Securities''). For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of a security's listing market, the Defined Limit is 21.5% for Original Circuit Breaker Securities. For all NMS securities that are not Original Circuit Breaker Securities (''Non-Original Circuit Breaker Securities'') with a price equal to or greater than $1, the Defined Limit is 29.5%, and 31.5% for those with a price less than $1. *See* Rule 11.21(d)(2)(G).

[20] The ''Designated Percentage'' is defined in Rule 11.21(d)(2)(D) to mean 8% with respect to Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of a security's listing market, the Designated Percentage is 20% for Original Circuit Breaker Securities. For Non-Original Circuit Breaker Securities with a price equal to or greater than $1, the Designated Percentage is 28%, and 30% for those with a price less than $1. *See* Rule 11.21(d)(2)(E).

size of the order below one round lot, a Member acting as a Market Maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy its obligations under Rule 11.21. A new timestamp would be created each time an NBBO Offset Peg Order was automatically adjusted.

Users utilizing the NBBO Offset Peg Order would have control over order origination, as required by the Market Access Rule, while also enabling them to satisfy their order marking and locate obligations prior to order entry, as required by Regulation SHO. Thus, Members would be in a position to comply with the Market Access Rule and Regulation SHO just as they would when placing any other order on the Exchange, while also enabling Members acting as Market Makers using coupled buy and sell NBBO Offset Peg Orders to satisfy their Exchange Market Making obligations.[21]

The Exchange intends to implement the proposed rule change on or about November 19, 2012, and will notify its Members and other market participants in an information circular to be posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[22] and furthers the objectives of Section 6(b)(5) of the Act,[23] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[24] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum Market Maker quotation requirements and Member obligations generally to comply with the requirements of the Market Access Rule and Regulation SHO.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from its Members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act)[25] and Rule 19b–4(f)(6)[26] 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 Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–44 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–EDGA–2012–44. 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–EDGA–2012–44 and should be submitted on or before October 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–24732 Filed 10–5–12; 8:45 am]

**BILLING CODE 8011–01–P**

[21] In this regard, the NBBO Offset Peg Order would not ensure that the Member was satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13241 and #13242]**

### Oklahoma Disaster Number OK–00063

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4078–DR), dated 08/22/2012.

*Incident:* Freedom and Noble Wildfires.

*Incident Period:* 08/03/2012 and continuing through 08/14/2012.

*Effective Date:* 09/27/2012.

*Physical Loan Application Deadline Date:* 10/22/2012.

*EIDL Loan Application Deadline Date:* 05/22/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Oklahoma, dated 08/22/2012 is hereby amended to expand the incident for this disaster to include the Noble Wildfire.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2012–24726 Filed 10–5–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13241 and #13242]**

### Oklahoma Disaster Number OK–00063

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4078–DR), dated 08/22/2012.

*Incident:* Freedom and Noble Wildfires.

*Incident Period:* 08/03/2012 through 08/14/2012.

*Effective Date:* 09/27/2012.

*Physical Loan Application Deadline Date:* 10/22/2012.

*EIDL Loan Application Deadline Date:* 05/22/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Oklahoma, dated 08/22/2012 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:* (Physical Damage and Economic Injury Loans): Cleveland.

*Contiguous Counties:* (Economic Injury Loans Only):

Oklahoma: Canadian, Mcclain, Oklahoma, Pottawatomie.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2012–24724 Filed 10–5–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13319 and #13320]**

### Washington Disaster #WA–00037

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4083–DR), dated 09/25/2012.

*Incident:* Severe Storm, Straight-line Winds, and Flooding.

*Incident Period:* 07/20/2012.

*Effective Date:* 09/25/2012.

*Physical Loan Application Deadline Date:* 11/26/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/25/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 09/25/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Ferry, Okanogan, And the Confederated Tribes of the Coleville Reservation.

*The Interest Rates are:*

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 3.125 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 13319B and for economic injury is 13320B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2012–24727 Filed 10–5–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### National Women's Business Council

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal advisory committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the National Women's Business Council (NWBC). The meeting will be open to the public.

**DATES:** The meeting will be held on October 19, 2012 from approximately 9 a.m. to 12 p.m. EST.

**ADDRESSES:** The meeting will be held at the Indianapolis Motor Speedway, 4790 West 16th Street, Indianapolis, IN 46222.

**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 National Women's Business Council. The National Women's Business Council is tasked with providing policy recommendations on issues of importance to women business owners to the President, Congress, and the SBA Administrator.

The purpose of the meeting is to provide updates on the NWBC's 2012 research agenda and action items for fiscal year 2013 included but not limited to procurement, access to capital, access to markets, veteran, young and high-growth women entrepreneurs. The topics to be discussed will include 2012 projects and 2013 goals and research.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public, however, advance notice of attendance is requested. Anyone wishing to attend or make a presentation to the NWBC must either email their interest to *info@nwbc.gov* or call the main office number at 202–205–3850.

Those needing special accommodation in order to attend or participate in the meeting, please contact 202–205–3850 no later than October 12, 2012.

For more information, please visit our Web site at *www.nwbc.gov*.

**Dan S. Jones,**

*Small Business Administration Committee Management Officer.*

[FR Doc. 2012–24725 Filed 10–5–12; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

## Privacy Act of 1974: Revision of Privacy Act System of Records

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Notice of Revision of Privacy Act Systems of Records.

**SUMMARY:** SBA is updating the Privacy Act Systems of Records for (i) the Loan System, SBA 21 (''SOR 21'') and (ii) the Suspension and Debarment Files, SBA 36 (''SOR 36'') to incorporate a comment received in response to the March 16, 2012 notice published in the **Federal Register**, and is updating both SORs to provide for a successor system to GSA's Excluded Parties List System referenced in the SORs. SBA is also revising the Privacy Act System for SOR 21 to add two new routine uses. This notice is in accordance with the Privacy Act requirement that agencies publish their amended Systems of Records in the **Federal Register** when there is a revision, change or addition to the systems.

**DATES:** Written comments on the revisions to the SBA's SOR 21 and SOR 36 Systems of Records are due November 8, 2012. The changes to these Systems of Records are effective without further notice on November 23, 2012 unless comments are received that result in further revision. Based on SBA's review of comments received, if any, SBA will publish a notice if it determines to make changes to the system notices.

**ADDRESSES:** Written comments on the revisions to the SBA's SOR 21 and SOR 36 Systems of Records should be directed to Ingrid Ripley, Program Analyst, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416. When submitting comments please identify whether comments are related to SOR 21 or SOR 36.

**FOR FURTHER INFORMATION CONTACT:** Ingrid Ripley, Program Analyst, (202) 205–7538.

**SUPPLEMENTARY INFORMATION:** SBA is amending its Privacy Act System of Records, notice of which was previously published at 74 FR 14890 (April 1, 2009) and 77 FR 15835–01 (March 16, 2012), to update System 21 (Loan System) and System 36 (Suspension and Debarment Files) to incorporate a comment received from the public, to update a GSA system referenced within the notice, and to add two new routine uses to SOR 21.

### System 21—Loan System

SBA is updating the routine use provisions of its Privacy Act Systems of Records, Loan System, SBA 21 (''SOR 21'') to incorporate a comment received in response to the March 16, 2012 notice published in the **Federal Register**. In the March notice SBA added paragraphs ''l,'' ''m,'' and ''n'' to include Loan Agent review processes and additional regulatory processes, among other changes. SBA received one public comment regarding paragraph ''m'' and is revising SOR 21 to incorporate that comment. Specifically, SBA will revise paragraph ''m'' to provide that SBA may publish Loan Agent suspensions, revocations and exclusions under 13 CFR Part 103 not only in the Excluded Parties List System (''EPLS''), but also on SBA's Web site. In addition, SBA is updating paragraph ''m'' to refer to a ''successor system'' to the EPLS.

SBA is also revising SOR 21 to add a new routine use paragraph ''o'' to provide for the transfer of delinquent debt information for publication in a government-wide computer information system(s). SBA and its authorized lending institutions would be able to search this system to prescreen applicants for loans or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or guaranteed by the Government. This information will allow participating Federal agencies and approved private lenders acting on the Government's behalf to better monitor their credit programs and to reduce the credit extended to individuals with outstanding delinquencies on debts owed to SBA and other Federal agencies.

Finally, SBA is revising SOR 21 to add a new routine use paragraph ''p'' to allow transfer of loan information to Federal or state agencies for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, federally funded program. Government agencies, including but not limited to SBA, would be able to search this system. This transfer of information is authorized pursuant to the Improper Payments Elimination and Recovery Act of 2010, Executive Order 13520, and Executive Memorandum dated June 18, 2010, which required agencies to review existing databases known collectively as the ''Do Not Pay List'' before the release of any Federal funds. The purpose of the ''Do Not Pay List'' is to help prevent, reduce and stop improper payments from being made, and to identify and mitigate, fraud, waste and abuse.

### SBA System 36—Suspension and Debarment Files

SBA is updating the System of Records for Suspension and Debarment Files, SBA 36, (''SOR 36''), to incorporate a comment received in response to the March 16, 2012 notice published in the **Federal Register**. In the March notice, SBA added paragraph ''o'' to provide for publication of enforcement actions and exclusions in the GSA EPLS. SBA received a public comment regarding paragraph ''o'' and is revising SOR 36 to incorporate that comment. Specifically, the update to paragraph ''o'' in SOR 36 will allow SBA to publish suspension, debarments, other enforcement actions, and exclusions by SBA not only in the EPLS but also on SBA's Web site. In addition, SBA is updating paragraph ''o'' to refer to a ''successor system'' to the EPLS.

**SYSTEM NAME:**

Loan System—SBA 21

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in the records may be used, disclosed, or referred:

''m—To GSA and the public for publication of Loan Agent suspensions, revocations and exclusions under 13 CFR Part 103 in the Excluded Parties List System (or successor system) and on the SBA Web site consistent with Executive Order 12549 and other applicable law.''

''o—To the Department of Housing and Urban Development or other Federal agency for publication of delinquent debt information of persons delinquent in paying a debt owed to or guaranteed by the SBA on a system to allow searches by participating Government agencies and approved private lenders, consistent with applicable law.''

''p—to (a) a Federal or state agency, its employees, agents (including contractors of its agents), approved private lenders acting on the Government's behalf, or contractors, or (b) a fiscal or financial agent designated by the Department of the Treasury, including employees, agents or contractors of such agent, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, Federally funded program.''

**SYSTEM NAME:**

—Suspension and Debarment Files—SBA 36

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in the records may be used, disclosed or referred:

''o. To GSA and the public for publication of suspensions, debarments, other enforcement actions, and exclusions by SBA in the Excluded Parties List System (or successor system) and on the SBA Web site pursuant to Executive Order 12549 and other applicable law.''

Dated: September 27, 2012.

**Gene Stewman,**

*Acting Director, Office Financial Assistance.*

[FR Doc. 2012–24728 Filed 10–5–12; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 8057]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Balthus: Cats and Girls''

**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 ''Balthus: Cats and Girls,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about September 23, 2013, until on or about January 13, 2014, 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 Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 1, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–24783 Filed 10–5–12; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 8056]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Matisse: In Search of True Painting''

**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 ''Matisse: In Search of True Painting,'' 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 Metropolitan Museum of Art, New York, New York, from on or about December 4, 2012, until on or about March 17, 2013, 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 Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 2, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–24785 Filed 10–5–12; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Delegation of Authority No. 345]**

### Delegation by the Chief Financial Officer to the Comptroller of Certain Authorities Under the CFO Act

By virtue of the authority vested in me by the Chief Financial Officer Act, 31 U.S.C. 901 et seq., and by the designation from the President, dated June 12, 2012, and to the extent authorized by law, I hereby delegate to the Comptroller the functions and authorities provided for in 31 U.S.C. 902(a)(2), (3), (5) and (6), with the access and authorities provided for in 31 U.S.C. 902(b).

Any reference in the CFO Act to ''head of the agency'' shall be interpreted, in the context of this delegation of authority only, as a reference to the Chief Financial Officer. Any act, executive order, regulation or

procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Chief Financial Officer may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall terminate upon the appointment and entry upon duty of a subsequently-appointed Chief Financial Officer.

This document shall be published in the **Federal Register**.

Dated: September 28, 2012.

**Patrick F. Kennedy,**

*Chief Financial Officer.*

[FR Doc. 2012–24781 Filed 10–5–12; 8:45 am]

BILLING CODE 4710–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2012–39]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before October 29, 2012.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2012–0604 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Frances Shaver, (202) 267–4059, Office of Rulemaking, ARM–207, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, or Katie Haley, (202) 493–5708, Office of Rulemaking, ARM–204, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 1, 2012.

**Lirio Liu,**

*Acting Director, Office of Rulemaking.*

### Petition For Exemption

*Docket No.:* FAA–2012–0604.

*Petitioner:* Cessna Aircraft Company.

*Section of 14 CFR Affected:* §§ 91.409(a) and (b).

*Description of Relief Sought:* The petitioner seeks relief to allow the published Inspection Document Program to be accepted as an inspection program recommended by the manufacturer. The relief would enable operators to select a manufacturer recommended program that is tasked based on and integrated into the Cessna Model 208/208B published instructions for continued airworthiness.

[FR Doc. 2012–24804 Filed 10–5–12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2012–38]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before October 29, 2012.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2012–0113 using any of the following methods:

- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to

*http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tyneka Thomas ARM–105, (202) 267–7626, FAA, Office of Rulemaking, 800 Independence Ave SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 28, 2012.

**Lirio Liu,**

*Acting Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2012–0113.

*Petitioner:* Southwest Airlines Company.

*Section of 14 CFR Affected*: 14 CFR 121.139.

*Description of Relief Sought*: The relief sought would allow Southwest to operate its aircraft without carrying the appropriate parts of the maintenance manual aboard the airplane when its away from its principle base of operations.

[FR Doc. 2012–24787 Filed 10–5–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2012–0081]**

### Agency Information Collection Activities: Request for Comments for a New Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on June 22, 2012. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by November 8, 2012.

**ADDRESSES:** You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2012–0081.

**FOR FURTHER INFORMATION CONTACT:** Chris Allen, 202–366–4104, Office of Highway Policy Information, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, between 6:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** *Title:* Federal Highway Administration (FHWA) State Reports for American Recovery and Reinvestment Act (Recovery Act)

*Background:* The American Recovery and Reinvestment Act of 2009 (Recovery Act), provides the State Departments of Transportation and Federal Lands Agencies with $27.5 billion for highway infrastructure investment. With these funds also comes an increased level of data reporting with the stated goal of improving transparency and accountability at all levels of government. According to President Obama ''Every American will be able to hold Washington accountable for these decisions by going online to see how and where their tax dollars are being spent.'' The Federal Highway Administration (FHWA) in concert with the Office of the Secretary of Transportation (OST) and the other modes within the U.S. Department of Transportation (DOT) will be taking the appropriate steps to ensure that accountability and transparency are provided for all infrastructure investments.

The reporting requirements of the Recovery Act are covered in Sections 1201 and 1512. Section 1201 (c)(1) stipulates that ''notwithstanding any other provision of law each grant recipient shall submit to the covered agency (FHWA) from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency (FHWA) and transmitted to Congress. Covered agencies (FHWA) may develop such reports on behalf of grant recipients (States) to ensure the accuracy and consistency of such reports.''

Section 1512 of the Recovery Act requires ''any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual,'' including States, to provide regular ''Recipient Reports.''

As the recipients or grantees for the majority of the Recovery Act funds, States and Federal Land Management Agencies (FLMA) are by statute responsible for reporting to FHWA on the projects, use of Recovery Act funds, and jobs supported. States and FLMA that receive recovery fund apportionments directly from the Federal government are responsible for reporting to FHWA, and are also responsible for reporting quarterly to the *federalreporting.gov* Web site. To achieve a high-quality, consistent basis for reporting and project oversight, FHWA has designed the Recovery Act Database System (RADS) for obtaining and summarizing data including reports to congress, project oversight, and other purposes.

States and FLMA will be responsible for providing the data that are not currently available at the national level. Not every data element required to be reported by the Recovery Act needs to be specifically collected. To the maximum extent possible, FHWA will utilize existing data programs to meet the Recovery Act reporting requirements. For example, for the requirement to report aggregate expenditures of State funds, FHWA will use existing reports submitted by States and data collected in the Financial Management Information System (FMIS). While the reporting obligations in the Recovery Act are only applicable to the grant recipients, the States and FLMA may need to obtain certain information from their contractors, consultants, and other funding recipients in order to provide the FHWA with all of the required information.

Additional information on the American Recovery and Reinvestment Act of 2009 is available at *http://www.fhwa.dot.gov/economicrecovery/index.htm.*

*Respondents* In a reporting cycle, it is estimated that reports will be received from approximately 70 grant recipients. Respondents include: 50 State Departments of Transportation, the District of Columbia and Puerto Rico, the U.S. territories, the following Federal Land Management Agencies: National Park Service, U.S. Fish and Wildlife, National Forest Service and the Bureau of Indian Affairs, and several

Native American Indian Governments who, by contract, manage their own transportation program. These reports will be submitted through the RADS and reviewed for accuracy by the FHWA Division Offices.

*Estimated Average Burden per Response:* 5 hours

*Estimated Total Annual Burden Hours:* Total estimated average annual burden is 4000 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of computer technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: October 1, 2012.

**Steven Smith,**

*Chief, Information Technology Division.*

[FR Doc. 2012–24801 Filed 10–5–12; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Travis County, TX

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** Pursuant to 40 CFR 1508.22 and 43 TAC § 2.5(e)(2), the FHWA, Texas Department of Transportation (TxDOT), and Central Texas Regional Mobility Authority (Mobility Authority) are issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a transportation project in Travis County, Texas. The proposed project would improve US 290 from State Loop 1 (SL1 [Mopac]) to Ranch-to-Market Road (RM) 1826, in Travis County, Texas, a distance of approximately 3.6 miles. The EIS will also include improvements to SH 71 from Silvermine Drive to US 290 in Travis County, a distance of approximately 1.2 miles.

**FOR FURTHER INFORMATION CONTACT:** Mr. Salvador Deocampo, District Engineer, District A, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas, 78701. Phone: 512–536–5950.

**DATES:** Public Scoping meetings will be held in fall 2012 and winter 2013 to receive oral and written comments on environmental concerns that should be addressed in the EIS. The public scoping meetings will be held at dates, times and locations to be published in general circulation newspapers in the project area. Comments concerning the scope of the analysis should be received in writing within 30 days following the date of the last scoping meeting to receive full consideration in the development of alternatives.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with TxDOT and the Mobility Authority will prepare an EIS for the proposed improvement of US 290 from State Loop 1 (SL1 [Mopac]) to Ranch-to-Market Road (RM) 1826, in Travis County, Texas, a distance of approximately 3.6 miles. The EIS will also include improvements to SH 71 from Silvermine Drive to US 290 in Travis County, a distance of approximately 1.2 miles. Proposed improvements were originally considered in a Final Environmental Impact Statement (FEIS) covering improvements to SH 71/US 290 from RM 1826 to Farm-to-Market (FM) 973. A Record of Decision (ROD) was issued by FHWA on August 22, 1988. The mid-section of the original project limits, between Joe Tanner Lane and Riverside Drive, has been constructed. Since the issuance of the ROD, changes in adjacent land use, State and Federal listing of the Barton Springs salamander as endangered, changes in funding mechanisms, and public input have resulted in changes in the proposed design concept. A new EIS will be completed to evaluate potential impacts from the proposed improvements. The proposed project limits of the US 290 EIS would extend beyond the limits of the original FEIS to allow for a logical terminus and transition back to existing US 290 at Circle Drive and along SH 71 at Silvermine Drive.

The project is listed in the Capital Area Metropolitan Planning Organization (CAMPO) 2035 Regional Transportation Plan, as amended, as a six-lane tolled freeway from Circle Drive to Joe Tanner Lane and as tolled connector bridges from SH 71 to US 290 W. The proposed action is also included in the CAMPO's fiscal year 2011–2014 Transportation Improvement Program (TIP) as an added capacity, tolled facility and tolled connector bridges from SH 71. The need for the proposed project stems from corridor congestion causing unreliable traffic operations within the US 290/SH 71 corridor. TxDOT and the Mobility Authority have identified the following issues that the project would address: safety concerns along the corridor, roadway congestion which has been caused by steady population growth in the Austin metropolitan area, system mobility and connectivity, time delay and level of service (LOS; currently at LOS F—unacceptable congestion) within the corridor, and reliable routes for transit and emergency vehicles within the corridor.

In order to address the identified needs and objectives, the purpose of the proposed project is to improve mobility and operational efficiency, facilitate long-term congestion management in the corridor by accommodating the movement of people and goods for multiple modes of travel, and improve safety and emergency response within the corridor. A reasonable number of alignment alternatives will be identified and evaluated in the EIS, as well as the No-build Alternative, based on input from federal, state, and local agencies, as well as private organizations and concerned citizens. Alternative designs and funding alternatives will include tolling options or new managed lanes. In addition, environmental stewardship and sustainability strategies will be developed to address those problems which are not transportation related and may include improved service quality and quality of access to goods and services, safety, improved air quality, noise reduction, improved water quality, protection of habitat and open space, historic preservation, reduced carbon emissions, increased social equity, economic development, and a satisfying quality of life, plus local goals consistent with the overall project purpose and need.

Impacts caused by the construction and operation of the proposed improvements would vary depending on the selection of a build alternative. The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: impacts to residences and businesses, including potential relocation; impacts to parkland; transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction equipment and operation of the roadway; social and economic impacts, including impacts to minority and low-income residences; impacts to historic cultural resources; endangered and threatened species and impacts to

waters of the U.S. including wetlands from right-of-way encroachment; and potential indirect and cumulative impacts.

Public involvement is a critical component of the project development process and will occur throughout the planning and study phases. Opportunities for public involvement would exist during the scoping process, public meetings and a public hearing. A Public and Agency Coordination Plan will be provided in accordance with 23 U.S. Code Section 139 (23 U.S.C. 139), to facilitate and document the lead agencies, structure interaction with the public and other agencies, and to inform the public and other agencies of how the coordination will be accomplished. The Public and Agency Coordination Plan will promote early and continuous involvement from stakeholders, agencies, and the public as well as describe the proposed project, the roles of the agencies and the public, the project purpose and need, schedule, level of detail for alternatives analysis, and the proposed process for coordination and communication.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 1, 2012.

**Salvador Deocampo,**

*District Engineer.*

[FR Doc. 2012–24722 Filed 10–5–12; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2012–0006–N–14]**

### Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on August 6, 2012, volume 77, page number 151.

**DATES:** Comments must be submitted on or before November 8, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet Wylie, Office of Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.).

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On August 6, 2012, FRA published a 60-day notice in the **Federal Register** soliciting comments on ICR that the agency was seeking OMB approval. 77 FR 46800. FRA received one comment after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, August 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, August 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Solicitation of Applications and Notice of Funds Availability for High-Speed Rail Corridors and Intercity Passenger Rail Service-Capital Assistance and Planning Grants Program.

*OMB Control Number:* 2130–0584.

*Type of Request:* Revision of a currently approved collection.

*Affected Public:* States and local governments, government sponsored authorities and corporations, railroads.

*Abstract:* After 60 years and more than 1.8 trillion investment dollars, the United States has developed the world's most advanced highway and aviation systems. During this time, the nation has made a relatively modest investment in passenger rail systems. As congestion on highways and in the air continues to grow and environmental costs mount, there is a growing need for diverse transportation options.

In 2009, President Obama announced a new vision to address the nation's transportation challenges. He called for a collaborative effort among the Federal government, States, railroads, and other stakeholders to help transform America's transportation system. The President's vision seeks to create an efficient high-speed passenger rail system to connect inner-city communities across America.

Developing a comprehensive high-speed intercity passenger rail network requires a long-term commitment at both the Federal and State levels. The President has jump-started the process with $2 billion provided by the Department of Transportation (DOT) Appropriations Act of 2010 (FY10 Appropriations), $8 billion provided by the American Recovery and Reinvestment Act (ARRA), $90 million provided by the DOT Appropriations Act of 2009 (FY09 Appropriations), and approximately $1.8 million remaining funds from the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008 (FY08 Appropriations). Additional or

future funding for high-speed intercity passenger rail may come from a variety of sources, including annual appropriations, one-time appropriations, redistribution of previously allocated or obligated funds, or distribution of residual funding from previous sources.

The Federal Railroad Administration (FRA) allocates funds to applicants with plans or programs that align with the President's key strategic transportation goals: creating safe and efficient transportation choices, building a foundation for economic competitiveness, promoting energy efficiency and environmental quality, and supporting interconnected livable communities. Grants are being administered for the following types of projects:

• Service Development Programs—Aimed at new high-speed rail corridor services or substantial upgrades to existing corridor services. Grants are intended to fund a set of inter-related projects that constitute a phase (or geographic section) of a long-range corridor plan.

• Individual Projects—Aimed at discrete capital projects that will result in service benefits or other tangible improvements on a corridor. These projects include completion of preliminary engineering (PE), National Environmental Policy Act (NEPA) documentation, final design (FD), and construction, which can include equipment procurements to provide improved service and modernized fleets throughout the country.

• Planning Projects—Aimed at helping to establish a pipeline of future construction projects and corridor development programs by completing Service Development Plans and service-level environmental analysis for corridors that are at an earlier stage of the development process, as well as State Rail Plans.

As the President outlined in his March 20, 2009 memorandum, ''Ensuring Responsible Spending of Recovery Act Funds,'' implementing agencies are to ''develop transparent, merit-based selection criteria that will guide their available discretion in committing, obligating, or expending funds under the Recovery Act.'' In order to achieve this goal, FRA created an application process that contains clear selection criteria and evaluation procedures.

**The Application Process**

In essence, the application process is grounded on three key principles: (1) Promoting collaboration and shared responsibility among the Federal Government and States, groups of States within corridor regions, and governments, railroads and other private entities; (2) managing, rather than eliminating, risk through program management structure, controls and procedures that permit prudent but effective investments; and (3) ensuring early success while building a sustainable program to meet near-term economic recovery goals while developing public consensus for a long-term program. FRA has issued interim program guidance as well as detailed instructions to clearly explain the application process.

The applications include the standard items, such as the SF 424, all ARRA-relevant forms, and other necessary and relevant technical documents that are project-specific and voluntary.

In order to determine eligibility for funds, FRA must solicit applications and collect information from parties interested in obtaining and utilizing these funds for eligible projects.

Following allocation of funds to applicants, FRA must collect information from recipients in the form of various required reports in order to effectively monitor and track the progress of all funded projects. This process consists of:

- Tracking project activities and progress against the approved milestones in the Statement of Work through quarterly submission of the FRA Quarterly Progress Report
- Comparing the rate of a project's actual expenditures to the planned amounts in the approved project budget through the quarterly submission of the Federal Financial Report (SF–425)
- Tracking cumulative funds and job creation through the quarterly submission of the ARRA 1512(c) Report for ARRA recipients
- Capturing the cumulative activities and achievements of the project, with respect to objectives and milestones, through the one-time submission of the Final Performance Report

This collection of information is necessary in order to comply with the funding agreements outlined in the Notice of Grant Agreement and, for ARRA recipients, satisfy legal obligations identified in Section 1501(c).

*Form Number(s):* FRA F 6180.132, FRA F 6180.133, FRA F 6180.134, FRA F 6180.135, FRA F 6180.138, FRA F 6180.139, SF–425.

*Annual Estimated Burden Hours:* 20,384.

*Addressee:* Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: FRA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov*

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 1, 2012.

**Michael Logue,**

*Associate Administrator for Administration, Federal Railroad Administration.*

[FR Doc. 2012–24613 Filed 10–5–12; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by

the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

**DATES:** Written comments should be received on or before December 10, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Elaine.H.Christophe@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

*OMB Number:* 1545–1432.

*Abstract:* This form is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction, as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

*Current Actions:* We will be conducting different customer satisfaction and opinion surveys and focus group interviews during the next three years than in the past. At the present time, is not determined what these surveys and focus groups will be.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 250,000.

*Estimated Time per Respondent:* 12 minutes.

*Estimated Total Annual Burden Hours:* 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 25, 2012.

**Elaine Christophe,**

*Tax Analyst.*

[FR Doc. 2012–24750 Filed 10–5–12; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Information Collection; Comment Request

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before December 10, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

*We invite comments on:* (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including 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 the requested information.

**Information Collections Open for Comment**

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

*Title:* Real Estate Mortgage Investment Conduits.

*OMB Number:* 1545–1276.

*Regulation Project Number:* FI–88–86 (TD 8458).

*Abstract:* Internal Revenue Code section 860E(e) imposes an excise tax on the transfer of a residual interest in a real estate mortgage investment conduit (REMIC) to a disqualified party. The amount of the tax is based on the present value of the remaining anticipated excess inclusions. This regulation requires the REMIC to furnish, on request of the party responsible for the tax, information sufficient to compute the present value of the anticipated excess inclusions. The regulation also provides that the tax will not be imposed if the record holder furnishes to the pass-thru or transferor an affidavit stating that the record holder is not a disqualified party.

*Current Actions:* There are no changes being made to these regulations.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,600.

*Estimated Time per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 525.

*Title:* Update of Checklist Questionnaire Regarding Requests for Spin-Off Rulings.

*OMB Number:* 1545–1846.

*Revenue Procedure Number:* Revenue Procedure 2003–48.

*Abstract:* Revenue Procedure 2003–48 updates Revenue Procedure 96–30, which sets forth in a checklist questionnaire the information that must be included in a request for ruling under section 355. This revenue procedure updates information that taxpayers must provide in order to receive letter rulings under section 355. This information is required to determine whether a taxpayer would qualify for non-recognition treatment.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 180.

*Estimated Time per Respondent:* 200 hours.

*Estimated Total Annual Burden Hours:* 36,000.

*Title:* Revocation of Election filed under I.R.C. 83(b).

*OMB Number:* 1545–2018.

*Form Number:* Rev. Proc. 2006–31.

*Abstract:* This revenue procedure sets forth the procedures to be followed by individuals who wish to request permission to revoke the election they made under section 83(b).

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and Households, Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 400.

*Title:* Application for Group or Pooled Trust Ruling.

*OMB Number:* 1545–2166.

*Form Number:* Form 5316.

*Abstract:* Group/pooled trust sponsors file this form to request a determination letter from the IRS for a determination that the trust is a group trust arrangement as described in Rev. Rul. 81–100, 1981–1 C.B. 326 as modified and clarified by Rev. Rul. 2004–67, 2004–28 I.R.B. 28.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local, or tribal governments, and not-for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Average Time per Respondent:* 19 hours.

*Estimated Total Annual Burden Hours:* 3,800 hours.

*Title:* Extension of Time for Payment of Taxes by a Corporation Expecting a New Operating Loss Carryback.

*OMB Number:* 1545–0135.

*Form Number:* 1138.

*Abstract:* Form 1138 is filed by corporations to request an extension of time for the payment of taxes for a prior tax year when the corporation believes that it will have a net operating loss in the current tax year. The IRS uses Form 1138 to determine if the request should be granted.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,033.

*Estimated Time per Respondent:* 4 hr., 49 min.

*Estimated Total Annual Burden Hours:* 9,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: September 25, 2012.

**Elaine Christophe,**

*Tax Analyst.*

[FR Doc. 2012–24751 Filed 10–5–12; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Price for the 2012 Annual Uncirculated Dollar Coin Set

**AGENCY:** United States Mint, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** Because of the recent increase in the market price of silver, the United States Mint is announcing a new price of $59.95 for the 2012 Annual Uncirculated Dollar Coin Set. This set contains the following uncirculated coins—four Presidential $1 Coins, one Native American $1 Coin and one American Eagle Silver Coin.

**FOR FURTHER INFORMATION CONTACT:** B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW; Washington, DC 20220; or call 202–354–7500.

**Authority:** 31 U.S.C. 5111, 5112 & 9701.

Dated: October 2, 2012.

**Richard A. Peterson,**

*Acting Director, United States Mint.*

[FR Doc. 2012–24777 Filed 10–5–12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF VETERANS AFFAIRS

### Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act)

that the Special Medical Advisory Group will meet on October 25, 2012, in Room 830 at VA Central Office, 810 Vermont Avenue NW., Washington, DC. The session will begin at 8:30 a.m. and end at 3 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled Veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussions on the Accountable Care Organization Innovations in Healthcare; Innovations in Care Delivery in VHA; the Camp Lejeune Legislation; and the Impact of the Affordable Care Act.

No time will be allocated for receiving oral presentations from the public. However, members of the public may submit written statements for review by the Committee to Ms. Juanita Leslie, Department of Veterans Affairs, Office of Administrative Operations (10B), Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *j.t.leslie@va.gov*. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Leslie at (202) 461–7019.

Dated: October 2, 2012.

By Direction of the Secretary.

**Vivian Drake,**

*Committee Management Officer.*

[FR Doc. 2012–24716 Filed 10–5–12; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

Vol. 77 Tuesday,

No. 195 October 9, 2012


## Part II

## Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; State of Hawaii; Regional Haze Federal Implementation Plan; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2012–0345, FRL–9727–1]**

## Approval and Promulgation of Implementation Plans; State of Hawaii; Regional Haze Federal Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing a final Federal Implementation Plan (FIP) to address regional haze in the State of Hawaii. This FIP addresses the requirements of the Clean Air Act (CAA or ''the Act'') and EPA's rules concerning reasonable progress towards the national goal of preventing any future and remedying any existing man-made impairment of visibility in mandatory Class I areas in the State of Hawaii.

The FIP establishes an emissions cap of 3,550 tons of sulfur dioxide ($SO_2$) per year from three specific fuel oil-fired, electric utility boilers on the Island of Hawaii beginning in 2018. The Hawaii Electric Light Company (HELCO) can minimize impacts on the ratepayers by meeting the cap through the increased use of renewable energy and energy conservation. EPA finds that this control measure, in conjunction with other emissions control requirements that are already in place, will ensure that reasonable progress is made during this first planning period toward the national goal of no man-made visibility impairment by 2064 at Hawaii's two Class I areas.

EPA worked closely with the State of Hawaii in the development of this plan and the State has agreed to incorporate the control requirements into the relevant permits. The State has indicated that it intends to take full responsibility for the development of future Regional Haze plans.

**DATES:** This rule is effective on November 8, 2012.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2012–0345 for this action. Generally, documents in the docket are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. Please note that while many of the documents in the docket are listed at *http://www.regulations.gov,* some information may not be specifically listed in the index to the docket and may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports or otherwise voluminous materials), and some may not be available at either location (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Gregory Nudd, Air Planning Office (AIR–2), U.S. Environmental Protection Agency Region 9, 415–947–4107, *nudd.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever ''we,'' ''us,'' or ''our,'' is used, we mean the United States Environmental Protection Agency (EPA).

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10. Reasonable Progress Analysis for $SO_2$ Emissions on Maui
11. Agricultural Burning on Maui
12. Integral Vista Issue and Reasonably Attributable Visibility Impairment
13. Comments on the Monitoring Strategy
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B. Comments From the Public Hearings
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## I. Background and Purpose

### *A. Definitions*

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

1. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act.
2. The initials $b_{ext}$ mean or refer to total light extinction.
3. The initials *BART* mean or refer to Best Available Retrofit Technology.
4. The term *Big Island* refers to the Island of Hawaii.
5. The term *Class I area* refers to a mandatory Class I Federal area.[1]
6. The initials *DOH* refer to the Hawaii Department of Health.
7. The initials *dv* mean or refer to deciview(s).
8. The initials *EGU* mean or refer to Electric Generating Units.
9. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.
10. The initials *FIP* mean or refer to Federal Implementation Plan.
11. The initials *FLMs* mean or refer to Federal Land Managers.
12. The words *Hawaii* and *State* mean or refer to the State of Hawaii.
13. The initials *HECO* mean or refer to the Hawaiian Electric Company.
14. The initials *HELCO* mean or refer to the Hawaii Electric Light Company.
15. The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.
16. The initials *MECO* mean or refer to Maui Electric Company.
17. The initials *MW* mean or refer to megawatt(s).
18. The initials $NO_X$ mean or refer to nitrogen oxides.
19. The initials *NP* mean or refer to National Park.
20. The initials *OC* mean or refer to organic carbon.
21. The initials *PM* mean or refer to particulate matter.
22. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).
23. The initials $PM_{10}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
24. The initials *PSD* mean or refer to Prevention of Significant Deterioration.
25. The initials *RAVI* mean or refer to Reasonably Attributable Visibility Impairment.
26. The initials *RP* mean or refer to Reasonable Progress.
27. The initials *RPG* or *RPGs* mean or refer to Reasonable Progress Goal(s).
28. The initials *SIP* mean or refer to State Implementation Plan.
29. The initials $SO_2$ mean or refer to sulfur dioxide.
30. The initials *tpy* mean or refer to tons per year.
31. The initials *TSD* mean or refer to Technical Support Document.
32. The initials *URP* mean or refer to Uniform Rate of Progress.
33. The initials *VOC* mean or refer to volatile organic compounds.
34. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

[1] Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.''

*B. Overview*

On May 29, 2012, the EPA proposed a FIP to address regional haze in the State of Hawaii. We proposed to determine that this FIP would meet the requirements of the CAA and EPA's rules concerning reasonable progress towards the national goal of preventing any future and remedying any existing man-made impairment of visibility in mandatory Class I areas.[2] A detailed explanation of the requirements for regional haze plans and an explanation of EPA's Plan are provided in our Notice of Proposed Rulemaking and are not restated here.[3]

In our Notice of Proposed Rulemaking, we proposed to find that there was only one source in Hawaii that was subject to Best Available Retrofit Technology (BART) requirements, the Kanoelehua Hill Generating Station (Hill) on the Island of Hawaii (the Big Island). We also proposed to find that the current level of pollution control at Hill was consistent with BART and no additional controls would be required to meet the BART requirement. In addition, the EPA proposed to find that sufficient emissions reductions were expected on Maui to make reasonable progress during the first implementation period of 2001–2018. We also proposed to find that additional $SO_2$ reductions were required on the Big Island to ensure reasonable progress. We proposed that those reductions should be derived from controlling emissions on three oil-fired power plants on the Big Island: Hill, Puna and Shipman. The proposed control measure would cap the emissions of these three plants at 3,550 tons of $SO_2$ per year beginning in 2018. EPA received several comments during the public comment period on our proposal. We have provided summaries of and responses to significant comments below. Following consideration of all comments, EPA has decided to finalize the Hawaii Regional Haze FIP as proposed with one clarification regarding the compliance date for the emissions cap. We will work with the Hawaii Department of Health on developing future regional haze plans.

**II. EPA Responses to Comments**

EPA held two public hearings in Hawaii on May 31 and June 1, 2012 to accept oral testimony and written comments on the proposal. The first meeting was held at Maui College in Kahului on the Island of Maui. Twenty people provided oral comments and four provided written comments at this hearing. The second hearing was at the Waiakea High School in Hilo on the Big Island. Four people provided oral comments at this hearing and one provided written comments. Verbatim transcripts of the public hearings are available in the public docket for this rulemaking, Docket ID No. EPA–R09–OAR–2012–0345, which can be accessed through the *www.regulations.gov* Web site.

We also received an additional 18 written comments through email, postal mail and the rulemaking docket. These comments are also available in the public docket for this rulemaking, Docket ID No. EPA–R09–OAR–2012–0345, which can be accessed through the *www.regulations.gov* Web site.

*A. EPA Responses to Written Comments*

EPA received 18 written comments on the proposal. Commenting organizations include: Friends of Haleakala National Park (FHNP), Alexander and Baldwin, the parent company of Hawaii Commercial and Sugar (HC&S), Maui Electric Company (MECO), Hawaii Electric Light Company (HELCO), National Park Service (NPS), Maui Tomorrow Foundation (Maui Tomorrow), Law office of Marc Chytilo on behalf of Preserve Pepe'ekeo Health and Environment and private citizens (Chytilo), Robert W. Parsons on behalf of the Office of the Mayor of Maui (Parsons) and Earthjustice on behalf of the National Parks Conservation Association, Sierra Club, and Blue Planet Foundation (Earthjustice). Seven private citizens also submitted comments on the proposal.

1. Baseline Visibility, Natural Visibility and Uniform Rate of Progress

*Comment:* Four commenters (Earthjustice, HC&S, HELCO, and MECO) believe that EPA's proposed analysis contains a fundamental flaw in including the contribution of the Kilauea Volcano in baseline visibility conditions, but excluding it from natural visibility conditions. The commenters asserted that EPA must revise its analysis and the resulting uniform rate of progress (URP) in the final FIP.

Two of these commenters (HELCO, MECO) stated that EPA's exclusion of volcanic emissions from the determination of natural visibility conditions is arbitrary and capricious. Another of the commenters (Earthjustice) stated that EPA's methods for incorporating volcanic emissions into its analysis are internally inconsistent and arbitrary. These commenters asserted that while emissions from the volcano vary from year to year, there is no reasonable basis for EPA to completely exclude them from the estimate of natural conditions.

According to two of the commenters (HELCO, MECO), EPA has expressed the opinion that Kilauea could stop erupting at any time and that natural visibility conditions in 2064 might not include emissions from the volcano. In the view of the commenters, this does not justify EPA's use of the default conditions developed by the Western Regional Air Partnership (WRAP) for western states in the continental United States to determine requirements for Hawaii; rather, it displays a fundamental misunderstanding of Kilauea's emissions profile. Based on a report attached to the comments, the commenters asserted that significant $SO_2$ emissions would continue venting from the volcano even if it were to stop erupting immediately because, although $SO_2$ output is greatest during eruptive events, Kilauea emits $SO_2$ at all times, even during non-eruptive periods. The commenters contend that a substantial amount of data on Kilauea's emissions has been collected, and EPA should, at a minimum, use existing data to develop a ''non-eruptive'' emissions profile. The commenters stated that like particulate emissions from fire, $SO_2$ emissions from Kilauea are naturally occurring and would continue to occur in the absence of human activities. Accordingly, the commenters asserted that EPA cannot simply ignore emissions from Kilauea.

These commenters (HELCO, MECO) stated that by including emissions from Kilauea in baseline visibility conditions but excluding them from natural visibility conditions, EPA has created an ''apples to oranges comparison'' that artificially inflates the amount of manmade emissions reductions necessary in Hawaii. As a result, the commenters asserted, the proposed FIP would establish reasonable progress goals that would be impossible to achieve through the reduction of

[2] Areas designated as mandatory Class I Federal areas consist of NPs exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of the Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[3] *See* 77 FR 31691 (May 29, 2012).

anthropogenic emissions, which is inconsistent with EPA's own guidance. The commenters conclude that EPA must revise its analysis and the URP based on a proper evaluation of volcanic emissions and EPA's failure to appropriately evaluate volcanic emissions is arbitrary and capricious and must be addressed in the final FIP. However, the commenters recognized that EPA may opt not to revise its reasonable progress analysis in this way during this planning period. In that event, the commenters requested that EPA commit to addressing Kilauea's emissions in the next planning period because continuing to exclude these emissions that are the dominant cause of visibility impairment would create untenable results—increasingly expensive controls in successive planning periods that would not result in perceptible improvements in visibility.

Another commenter (Earthjustice) stated that the goal of the haze program is to eliminate visibility impairment ''from manmade air pollution'' [citing 42 U.S.C. 7491(a)(1)]. According to the commenter, failing to include the volcano in natural conditions distorts the analysis of the impacts from human sources and the corresponding BART controls and reasonable progress goals to achieve natural visibility conditions. The commenter asserted that based on this ''skewed analysis,'' EPA summarily eliminated any controls for $NO_X$ for the BART analysis and reasonable progress goals. The commenter contended that EPA avoided evaluating the actual URP for anthropogenic $SO_2$ pollution; instead, rejecting a URP inflated by volcano impacts (which the commenter termed a ''strawman of EPA's own making''), then proposing arbitrary progress goals of its own choosing. The commenter indicated that EPA's approach toward volcano conditions is unjustified and prevents the Agency from providing a rational and transparent justification for its pollution control determinations. According to the commenter, this approach also deprives the public of proper notice and opportunity to comment; in the commenter's view, EPA must rationally review and address impacts from human sources unskewed by volcano impacts and allow the public a meaningful opportunity to review and comment on such determinations.

The fourth commenter (HC&S) pointed out that under EPA's methodology, the URP incorporates reductions in visibility impairment that are sufficient to offset both the portion of baseline impairment that comes from anthropogenic emissions and the portion that is caused by the volcano. The commenter believes that to make a more accurate assessment of the reduction in emissions from anthropogenic sources necessary to achieve natural visibility conditions, emissions from Kilauea either need to be included in, or excluded from, both the estimate of baseline visibility conditions and the estimate of natural visibility conditions. The commenter recommended that EPA adopt the Hawaii DOH's proposed method to adjust the baseline visibility impairment to account for the impacts of volcano emissions as well as for the impacts of Asian dust. According to the commenter, under this approach, the URP target for 2018 would be 0.32 deciviews (dv), which is only slightly greater than what would be achieved through the proposed FIP.

*Response:* The central concern of these comments appears to be that the approach EPA used to determine the uniform rate of progress (URP), in particular how we considered volcanic emissions, led to inappropriate regulatory decisions in the proposal and/or may lead to inappropriate regulatory decisions in the future. EPA disagrees with this concern. The commenters mistakenly conclude that the URP sets a target or goal for the first planning period. In fact, the development of the URP is an analytical exercise that is intended to inform the setting of reasonable progress goals (RPGs) rather than a standard or presumptive target for the plan to meet.

In establishing RPGs, the states and EPA must ''consider'' both the URP and the emission reduction measures needed to achieve the URP.[4] More specifically, EPA has recommended that states use the following approach in setting their RPGs:

1. Establish baseline and natural visibility conditions.

2. Determine the URP (i.e., a straight line between baseline visibility in 2000–2004 for the worst 20 percent days and projected natural conditions for the worst 20 percent days in 2064).

3. Identify and analyze the measures aimed at achieving the URP.

a. Identify the key pollutants and sources and/or source categories that are contributing to visibility impairment at each Class I area.

b. Identify the control measures and associated emission reductions that are expected to result from compliance with existing rules and other available measures for the sources and source categories that contribute significantly to visibility impairment.

c. Determine what additional control measures would be reasonable based on the statutory factors and other relevant factors for the sources and/or source categories identified.

d. Estimate through the use of air quality models the improvement in visibility that would result from implementation of the control measures found to be reasonable and compare this to the URP.

4. Establish an RPG.

In this case, the commenters' concerns relate primarily to how EPA performed step 1 of this analysis. Specifically, the commenters object to EPA's inclusion of volcanic emissions in the baseline and exclusion of volcanic emissions in our estimate of natural conditions. EPA acknowledges the commenters' concerns, but does not agree that our approach is arbitrary or unjustified in this case. Rather, we have followed the statutory and regulatory requirements for Reasonable Progress analyses, while also accounting for unique circumstances in Hawaii that severely limit the utility of the URP as an analytical tool for setting RPGs for the state's Class I areas.

Pursuant to 40 CFR 51.308(d)(2), baseline visibility conditions must be calculated using actual monitoring data from 2000–2004. Therefore, the baseline conditions for Class I areas in Hawaii necessarily include volcanic emissions. It is difficult to include volcanic emissions as part of natural background visibility in 2064 because of the extreme variability in volcanic emissions from year to year. In this case, a 2064 projection would be little better than a guess. Therefore, in estimating natural conditions for purposes of this first planning period, we have not attempted to forecast the future contribution of the volcano to natural background visibility. Even if we could quantitatively estimate ''natural'' volcanic emissions and air quality effects in 2064 with any accuracy, the URP would be of very limited value in setting RPGs for Hawaii.

As explained in EPA's Reasonable Progress Guidance, the URP is intended to serve as a gauge against which to measure the improvement in visibility conditions that is projected to result

[4] In addition, as noted in our proposal, CAA section 169A and the RHR at 40 CFR 51.308(d)(1)(i)(A) require consideration of the following four factors in determining ''reasonable progress'': (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. The weighing of these four factors is sometimes referred to as a ''four-factor analysis'' to distinguish it from the ''five-factor analysis'' for BART determinations. Comments concerning the URP and related issues are addressed in this section. Other comments on our RP analysis are addressed below.

from implementation of reasonable control measures during the first planning period which ends in 2018.[5] However, the variability of volcanic emissions from Kilauea renders this type of analysis unhelpful for Hawaii's Class I areas. To understand why this is the case, it helps to look at Figure II.B–6 in EPA's technical support document (TSD). This figure shows the URP calculation for Hawaii Volcanoes National Park (NP). The points on the left side of the figure are the actual, measured visibility impairment at Hawaii Volcanoes for the past several years; these measurements vary by at least 13 dv, as compared to the difference between baseline conditions and natural conditions of 11.7 dv. This dramatic variation in visibility impairment on the worst 20 percent days is driven by the extreme variability of the volcanic emissions, which dominate visibility impairment on those days. Thus, the only way EPA could accurately estimate the improvement in visibility on the worst 20 percent days by 2018 is if we could accurately predict volcanic emissions on those days. In the absence of an accurate projection of volcanic emissions for 2018, there is no reasonable estimate of visibility conditions in 2018 to compare with the URP. Therefore, EPA has used a different method of gauging reasonable progress for this first planning period, as explained in Section F of the proposal, ''Reasonable Progress Goals for Hawaii.''[6]

However, given the dominance of volcanic emissions on the worst 20 percent days in Hawaii, it may be appropriate for future plans to focus on other days when the proportion of anthropogenic contribution to visibility impairment is larger. We expect that the State of Hawaii will develop future regional haze plans, consistent with the CAA and EPA's implementing regulations. We plan to work with the State of Hawaii on those future plans and we will consider different approaches to gauging reasonable progress, and different approaches to determining the URP.

2. Estimating Natural Visibility Conditions

*Comment:* One commenter (NPS) noted that emissions from the Kilauea Volcano vary from year to year, making it difficult to project future emissions levels or the specific contribution of these emissions to visibility impairment in 2018 or 2064. For clarity, the commenter recommended that EPA revise the conclusion in section III.B.1 of the preamble to the proposed FIP (77 FR 31699, May 29, 2012) to read ''* * * in estimating natural conditions for purposes of this first planning period, we have not tried to forecast the future contribution of the volcano to natural background visibility'' rather than stating an assumption that there will be no visibility impact from the volcano.

*Response:* The NPS is correct in saying that EPA did not attempt to forecast the future contribution of the volcano to natural background visibility. However, since the default natural conditions do not include volcanic emissions, we implicitly assumed that there would be no visibility impact from the volcano in our URP analysis. EPA does not consider this implicit assumption to be problematic because the URP analysis is not useful in the case of Hawaii due to the infeasibility of accurately accounting for volcanic emissions in the 2018 projections (see Section II.A.1. of this notice).

We would consider a refined estimate of natural conditions at these Class I areas if the State of Hawaii were to propose such a change as part of the next Regional Haze plan for Hawaii. Any such estimate would need to be consistent with our guidance on this subject.[7]

3. Contribution Assessment According to IMPROVE Monitoring Data

*Comment:* One commenter (NPS) generally agreed with EPA's assessment of contributions to visibility impairment.

*Response:* EPA appreciates NPS' support of our contribution assessment, given their extensive expertise in this subject.

4. Impact of Fugitive Dust on Visibility Impairment in Hawaii Class I Areas

*Comment:* One commenter (Parsons) stated that EPA is incorrect in stating that there are no impacts or degradations in visibility to Haleakala NP as a result of fugitive dust. According to the commenter, EPA did not examine the impacts of particulate matter carried into the atmosphere from Maui's agricultural fields, which affects air quality on many days. The commenter asserted that Maui is subjected to strong trade winds on many days, and plantation practices of clearing and tilling hundreds of acres at a time means that tons of windborne topsoil are lost each year. The commenter believes that best management practices might help mitigate this loss, and preserve Maui's air quality, but plantations are exempt from the sort of requirements that would be applied to other land-altering activities, such as construction site grading. The commenter suggested that EPA may be able to work with the Hawaii Department of Agriculture and DOH to revise standards for dust control in order to protect the health and welfare of the community and near-shore coral reef ecosystems, and to help mitigate impacts that contribute to regional haze.

Two commenters similarly asserted that fugitive dust from the sugarcane fields affects the haze in Haleakala NP and is killing Maui's coral reefs. The commenter indicated that after harvest, the cane fields are left bare and the loose topsoil is picked up by the trade winds and carried across the island, coating everything in its path and eventually settling on and killing the coral reefs south of Maui.

*Response:* EPA disagrees with the commenter's assertion that we did not consider the impact of dust from agricultural activities when evaluating causes of haze at Hawaii's national parks. Dust from agricultural activities and other sources is measured at the IMPROVE monitors as coarse mass and soil. Section II.A.3. of the TSD discusses causes of haze at Haleakala NP. Section II.B.3 discusses the causes of haze at Hawaii Volcanoes NP. Both of these sections of the TSD address the contribution of coarse mass and soil to visibility impairment on the best and worst days. Coarse mass contributes about 9 percent to visibility impairment on the worst 20 percent days at Haleakala.[8] The source of the coarse mass measured at the IMPROVE site is unclear. It could be dust from the low elevations transported up to the park, or it could be from nearby sources such as unpaved roads.

EPA shares the commenters' concerns about the impact of dust emissions on public health, the loss of topsoil and possible impacts to water quality and marine life. However, in the context of this rulemaking, EPA does not consider it reasonable to require additional pollution control without clear evidence that the dust is causing or contributing to haze at the Class I area. Further analysis of the source of this coarse

[5] See Section 1–7 of ''Guidance for Tracking Progress Under the Regional Haze Rule'', Document No. EPA–R09–OAR–2012–0345–0003–B10.

[6] 77 FR 31707, May 29, 2012

[7] See ''Guidance for Estimating Natural Visibility Conditions under the Regional Haze Rule'' Document No. EPA–R09–OAR–2012–0345–0003–B9.

[8] See ''Technical Support Document for the Proposed Action on the Federal Implementation Plan for the Regional Haze Program in the State of Hawaii, Air Division, U.S. EPA Region 9'', [hereinafter TSD] p. 12, Document No. EPA–R09–OAR–2012–0345–0003–A3.

mass should be conducted as part of the reasonable progress review for the next planning period.

5. Subject to BART Analysis

*Comment 1: Agreement with analysis to identify sources subject to BART.*

Three commenters (HC&S, HELCO, and MECO) agreed with EPA's analysis to determine which sources should be subject to BART requirements. Their comments are summarized in the following paragraphs.

Two of the commenters (HELCO, MECO) noted that CAA section 169A(b)(2)(A) requires the relevant regulatory agency to review a state's BART eligible sources and determine whether they emit ''any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in [a Class I] area.'' These commenters cited the BART Guidelines (70 FR 39109, July 6, 2005) to add that if a source does not meet this threshold, it may be exempt from further BART review. Based on these principles, the commenters believe that EPA's analysis of which sources in Hawaii should be subject to BART is sound and consistent with the BART Guidelines, and they urged EPA to retain it for the final FIP.

These two commenters stated that the BART Guidelines provide regulatory agencies with three options for making a ''cause or contribute'' finding and that EPA reasonably chose to use an ''individual source attribution approach'' and a threshold of 0.5 dv in this case. According to the commenters, the BART Guidelines explain that the appropriate contribution threshold depends on the number and proximity of sources affecting a Class I area, and a threshold lower than 0.5 dv is justified where there are a large number of BART-eligible sources within the state and in proximity to a Class I area. The commenters added that in Hawaii there are few BART-eligible sources and they are not concentrated near a single Class I area. On this basis, one of the commenters (MECO) explicitly expressed agreement that 0.5 dv is the appropriate threshold.

These two commenters went on to note that, consistent with the BART Guidelines, EPA applied the 0.5 dv contribution threshold to the results of computer modeling that was used to predict visibility impacts from each BART-eligible source in Hawaii, with the result that six of the eight BART-eligible sources fell below the 0.5 dv contribution threshold.[9] The commenters agreed that EPA appropriately determined that only HELCO's Kanoelehua Hill Generating Station is subject to BART and exempted all other BART-eligible sources in Hawaii from further BART review. One of the commenters (HELCO) specifically stated that this analysis correctly excluded Hawaiian Electric Company's (HECO's) Waiau and Kahe facilities, and the other (MECO) stated that MECO's Kahului facility was appropriately excluded.

The third commenter (HC&S) also agreed with the proposed threshold (0.5 dv) used to assess whether the impact of a single source contributes to visibility impairment at the Hawaiian Class I areas. This commenter pointed out that of the six sources in Hawaii exempted from BART because their modeled impact is below 0.5 dv, none has a modeled impact of as much as half of this threshold level. The commenter also stated that the combined impact from all six sources is 0.715 dv at Haleakala NP, which is lower than the level (1.0 dv) at which the BART Guidelines consider a single source to ''cause'' visibility impairment. The commenter added that while this combined impact is somewhat higher than the proposed 0.5 dv contribution threshold, the BART Guidelines explicitly caution that visibility effects of multiple sources should not be aggregated and their collective effects compared against the contribution threshold, because this would inappropriately create a ''contribution to contribution'' test. The commenter concluded that it is therefore reasonable to conclude that these six sources do not cause or contribute to visibility impairment at Haleakala NP. The commenter also asserted that since the combined visibility impact of these six sources at the Hawaii Volcanoes NP totals 0.35 dv, it is reasonable to conclude that these sources do not cause or contribute to visibility impairment at Hawaii Volcanoes NP. The commenter noted that setting the contribution threshold at 0.5 dv for sources subject to BART will capture those BART-eligible sources responsible for more than half of the visibility impacts at Haleakala NP and nearly 90 percent of the visibility impacts at Hawaii Volcanoes NP while still excluding other sources with very small impacts. The commenter believes that given the relatively small number of BART-eligible sources potentially impacting Class I areas in Hawaii and the magnitude of both the individual sources' impacts and the combined impact from all sources proposed to be exempt from BART, the proposed 0.5 dv threshold for determining whether a single source contributes to visibility impairment is wholly consistent with the BART Guidelines and is therefore an appropriate threshold for use in the Hawaii FIP.

*Response 1:* EPA agrees that the determination of sources subject to BART was conducted appropriately and in accordance with the applicable regulatory requirements and guidance. EPA also agrees that the 0.5 dv threshold is appropriate for Hawaii.

*Comment 2: Disagreement with part of the analysis.*

Two commenters (FHNP, Parsons) disagreed with some aspects of EPA's analysis to determine which sources should be subject to BART requirements.

One commenter (FHNP) suggested that the MECO Kahului and HECO Kahe facilities should not be exempted from BART analysis. The commenter noted that EPA used a modeled increase of 0.5 dv at the Haleakala IMPROVE monitoring site (HALE) to identify candidates for BART analysis, and that the measured concentrations of pollutants taken at the Haleakala Crater monitoring site (HACR) are approximately half of those measured at HALE. According to the commenter, it is expected that the point sources analyzed in this report would contribute similar densities of non-anthropologic elements at both the HALE and the HACR sites (with the exception of some smoke sources) and that, hence, a point source modeled to produce a 0.25 dv change at HALE would be expected to produce an approximate 0.5 dv change at HACR in the Class I area. The commenter pointed out that the MECO Kahului site and the HECO Kahe site were modeled to produce changes of 0.232 dv and 0.221 dv, respectively, at HALE. The commenter believes that extrapolating these contributions to the HACR site suggests that these sources are very close to contributing 0.5 dv in the Class I area. The commenter concluded that since actions recommended in the report are projected to produce less than the target rate of progress, the MECO Kahului and HECO Kahe sites should not be exempted from BART analysis.

The second commenter (Parsons) objected to EPA's omission of the Kahului facility from BART requirements. The commenter stated that air emissions from MECO's Maalaea

[9] Six of the eight BART-eligible sources had a less than 0.5 deciview impact and so were exempted from BART. One of the remaining facilities, Hu Honua Bioenergy is no longer permitted to burn fossil fuels and is therefore also exempt from BART. This leaves one facility in Hawaii as subject to BART, the Kaneolehua Hill facility. See 77 FR 31704, 31705.

and Kahului facilities rank them as the fifth and seventh worst polluters in Hawaii. The commenter noted that EPA has not proposed additional pollution controls at either facility. According to the commenter, at the public hearing on May 31, 2012, EPA stated the belief that the Kahului facility will cease operations by 2018. The commenter asserted that this is conjectural and indicated that it would be prudent to apply more stringent pollution control standards to this facility, especially in the short term.

*Response 2:* We do not agree that the Kahului or Kahe facilities should be subject to BART.

As an initial matter, we would like to clarify that the modeling upon which we have based our subject-to-BART determinations did not use either the Haleakala (HALE) IMPROVE monitoring site or the Haleakala Crater (HACR) site as a receptor.[10] Rather the subject-to-BART modeling predicted visibility impacts at gridded receptor locations spaced approximately one kilometer apart within the Class I area domain.[11] Therefore, the modeled impacts cited by the commenter (i.e. 0.232 dv for Kahului and 0.221 dv for Kahe) represent the 8th highest delta-deciview values for the year modeled (2005) from all modeled receptors at Halekala National Park and do not reflect modeled impacts at either HALE or HACR.[12]

To the extent that the commenter is arguing that the subject-to-BART modeling should have used background conditions for HACR rather than HALE, we also disagree. Consistent with the BART Guidelines, the subject-to-BART modeling for Hawaii was performed against natural visibility conditions.[13] Natural conditions have not yet been established for the HACR site. Therefore, EPA reasonably relied on the available information regarding natural conditions at the HALE site for purposes of conducting subject-to-BART monitoring.

With respect to measured pollutant concentrations, the commenter (FHNP) correctly notes that the values of the measured concentration of pollutants taken at the HACR site are smaller than those measured at the HALE site (i.e., the HACR site is ''cleaner''). The commenter suggests that, therefore, a point source modeled to produce a 0.25 dv change at HALE would be expected to produce an approximate 0.5 dv change at HACR, and hence a 0.5 dv change in the Class 1 area. However, as noted by the commenter, doubling the source impact is a rough approximation of the effect of reducing the background light extinction by half. The effect of reducing the background extinction by half on the change in deciviews (delta dv) varies depending on the source extinction $b_{ext}$ (source) and the background extinction, $b_{ext}$ (bkg), but would be smaller than doubling the source impact. Therefore, the rough approximation proposed by the commenter (doubling the source impact) to estimate the potential change in visibility impacts from the facilities from using the new HACR site to calculate background light extinction would not be appropriate.[14] So, even if natural conditions for the HACR site had been available, we do not expect that the impact of the sources would approximate 0.5 dv. EPA therefore disagrees that these sources should be subject-to-BART. Nonetheless, because Kahului and Kahe are both significant sources of pollution and include non-BART-eligible units as well as BART-eligible units, they may be appropriate candidates for controls as part of future Regional Haze plans.

We also disagree with the commenter that the URP is relevant to whether Kahului and Kahe are subject to BART. Under the Regional Haze Rule (RHR), the determination of which sources are subject-to-BART is a separate analysis from the calculation of the URP and the setting of RPGs.[15] Moreover, as discussed in Section II.A.1 of this document, the URP is not a target and is particularly poorly suited for regulatory decisions in Hawaii.

Regarding the comments from Parsons, EPA agrees that the electric power plants Maalaea and Kahului are relatively large sources of pollution. However, as noted above, the modeled 98th percentile visibility impact of the BART-eligible Kahului source is 0.23 dv, less than one-half of the 0.5 dv subject-to-BART threshold. Due to the age of its equipment, the Maalaea power plant does not have BART-eligible units and therefore is not subject-to-BART.

EPA disagrees that we represented at the hearing in Maui that the Kahului Power Plant would no longer be operating in 2018. That assertion is not supported by the transcript.[16] Regardless, we did not base our decision on BART for the Kahului plant on future operation, but instead based it on the current emissions level for the facility.

*Comment 3: Puunene Mill.*

One commenter (HC&S) stated that the small contribution to visibility impairment from the Puunene Mill warrants a determination that the facility should not be subject to BART. While conceding that it was reasonable to use maximum actual 24-hour emissions to model worst-case visibility impacts, the commenter indicated that typical visibility impacts from the Puunene Mill are likely to be lower than the modeled results. The commenter noted that even so, modeling results for both coal and bagasse firing showed that the impact of the facility was well below the 0.5 dv contribution threshold at both Haleakala NP and Hawaii Volcanoes NP, at both the maximum 24-hour 98th percentile impact and the highest modeled impact. According to the commenter, the highest modeled impact for the facility (i.e., during coal firing) was less than half the contribution threshold at Haleakala NP and less than 20 percent of the threshold at Hawaii Volcanoes NP. The commenter added that modeling of the combined impacts of both BART-eligible (Boiler 3) and Reasonable Progress-eligible (Boilers 1

[10] See ''Subject-to-Best Available Retrofit Technology (BART) Modeling for the State of Hawaii, Application of the CALPUFF Modeling System; Prepared for: Hawaii State Department of Health, Environmental Management Division Clean Air Branch by Alpine Geophysics, LLC (March 3, 2010)'', Document No. EPA–R09–OAR–2012–0345–0006–C3d.

[11] *Id.* Section 3.2.4. These receptor locations were provided by the National Park Service and are available at *http://www2.nature.nps.gov/air/Maps/Receptors/index.cfm.*

[12] The Hawaii BART/RP Supplemental Modeling Results Report does include modeling results at individual receptors placed at the location of the Haleakala (HALE) IMPROVE monitoring site and Haleakala Crater (HACR) site. See Hawaii BART/RP Supplemental Modeling Results, Alpine Geophysics (March 29, 2010), (Document No. EPA–R09–OAR–2012–0345–0011-Attachment 1) Table 12. The predicted visibility impacts from the Kahului and Kahe BART-eligible sources at the HALE and HACR receptors were similar to predicted visibility impacts at the NPS receptors, and were below the 0.5 deciview threshold for all receptors. Specifically, the modeled 98th percentile delta deciview impact from the BART-eligible units at Kahului was 0.227 at HALE and 0.247 at HACR. Id. Table 15. The modeled 98th percentile delta deciview impact from BART-eligible units at Kahe was 0.262 at HALE and 0.255 at HACR. Id. Table 15. Therefore, even if we had used HACR as a receptor for purposes of subject-to-BART modeling, neither the Kahe nor the Kahului facility would have been found to be subject-to-BART.

[13] Specifically the modeling was performed against natural visibility baseline conditions for the best 20% of days. Use of either the best 20% days or average natural conditions is permissible under the BART Guidelines. See Memo from Joseph W. Paisie regarding Regional Haze Regulations and Guidelines for BART (July 19, 2006) (Document No. EPA–R09–OAR–2012–0345–0003–B15). However, use of the 20% best days is more conservative (i.e., it tends to increase the baseline impacts for a given source).

[14] EPA does not believe doubling the source impact is appropriate. However, EPA notes that doubling the source impact of 0.23 deciviews and 0.22 deciviews would result in values below the 0.5 dv threshold.

[15] Compare 40 CFR 51.308(d)(1) and 51.308(e).

[16] See transcript of Kahului hearing, Document No. EPA–R09–OAR–2012–0345–0022.

and 2) sources at the Puunene Mill demonstrated that the maximum 24-hour 98th percentile visibility impacts from the facility during both bagasse firing and coal firing scenarios are well below the 0.5 dv contribution threshold. The commenter believes that the modeling analysis clearly shows that even worst-case emissions from the Puunene Mill do not cause or contribute to visibility impairment at either Haleakala NP or Hawaii Volcanoes NP, and that additional controls are therefore not warranted.

In contrast, one commenter (Parsons) believes that with regard to the Hawaii Regional Haze FIP and for public health concerns, air emissions at HC&S's Puunene Mill should be subjected to BART determinations, Maximum Achievable Control Technology (MACT) Hammer standards and both continuous opacity monitoring systems (COMS) and continuous emissions monitoring systems (CEMS) guidelines. The commenter stated that the Puunene Mill is the second worst polluter in Hawaii with regard to air emissions. The commenter indicated that Boilers 1 and 2 at the facility predate the Act, and thus have been exempt from those standards for decades. The commenter also contended that EPA's ''revised MACT Hammer provisions'' have not been applied to these units because HC&S and sugar growers in Florida and Texas submitted a report replacing these emission limits with their own subcategory of bagasse-fired boilers. The commenter added that HC&S combusts 100,000 tons of coal annually without emission standards that apply to other coal-burning facilities. The commenter also stated that Boiler 3 at the facility has not been held to Federal standards required for COMS and CEMS or regulatory oversight by the Hawaii DOH.

Two other commenters also stated that EPA should include all of the HC&S smoke stacks in its review. In particular, the commenter asked that EPA review and closely monitor the electric power production emissions on the Puunene Mill.

*Response 3:* We reaffirm that the Puunene Mill is not subject-to-BART. In accordance with the BART Guidelines, the subject-to-BART modeling for Puunene Mill was performed using worst-case emissions from the Mill and best-case visibility (under natural conditions) at the parks.[17] This analysis assumed the Mill was powered entirely by coal, its most polluting fuel, for 24 hours. That worst-case 24-hour emission rate was then compared to the clearest days at Haleakala NP and Hawaii Volcanoes NP. This comparison of very high emissions at the Puunene Mill to very clean conditions at the park was modeled for every weather condition during the 365 days of the year. The resulting visibility impact was less than the 0.5 dv threshold that would make the facility subject to BART.[18] EPA reviewed this analysis and concurs with the results.

The commenter indicates that he believes the Mill should be subject to Federal guidelines for CEMS and COMS. We are confident that the methods used to calculate worst-case emissions are appropriate and conservative. Therefore, the absence of continuous monitors does not weaken the analysis.

The commenter also indicates that he believes the Puunene Mill should be subject to MACT controls. The applicability of MACT is outside the scope of this rulemaking.

*Comment 4: Hu Honua and Tradewinds should be subject to BART controls.*

One commenter (Chytilo) objected to the exclusion of the Hu Honua Bioenergy Facility and the Tradewinds Veneer Mill and Cogeneration Facility's electric generating EGUs from the proposed FIP. The commenter argued that these facilities should be subjected to BART controls and emissions limits. The commenter stated that even though neither source was operating during the baseline period, the emissions from each source are significant and will interfere with progress towards national visibility objectives.

The commenter also asserted that EPA improperly exempted these sources from controls, reporting and reasonable further progress based on what the commenter believes is the irrelevant and incorrect belief that each source is entirely biofueled. The commenter stated that emissions controls will be less successful for these facilities because steady state operations are more difficult to achieve and the operators contemplate diurnal fuel source changes and other operational shifts daily. The commenter added that biofueled sources still cause visibility impairment, and alleged that the FIP rulemaking offers no explanation for why biofueled sources should be exempted from haze controls. The commenter indicated that the two facilities are permitted to burn wood waste which, according to the commenter, is a variable fuel that actually produces increased emissions and should be subject to enhanced controls. The commenter believes that haze objectives cannot be met if these sources are exempted.

The commenter made the following additional points related to the Hu Honua facility:

- The emissions calculations for the Hu Honua facility are questionable. The commenter expressed agreement with EPA's comments on the facility's Covered Source Permit (Hawaii's term for a title V permit), which the commenter characterized as saying that unrealistic emissions factors were used and actual plant emissions are likely to be considerably higher.
- The facility's permit allows the use of conventional diesel fuel during startup and off-peak periods, so any exemption for biofuels is not warranted.
- Sulfur oxides ($SO_X$) emissions are not insignificant. The commenter asserted that $SO_X$ emissions from the facility ''constitute nearly 93 percent of the * * * NAAQS,'' and that EPA's rationale that these emissions may be ignored due to background volcanic emissions is misplaced. The commenter stated that the Pepe'ekeo area is only affected by volcanic emissions during certain wind conditions, and during other periods the facility's $SO_X$ and other visibility-impairing emissions will be significant and should not be exempted.

*Response 4:* The definition of BART-eligible facility may be found in 40 CFR 51.301. It provides a list of types of facilities that may be eligible for BART if they were built between 1962 and 1977. These types of facilities include ''fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input.'' When Hu Honua converted to biofuels, it was no longer ''fossil-fuel fired'' and therefore was no longer BART-eligible. The permit for this facility allows for it to be fueled by wood or biodiesel. Neither of these is a ''fossil fuel.'' Therefore, the facility is not eligible for BART. The Tradewinds Veneer cogeneration facility was not built between 1962 and 1977 and does not burn fossil fuels. Therefore, this facility is also not eligible for BART.

We note that the commenter's general concern about emissions from new large facilities possibly interfering with visibility goals is a common consideration in air quality planning and is not limited to these two facilities. Such emissions are regulated in large part under the CAA's Prevention of

[17] See Section 2.4 of ''Subject-to-Best Available Retrofit Technology (BART) Modeling for the State of Hawaii, Application of the CALPUFF Modeling System; Prepared for: Hawaii State Department of Health, Environmental Management Division Clean Air Branch by Alpine Geophysics, LLC (March 3, 2010)'', Document No. EPA–R09–OAR–2012–0345–0006–C3d.

[18] Id. Table 6.

Significant Deterioration (PSD) permitting program, which applies to new major sources and major modifications at existing sources for pollutants where the area in which the source is located has been designated attainment or unclassifiable with one or more of the NAAQS. Among other requirements, PSD review requires an air quality analysis, using dispersion modeling, of ambient concentrations that would result from the applicant's proposed project. The PSD regulations provide special protection of Air Quality Related Values, including visibility, in Class I areas, including oversight by and coordination between the permitting authority and the Federal land managers (FLMs). The RH rule also requires reviews of plans every 5 years and complete new regional haze plans every 10 years. The 5-year update of this plan will include a verification that emission trends on the Islands are consistent with reasonable progress and an analysis of whether anthropogenic visibility impairment is decreasing The next full plan, required in 10 years, will include a new reasonable progress analysis that would take into account these and any other new sources of pollution.

6. BART Determination for Kanoelehua Hill

*Comment 1: General comments on BART for Hill.*

One commenter (Earthjustice) stated that EPA's proposal to exempt the Hill facility from any BART controls neither meets the requirements of the BART program, nor promotes necessary visibility improvements at Hawaii's Class I areas. The commenter pointed out that even though EPA has stated that this facility is by far the largest source of anthropogenic $SO_2$ emissions on the Big Island (citing 77 FR 31706), no BART control is required. The commenter believes that this result lacks a reasoned and lawful justification. The commenter asserted that EPA must require demonstrably cost-effective controls, rather than readily relieving polluters of these obligations. The specific arguments made by the commenter related to nitrogen oxides ($NO_X$) and $SO_2$ are detailed in the following subsections.

In contrast, another commenter (HELCO) agreed that EPA appropriately determined that BART controls are not justified for the Hill facility. The commenter noted that EPA's analysis of the five statutory factors that must be considered in establishing BART was based largely on an analysis performed by a consultant for HELCO (''the Trinity BART report'' [19]) which, according to the commenter, was consistent with the BART Guidelines even though the guidelines are not mandatory for a facility the size of the Hill facility. However, because the BART Guidelines were designed for power plants, the commenter believes they are both an apt and a conservative guide in this instance.

*Response 1:* EPA disagrees with Earthjustice's comments with respect to our BART determination for the Hill facility. The EPA BART determination is appropriate for Hill for reasons detailed below. And, it is important to note that we are requiring $SO_2$ reductions from Hill and two other plants on the Big Island in order to ensure reasonable progress toward eliminating anthropogenic visibility impairment at Hawaii Volcanoes NP. EPA agrees with HELCO's comment that the BART analysis conducted by Trinity for HELCO was consistent with the BART guidelines, although EPA does not agree with the company's cost estimates for lower sulfur fuels.

*Comment 2: HELCO's comments on particulate matter (PM) and $NO_X$.*

One commenter (HELCO) agreed with EPA's determination that the Hill facility should not install $NO_X$ or PM BART. The commenter stated that the Trinity BART report evaluated the available control technologies and that EPA, based on that report, found that the controls considered for PM would not be cost effective and that the controls considered for $NO_X$ would not provide a measurable visibility benefit at Haleakala NP or Hawaii Volcanoes NP. Given what the commenter characterized as the high cost of controls and low degree of improvement in visibility that might result from controls, the commenter supports EPA's determination that ''no control for $NO_X$ and PM at the Hill Plant is consistent with BART'' (citing 77 FR 31706).

*Response 2:* EPA agrees that the existing emission levels of PM and $NO_X$ from Hill are consistent with BART, given the unique conditions in Hawaii.

*Comment 3: Earthjustice comments on $NO_X$.*

One commenter (Earthjustice) stated that EPA proposed no control as BART for $NO_X$ even though HELCO admitted that the control option of low-$NO_X$ burners (LNB) is cost effective and proposed them as BART (citing the Trinity BART report, p. 5–11). According to the commenter, EPA reached this conclusion based on the rationale that ''due to the overwhelming contribution of sulfate to visibility impairment at the nearby Hawaii Volcanoes Class I area, it is unlikely that reductions in $NO_X$ would have a measurable impact on visibility at that area'' (citing 77 FR 31705). However, as detailed in section II.A.1., the commenter believes that EPA inflated the impact of sulfate by including the natural contributions of the Kīlauea Volcano in baseline conditions but not in natural conditions. The commenter believes that this approach ignores the goal of the haze program of controlling anthropogenic visibility impairment. The commenter asserted that EPA cannot justify dismissing a pollution control that the utility already acknowledged as BART by burying it within the background impact of the volcano.

The commenter also stated that EPA summarily dismisses post-combustion controls such as selective catalytic combustion (SCR) because ''they were not found to be cost effective'' in the Trinity BART report (citing 77 FR 31706). However, according to the commenter, that report showed that the cost effectiveness of SCR for Hill falls within the range established in EPA and state BART determinations. The commenter quoted the Trinity BART report as including SCR costs of $2,600 and $2,200/ton for the units at the Hill facility, while EPA's proposal for BART at the Four Corners Power Plant considered cost estimates of $4,887 to $6,170/ton to be cost-effective (citing 75 FR 64227, October 19, 2010) and states have established thresholds for cost-effectiveness such as $7,300 (Oregon), $7,000 to $10,000 (Wisconsin), $5,946 to $7,398 (New Mexico), and $5,500 (New York).

The commenter believes that, in any event, EPA has no basis for eliminating BART controls without engaging in the statutorily mandated five-factor BART analysis. According to the commenter, EPA simply waived any analysis, and any pollution reduction benefit, based on speculation. The commenter alleged that proper inquiry would confirm, for example, that LNB would prove much more effective at controlling $NO_X$ than the relatively high figures the utility cited.

*Response 3:* EPA disagrees with the commenter's assertion that a full five-factor analysis was not conducted for $NO_X$ controls at Hill. The Trinity BART report contains a complete five-factor analysis of $NO_X$ controls at Hill, which is consistent with EPA requirements

[19] See ''BART Five-Factor Analysis Prepared for Hawaiian Electric Light Company, Trinity Consultants'' (April 12, 2010), Document No. EPA–R09–OAR–2012–0345–0010-attachment 3, [hereinafter ''Trinity BART Report''].

and guidance.[20] We have relied in large part on that analysis in conducting our own five-factor BART analysis for $NO_X$ at Hill. As noted by Earthjustice, the Trinity BART Report found low-$NO_X$ burners to be cost-effective at Hill.[21] The Trinity BART Report also estimated that installation of LNB would result in an improvement of 0.21 dv at Hawaii Volcanoes and 0.02 dv at Haleakala (based on the 98th percentile impacts).[22] However, the Trinity BART Report noted this projection ''does not reflect reality'' because it ''relies on an approach for establishing natural conditions that does not consider the local volcanic activity.'' [23] In other words, the actual visibility benefit of LNB will be significantly less than 0.21 dv, due to the impact of volcanic emissions. Taking this fact into account, EPA concluded that the costs of LNB were not justified by the visibility benefit that would actually result from installation of controls.

In particular, EPA considered the unique atmospheric conditions on the Big Island, which call into question the reliability of the benefits predicted by the air quality model. The air quality model used by Trinity compared the impact of the $NO_X$ controls with estimated natural conditions consistent with EPA protocols. As described in Section II.A.1, above, the $SO_2$ emissions from the volcano were not included in those natural conditions. $SO_2$ emissions combine with ammonia in the atmosphere to form ammonium sulfate. $NO_X$ emissions combine with ammonia in the atmosphere to form ammonium nitrate. These ammonia compound particles contribute to visibility impairment. In these complex chemical reactions, ammonia is more likely to combine with sulfur than with nitrogen.[24] As such, inclusion of $SO_2$ emissions from volcanoes in the modeling would reduce the amount of ammonia available to combine with $NO_X$ to form ammonium nitrate. Given these baseline conditions at Hawaii Volcanoes NP, EPA finds that $NO_X$ controls will be much less effective at improving visibility than $SO_2$ controls during this first planning period.

As a result, we find that the costs of LNB are not justified by the visibility benefit that would actually result from installation of controls due to the unique atmospheric conditions on the Big Island. We also find that substantially more expensive post-combustion controls, such as SCR, were not justified for the same reason. Although the costs for those post-combustion controls could be reasonable in some contexts, they are not reasonable for Hill, given the low visibility improvements that would result from installation of such controls at this time. Nonetheless, as anthropogenic contributions to visibility impairment decrease over time, further reductions in $NO_X$ emissions may be required in order to ensure reasonable progress toward eliminating anthropogenic visibility impairment. Therefore, we expect the State of Hawaii to reevaluate the costs and visibility impacts of $NO_X$ controls at Hill in future regional haze plans.

*Comment 4: EPA's Determination of BART for $SO_2$.*

One commenter (HELCO) agreed with EPA that the Hill Plant should not be required to install $SO_2$ BART, stating that the potential improvement in visibility that might result from installing $SO_2$ controls on Hill Units 5 and 6 is far outweighed by the excessive costs of the controls that would be imposed on HELCO and its customers. In contrast, another commenter (Earthjustice) stated that EPA's proposal to exempt the Hill facility from any BART controls falls short of the law's mandates by summarily eliminating any $SO_2$ controls based on the rationale that it may increase retail electric rates by 1 percent. According to this commenter, EPA must require demonstrably cost-effective controls, rather than readily relieving polluters of these obligations. Additional detail of these comments is presented in the paragraphs that follow.

The first commenter (HELCO) stated that there are no cost-effective control options available for the Hill facility. The commenter noted that the BART Guidelines state that the majority of BART-eligible units could meet the presumptive limits at a cost of $400 to $2,000/ton of $SO_2$ removed, and that the costs for Hill far exceed that range. According to the commenter, the Trinity BART report found that switching to 1 percent sulfur fuel would cost between $6,677 and $7,363/ton, while EPA's analysis estimated costs of $5,587/ton. The commenter believes that the Trinity BART report estimate is more accurate, but pointed out that EPA's estimate also exceeds the cost-effectiveness threshold established in the BART Guidelines.

This commenter also agreed with EPA's statement that imposing fuel switching at Hill as BART would ''unduly increas[e] electricity rates in Hawaii'' (citing 77 FR 31707). The commenter stated that fuel switching would increase both the cost of electricity produced by the Hill facility and the cost of electricity that HELCO purchases from independent power producers (IPPs) because most of the contracts with the IPPs are tied to HELCO's ''avoided cost'' of producing electricity; thus, as HELCO's fuel costs increase for Hill, the price that most of the IPPs receive for the renewable electricity they provide increases. The commenter pointed out that the BART Guidelines recognize that there may be circumstances that justify taking into consideration the conditions of the plant and the economic effects of requiring the use of a given control technology, including ''effects on product prices, the market share, and profitability of the source'' (citing 70 FR 39130, July 6, 2005). The commenter asserted that given that the electricity rates in Hawaii already are three times higher than the national average, the increased cost of electricity alone is a reasonable basis for determining that BART for the Hill Plant is no additional controls.

The second commenter (Earthjustice) quoted the proposal preamble as saying that the pollution control of switching to 1 percent sulfur fuel oil would produce a 0.5 dv benefit, which EPA acknowledges is ''a significant improvement in visibility'' (citing 77 FR 31707). In addition, the commenter believes that this benefit is understated because EPA derived the 0.5 dv figure from the Trinity BART report which started from a baseline impact of Hill of 1.56 dv (citing 77 FR 31705), but EPA cited a higher baseline impact of 2.334 dv from the state's consultants in finding Hill subject to BART in the first instance (citing 77 FR 31704, 31705).

This commenter also stated that the cumulative benefit of BART controls must be analyzed, contending that EPA and states have in numerous cases recognized and included such cumulative visibility benefits in BART determinations. The commenter pointed out that the Trinity BART report's 0.5 dv figure includes only the visibility impact on Volcanoes NP; it does not include the visibility impact and benefit to Haleakala NP. The commenter indicated that EPA cited an impact of 0.808 dv at Haleakala NP in finding Hill subject to BART, while the Trinity BART report cited a figure of 0.44 dv (citing 77 FR 31705 and EPA's TSD, p. 50, footnote 45). The commenter stressed that in either case, this impact is not negligible, yet EPA has failed to calculate the visibility benefits to Haleakala NP. In sum, the commenter believes that the ''significant

[20] See Trinity BART Report Chapter 5.

[21] See Trinity BART Report at 5–11.

[22] *Id.* Table 5–7.

[23] Trinity BART Report at 5–11.

[24] See ''Chemical coupling between ammonia, acid gases, and fine particles'', B.H. Baek et al./ Environmental Pollution 129 (2004) 89–98.

improvement'' of 0.5 dv constitutes a bare minimum level of visibility benefit.

The commenter also contended that EPA's cost-effectiveness figure of $5,587/ton is inflated because EPA quotes the cost of the 0.5 percent sulfur oil burned on Oahu as an upper limit, but then assumes it to be the cost of 1 percent sulfur oil (citing the TSD, pp. 52–53). The commenter believes that in all likelihood, 1 percent sulfur oil would cost less than the 0.5 percent sulfur oil upper limit. The commenter added that, conversely, if EPA uses the cost of 0.5 percent sulfur oil, it also should use the pollution reduction benefit of the same.

According to the commenter EPA did not determine its figure of $5,587/ton to be unreasonable as a general matter, but instead indicated that it does not believe the benefits justify the costs ''in this case'' (citing 77 FR 31707). The commenter alleged that the only grounds EPA provided for this conclusion are the following: ''We are particularly concerned about unduly increasing electricity rates in Hawaii, given that these rates are already three times the national average according to the Energy Information Agency'' (citing 77 FR 31707). The commenter asserted that this rationale falls short for the following reasons:

- EPA's reliance on electricity rate increases contradicts its previous rejection of this rationale as a metric for cost effectiveness. In its BART determination for the San Juan Generating Station in New Mexico, for example, EPA maintained that ''we do not consider a potential increase in electricity rates to be the most appropriate type of analysis for considering the costs of compliance in a BART determination'' (citing 76 FR 52400, August 22, 2011). Rather, ''cost effectiveness analyses are based on the cost to the owner to generate electricity, or the busbar cost, not market retail rates'' (citing 76 FR 52398).
- EPA calculated that the fuel change would bump up retail electricity rates by only 1 percent, which seems negligible on its face. EPA does not explain how 1 percent amounts to an undue increase in rates, or provide any method to gauge an undue increase other than its assertion. This amounts to an arbitrary conclusion that any control having an effect on rates is unreasonable.
- In proposing to eliminate BART based on electricity rate impacts, EPA is straying into policy decisions that are more appropriately left to the Public Utility Commission (PUC) of the State of Hawaii's authority and expertise, or the regulated utility and market. The PUC is best positioned to decide how Hill can be most cost-effectively deployed in relation to all other available resource options if EPA fulfills its duty of controlling Hill's air pollution and having Hill internalize the cost. By negating BART based on generalized rate impact concerns, however, EPA undermines both its own function of controlling pollution and the PUC's regulatory function of managing utility resource costs and rates.
- It is not true that requiring Hill to adopt pollution controls will necessarily increase electric rates. Several large wind plants on Hawaii Island are routinely curtailed, especially at night. (The commenter appended many pages of HELCO's reports of such curtailments.) Increasing the cost of Hill's operation would not necessarily result in Hill's generation remaining constant and costs proportionately rising. Rather, it may lead the utility to reduce Hill's use to save on the increased fuel costs and instead receive more wind energy, which has a zero fuel cost (as well as zero pollution impact). In that case, an actual reduction in costs and rates may result (along with an even greater pollution reduction and visibility benefit than EPA calculated).
- EPA's proposal would not help to avoid unduly increasing electric rates, as much as it would distort the relative costs of polluting and clean energy resources and unduly disadvantage the latter. EPA recognizes the goals of the state's ''Clean Energy Bill'' (i.e., the state's renewable portfolio standard [RPS] and energy efficiency portfolio standard), although it does not make clear how this contributes to its analysis. The RPS allows a waiver of its requirements, however, based on ''[i]nability to acquire sufficient cost-effective renewable electrical energy,'' Haw. Rev. Stat. § 269–92(d) (2011 Supp.), which highlights the need for polluting generation like Hill to incorporate the costs of cost-effective pollution controls to enable accurate comparisons with ''cost-effective'' renewable energy. In this regard, EPA's proposal not only forfeits cost-effective pollution control now, but also works against the State's cited clean energy goals overall by exempting Hill from such costs and thus artificially subsidizing it relative to clean generation.

The commenter (Earthjustice) concluded by asserting that at minimum, EPA's proposal and rationale fail to consider the overall benefits of adopting the cost-effective option of switching to low-sulfur fuel, including a potential reduction in electric rates. The commenter believes that this highlights the analytical and practical flaws in EPA's use of utility rates as a justification to avoid its responsibility of requiring cost-effective pollution controls.

*Response 4:* We reaffirm that our BART determination for $SO_2$ at Hill was reasonable. With respect to visibility impacts from Hill, EPA acknowledges that the modeling by the State's consultants estimated a higher baseline impact at Hawaii Volcanoes NP (2.334 dv) than the modeling in the Trinity BART report (baseline impact of 1.56 dv). However, EPA does not consider one estimate to be more reliable than the other. The Trinity modeling was performed in accordance with EPA guidance and based on appropriately developed meteorological modeling data.[25] Even if we were to assume that the State's consultant's modeling results were somehow more accurate, it would not change our determination. Assuming a baseline impact at Hawaii Volcanoes of 2.334 dv from Hill, the corresponding estimated visibility benefit of switching to 1 percent sulfur oil would be approximately 0.8 dv. We find that this benefit is not sufficient to justify the cost of $5,587/ton.

Regarding the ''cumulative benefit'' of BART controls, EPA notes that the RHR and the BART Guidelines do not prescribe a particular approach to calculating or considering visibility benefits across multiple Class I areas. Summing the total visibility benefits over multiple Class I areas is a useful metric that can further inform the BART determination. However, in this instance, the baseline impacts of Hill at the only other affected Class I area, Haleakala NP, were less than 0.5 dv, and the projected improvement of switching to 1 percent sulfur fuel was 0.2 dv.[26] We

[25] The Trinity CALPUFF modeling was performed using the current regulatory version of the model, CALPUFF version 5.8, level 070623. The meteorological modeling prepared by JCA for the Trinity CALPUFF modeling was based on the MM5 mesoscale meteorological model developed by scientists at Penn State University (PSU) and The National Center for Atmospheric Research (NCAR). The CALPUFF regional haze modeling domain was based on three of the MM5 modeling domains which were used as CALMET inputs. The first domain is a 9 km resolution 'State' grid encompassing the 8 major Hawaiian Islands and two domains are 3 km resolution grids encompassing the islands of Maui and the Big Island, respectively. The MM5 modeling period extends from January 1, 2005 to January 1, 2008. The results of the statistical analysis show the MM5 simulations for the state of Hawaii are in close agreement with acceptable benchmarks for all of the examined variables. For example, the wind speed agreement appears to be good, with typical bias below the recommended 0.5 m/s error. See also TSD pp. 48 and 50.

[26] See Letter from Brenner Munger, Manager, Environmental Department, Hawaiian Electric

Continued

have taken this benefit into account in making our BART determination, but have concluded that this benefit (in addition to the 0.5–0.8 dv benefit for Hawaii Volcanoes) is not sufficient to justify requiring 1 percent sulfur fuel oil as BART, given the costs of compliance for this control option.

With respect to the costs-of-compliance factor for Hill, EPA has primarily taken into account the average cost effectiveness of controls, as recommended by the BART Guidelines.[27] We do not agree with HELCO that the BART Guidelines set any ''cost-effectiveness threshold.'' Rather, the Guidelines set presumptive BART limits of 95 percent $SO_2$ removal, or an emission rate of 0.15 lb $SO_2$/MMBtu, for currently uncontrolled coal-fired EGUs greater than 200 MW in size located at power plants greater than 750 MW.[28] In the preamble to the Guidelines, EPA noted that the majority of BART-eligible units with these characteristics could meet the presumptive limits at a cost of $400 to $2,000 per ton of $SO_2$ removed.[29] However, EPA did not indicate that these cost-effective values constituted a ''threshold.'' Moreover, the BART Guidelines do not set a presumptive limit for EGUs that burn oil, but instead recommend that ''[f]or oil-fired units, regardless of size, you should evaluate limiting the sulfur content of the fuel oil burned to 1 percent or less by weight.'' [30]

In this case, we estimated the average cost effectiveness of limiting the sulfur content of the fuel oil burned at Hill to 1 percent, based on reasonable assumptions concerning fuel costs in Hawaii. As explained in Section VI.D.2 of the TSD, since data for the continental United States would not reflect transportation costs to Hawaii, EPA determined that it was appropriate to use fuel market data for the State of Hawaii. Currently, the power plants on Oahu burn oil that is no more than 0.5 percent sulfur by weight, while the power plants on Maui and the Big Island (including Hill) burn oil that is no more than 2 percent sulfur by weight. In addition, the 0.5 percent fuel oil burned on Oahu has significantly different mechanical properties than the fuel burned on the Big Island.[31] Power plants on the Big Island would not be able to use the Oahu fuel without extensive modification to barges, pipelines in the ground, storage tanks, and boiler fuel delivery systems. Therefore, use of the 0.5 percent oil used on Oahu is not a viable option for Hill or the other power plants on the Big Island. In addition, we were not able to find market data for Hawaii or for the continental United States for 0.5 percent fuel oil that could be used on the Big Island. Therefore, our $SO_2$ BART analysis for Hill focused on the costs of switching to 1 percent sulfur fuel oil.

In the absence of any reliable publicly available data on the cost of 1 percent sulfur fuel oil in the State of Hawaii, we determined that it was appropriate to use the price of the Oahu 0.5 percent oil as an upper limit to the cost of 1 percent sulfur fuel oil. In other words, we assumed that, if 1 percent sulfur fuel oil were available on Oahu, it would cost the same or less than the 0.5 percent sulfur fuel burned on Oahu. The six-year (2006–2011) average cost differential between 0.5 percent fuel oil used on Oahu and the 2 percent fuel oil used on Maui and the Big Island is 0.190 $/gal, so we assumed that 1 percent sulfur fuel oil will, on average, cost 0.190 $/gal more than the 2 percent sulfur fuel oil currently being burned. We recognize that this is a conservative assumption, but find it to be reasonable, in light of the lack of reliable, publicly available market data for 1 percent sulfur fuel oil in Hawaii.

Based on this and other reasonable assumptions, we estimated that the average cost effectiveness of limiting the sulfur content of the fuel oil burned at Hill to 1 percent would be approximately $5,587/ton. We have concluded that $5,587/ton is too expensive to justify the projected visibility benefit of approximately 0.5–0.8 dv at Hawaii Volcanoes NP and 0.2 dv at Haleakala NP.

In addition to average cost effectiveness, EPA also took into account the potential impact of controls on electricity rates on the Big Island. Contrary to the commenter's assertion, consideration of electricity rates is not impermissible as part of a BART determination. The BART Guidelines provide that:

> There may be unusual circumstances that justify taking into consideration the conditions of the plant and the economic effects of requiring the use of a given control technology. These effects would include effects on product prices, the market share, and profitability of the source. Where there are such unusual circumstances that are judged to affect plant operations, you may take into consideration the conditions of the plant and the economic effects of requiring the use of a control technology. Where these effects are judged to have a severe impact on plant operations you may consider them in the selection process, but you may wish to provide an economic analysis that demonstrates, in sufficient detail for public review, the specific economic effects, parameters, and reasoning.[32]

EPA has determined that the unique energy situation in Hawaii (island-specific power grid, no availability of natural gas, high electric rates) constitutes an unusual circumstance, and accordingly, has considered the potential economic effects of requiring lower sulfur fuel as BART. In doing so, EPA is not ''straying into policy decisions that are more appropriately left to the [PUC] * * * or the regulated utility and market.'' Rather, EPA is exercising its discretion to consider unusual economic circumstances as part of its BART analysis. EPA agrees that the ''PUC is best positioned to decide how Hill can be most cost-effectively deployed in relation to all other available resource options'' and our BART determination does not constrain the PUC's ability to exercise this authority in any way.

EPA's consideration of the potential impact on electricity rates on Hawaii does not contradict previous EPA's BART determinations. With respect to EPA's BART determination for Public Service Company of New Mexico's (PNM) San Juan Generation Station (SJGS), the commenter's quotation of EPA's responses to comments is misleading. While EPA did not calculate potential increases in electricity rates associated with BART for SJGS, we noted that ''our cost estimate, being about ⅓ that of PNM's, will result in significantly less costs being passed on to rate payers.'' [33] EPA's statement that ''cost effectiveness analyses are based on the cost to the owner to generate electricity, or the busbar cost, not market retail rates'' pertains to the appropriate way to calculate the cost of auxiliary power needed to run a selective catalytic reduction (SCR) system and is not a general statement on the relevance of electricity rates to BART determinations.[34] In addition, the unique circumstances in Hawaii where there is no grid interconnectivity between islands to mitigate costs to ratepayers were not present in New Mexico.

We also note that EPA has taken into account economic effects as part of its BART determinations for other power plants with unusual circumstances. For

Company to Tom Webb, U.S. EPA Region 9, October 11, 2011, Document No. EPA–R09–OAR–2012–0345–0011—attachment 4.

[27] 40 CFR part 51, Appendix Y, § IV.D.4.c.

[28] 40 CFR part 51, Appendix Y, § IV.E.4.

[29] 70 FR 39132. July 6, 2005.

[30] 40 CFR part 51, Appendix Y, § IV.E.4.

[31] See Trinity BART Report at pg. 4–2.

[32] 40 CFR Part 51, Appendix Y, BART Guidelines § IV.E.3.

[33] 76 FR 52400.

[34] 76 FR 52398.

example, the Four Corners Power Plant (FCPP) is located on the Navajo Nation and contributes annually to revenues to the Navajo government through lease payments and coal royalties. In response to concerns raised by the Navajo Nation that options considered for BART may cause FCPP to close, EPA conducted an affordability analysis for our proposed BART determination for FCPP.[35]

Finally, we acknowledge that additional factors could influence the ratepayer impacts of requiring lower sulfur fuel. As noted by Earthjustice, increased fuel costs at Hill could result in the increased use of other types of generation. At the same time, the cost of electricity that HELCO purchases from IPPs could also increase due to increases in HELCO's ''avoided cost'' of producing electricity. These factors are outside of the scope of our analysis, but we note that it is not clear whether the overall effect of switching to alternative sources of generation would be to further increase costs or to mitigate the impact to ratepayers. As such, our estimate of ratepayer impacts is far from certain. Therefore, while we have considered these impacts as part of our analysis, we do not rely upon them specifically as part of our final BART determination.

In sum, taking into account the five BART factors, and particularly the costs of control and expected visibility improvement, we conclude that BART for Hill is no additional controls.

7. $NO_X$ Reasonable Progress Analysis for the State of Hawaii

*Comment 1: Determining reasonable progress through island-specific emissions inventories.*

One commenter (Earthjustice) objected to the fact that EPA limited its emissions inventories only to Maui and the Big Island in isolation. According to the commenter, EPA supported this approach by saying that ''trade winds tend to transport pollution from Oahu away from the Class I areas'' (citing 77 FR 31708). The commenter pointed out that the ''Kona'' winds often blow in the opposite directions, sometimes for as long as a week at a time, and asserted that general meteorological tendencies do not justify EPA summarily exempting all pollution sources from Oahu.

The commenter also quoted EPA as saying that modeling ''indicates that even very large sources on Oahu have relatively small visibility impacts on Haleakala'' (citing 77 FR 31708). The commenter stated that these visibility impacts are understated. According to the commenter, EPA's BART Guidelines recommend a minimum of three years of meteorological modeling for such analysis, while in this case, only one year of data were available. The commenter indicated that in other cases where only one year of modeling was conducted, it was established that the highest result, and not the 98th percentile result, should be used, and that in this case the highest result would have provided a visibility impact for two large plants on Oahu (Kahe and Waiau) of 1.28 and 0.57 dv at Haleakala NP, respectively, subjecting those plants to BART.

*Response 1:* The meteorological modeling for the analysis is based on one year of meteorological data, which represents the variety of meteorological conditions that occur throughout the year. This includes time periods when ''Kona'' winds are prevalent. Kona winds are from the west and southwest. These winds also direct emissions from Oahu away from the Class I areas.

EPA's BART Guidelines do not specify a minimum number of years of meteorological modeling for subject-to-BART analyses, but EPA agrees with the commenter that it is generally appropriate to use three to five years of meteorological data for such analyses. For Hawaii, the subject-to-BART modeling was performed using the best available meteorological modeling available at the time, which for Hawaii was one year of meteorological modeling.[36] Given the generally consistent Pacific trade wind patterns, EPA concludes that this meteorological modeling, based on one year of data, is adequate to sufficiently represent the range of meteorological conditions in Hawaii. Therefore, we find that it is appropriate to use the 98th percentile in the case of Hawaii for making subject-to-BART determinations. Based on the results of this modeling and information on prevailing winds, it is reasonable to assume that emissions from Oahu do not contribute to visibility impairment at the Class I areas on Maui or the Big Island.

*Comment 2: EPA's reasonable progress analysis for $NO_X$ sources on Maui and the Big Island.*

One commenter (Earthjustice) indicated that EPA should not have eliminated controls for $NO_X$ in its reasonable progress analysis. According to the commenter, EPA ignored its own guidance indicating that installation of LNB is ''highly cost-effective'' (citing 40 CFR part 51, Appendix Y), as well as the utilities' own analysis confirming the same (citing the Trinity BART report). The commenter asserted that EPA circumvented the legally mandated analysis for reasonable progress by misleadingly claiming a ''small contribution'' of $NO_X$ in relation to $SO_2$ levels inflated by volcano impacts.

In contrast, two other commenters (HC&S, MECO) agreed with the proposal that sources on Maui and the Big Island should not be required to install $NO_X$ controls. The commenters stated that such controls are not justified given the 20 percent net reduction in $NO_X$ emissions anticipated from existing regulations and the small contribution of $NO_X$ to visibility impairment in Hawaii's Class I areas. One of the commenters (MECO) also indicated that such controls are not justified due to the high cost of compliance.

*Response 2:* Based on our analysis of the reasonable progress factors, as set forth in section III.F.2. of our proposal,[37] and given the unique atmospheric conditions in Hawaii, as described in section II.A.6 above, EPA finds that the significant reductions in $NO_X$ emissions from mobile sources are sufficient to show reasonable progress for the first planning period for both Maui and the Big Island. Additional controls on industrial $NO_X$ sources may be required in future planning periods.

8. Reasonable Progress Analysis for $SO_2$ Emissions on the Big Island

*Comment 1: Cap could/should be lower.*

One commenter (NPS) believes that the proposed $SO_2$ cap for certain point sources on the Big Island is the minimum acceptable action to demonstrate reasonable progress for Hawaii Volcanoes NP. Given the reductions projected under Hawaii's Clean Energy Bill, the commenter believes that a lower $SO_2$ emissions cap is feasible and justified. The commenter also noted that EPA's analysis used the current costs for 0.5 percent sulfur fuel oil on Oahu to estimate the costs of 1.0 percent sulfur fuel oil on Maui and the Big Island, concluding that EPA likely overestimated the costs of switching to 1.0 percent sulfur fuel oil.

Another commenter (Earthjustice) stated that the proposed $SO_2$ cap on certain HELCO plants on the Big Island does not achieve progress toward eliminating anthropogenic visibility impairment, but instead largely

[35] 75 FR 64227, October 19, 2010.

[36] The Western Regional Air Partnership provided three years of meteorological modeling for the analysis for all western states, with the exception of Hawaii and Alaska. Because meteorological modeling was not provided for Hawaii, Hawaii DOH directed their contractor to prepare meteorological modeling for the subject-to-BART analysis.

[37] 77 FR 31708, 31709.

maintains status quo emissions levels (noting that the proposed cap level of 3,550 tpy is only 375 tpy less than the affected plants' current baseline $SO_2$ emissions of 3,875 tpy). The commenter questions why EPA does not adopt the State's clean energy mandates under which the HELCO plants' $SO_2$ emissions are projected to decline to around 1,000 tpy or less as part of the long-term strategy (and thereby make these reductions federally enforceable), particularly since they reflect the State's own legal mandates and judgments as to what is reasonable.

This commenter added that while the proposed cap serves as a minimal ''backstop'' against increased pollution, it does not fulfill the legal mandate of progress toward eliminating anthropogenic visibility impairment. The commenter stated that EPA must, first, calculate a meaningful URP that is unskewed by volcano conditions and second, require a rate of reasonable progress that is no less than the URP and reflects $NO_X$ and $SO_2$ controls and state clean energy mandates. The commenter believes that EPA has not justified its failure to provide for achievement of a ''rationally based'' URP, or its failure to consider or provide for even greater progress, as its own rules and policies require.

*Response 1:* Based on our analysis of the reasonable progress factors, set forth in section III.F.4 of our proposal,[38] and given the unique atmospheric conditions in Hawaii, as described in section II.A.6 above, EPA finds that the proposed cap of 3,550 tpy is sufficient to ensure reasonable progress for this planning period. This cap provides a federally enforceable requirement to ensure that total emissions of $SO_2$ from the sources on the Big Island with the greatest anthropogenic visibility impacts on Hawaii Volcanoes NP will not increase over the course of the first implementation period. With the cap in place, total anthropogenic emissions of $SO_2$ on the Big Island are expected to decline during this period.

The Hawaii 2009 Clean Energy Omnibus Bill (Act 155 (09), HB1464, signed June 25, 2009, [hereinafter ''Clean Energy Bill'']) sets standards for renewable energy and energy conservation which would tend to reduce emissions at Hill, Shipman and Puna. However, it is unclear how those standards will be met and what new generation will be on line by January 1, 2018. The analysis of the bill provided by EPA in the proposal was intended to give the reader a qualitative understanding of the uncertainty in existing 2018 emission projections for these plants. It is up to the State of Hawaii to determine how the Clean Energy Bill is implemented and it is quite possible that Hill, Shipman and Puna will continue to operate at a similar capacity in 2018 as they do now. In light of this uncertainty, EPA finds it is reasonable to set a cap that could be met entirely by conversion to 1 percent fuel oil at the targeted plants, even if these plants did not have to reduce emissions under the Clean Energy Bill.

We also find that no additional reductions in anthropogenic $SO_2$ emissions are reasonable for this implementation period. As noted in our proposal, we estimate that meeting the cap through conversion to 1 percent fuel oil will cost approximately $7.9 million per year and $5,600/ton of $SO_2$ reduced.[39] We acknowledge that this cost estimate is conservative, but we find it to be reasonable for the reasons set forth in Section VI.D.2 of the TSD and Section II.B.6 above.

Finally, we do not agree that EPA must or should set RPGs for Hawaii that provide for a rate of improvement equivalent to or faster than the URP. As explained in Section II.A.1 above, the URP does not set a mandatory target for emissions reductions and is unhelpful in setting RPGs for Hawaii, given the unpredictability of volcanic emissions.

*Comment 2: High cost of proposed cap outweighs possible benefits.*

One commenter (HELCO) does not agree that a cap is required to meet reasonable progress goals. The commenters asserted that the costs and non-air quality and energy impacts of achieving $SO_2$ emissions reductions are excessive, and are unlikely to achieve any improvement in visibility; thus, the commenter believes that no controls should be required.

The commenter asserted that EPA has significantly underestimated the costs of switching to 1 percent sulfur fuel at the Hill, Puna, and Shipman Plants, noting that EPA estimated that the proposed emissions cap will cost $5,500/ton of $SO_2$ reduced annually (citing 77 FR 31711), while the commenter estimates that this control measure would cost approximately $7,354/ton at Hill, $7,204/ton at Shipman, and $7,205/ton at Puna. The commenter indicated that EPA's cost estimate fails to account for all of the costs associated with switching fuels at these facilities. As previously discussed in the section of this document on $SO_2$ BART (Section II.A.6.), fuel switching at the commenter's facilities will increase both the cost of electricity produced by the commenter's units and the cost of electricity that the commenter purchases from specific IPPs with avoided cost pricing. The commenter stated that EPA has not provided a reasoned basis for disregarding the commenter's cost estimates.

In addition, the commenter asserted that the visibility improvements anticipated by EPA do not justify the costs associated with complying with the proposed cap. The commenter made the following points in support of this assertion:

- EPA's proposal is based on modeling showing that Hill and Puna may be causing or contributing to impairment at Haleakala NP and that Shipman may be contributing to visibility impairment at Hawaii Volcanoes NP, using the same conservative assumptions used for MECO's Kahului Plant on Maui (citing 77 FR 31711). For Kahului, EPA's modeling was ''based on conservative assumptions that are unlikely to occur during normal operations'' (citing 77 FR 31709). Such tenuous connections to visibility impacts should not be the basis for imposing significant costs on HELCO's ratepayers.
- The proposed cap cannot be justified based on the ''slight improvement'' in projected visibility for 2018 at Volcanoes NP (0.18 dv) and Haleakala NP (0.29 dv) (citing 77 FR 31713). These levels are far less than either the level necessary for a perceptible improvement in visibility or the level of improvement EPA estimated in the BART analysis for the Hill Plant (citing 77 FR 31707).
- There is no reasonable basis for EPA's determination that a control cost of $5,500/ton of $SO_2$ and a 2 percent increase in electricity rates are justified for a visibility improvement of significantly less than 0.5 dv. In the BART analysis for the Hill Plant, EPA determined that a 0.5 dv improvement was outweighed by a control cost of $5,600/ton and a 1 percent increase in electricity rates (citing 77 FR 31707). EPA fails to explain why an emissions cap that achieves less at a greater cost to rate-payers is justified as a reasonable progress requirement, particularly since the degree of improvement in visibility is a factor in determining BART and is not a factor in determining reasonable progress [citing 40 CFR 51.308(d)].
- The high control costs for fuel switching are excessive for an aesthetic program such as Regional Haze. These costs far exceed the cost thresholds EPA recently applied in the Cross-State Air

[38] 77 FR 31710.

[39] 77 FR 31711, 31712. Table 23 in the proposal mistakenly listed the total cost as $7,859,89,'' but the text correctly reflects the estimated cost of $7.9 million.

Pollution Rule (citing 76 FR 48208, August 8, 2011), which is a health-based standard for which EPA selected cost-effectiveness thresholds of $500/ton for $NO_X$ reductions and $500 or $2,300/ton for $SO_2$ reductions.

The commenter went on to assert that the proposed emissions cap is not necessary to meet reasonable progress goals because of the high likelihood that $SO_2$ emissions from the affected facilities will decrease absent any Regional Haze requirement due to Hawaii's Clean Energy Bill. According to the commenter, EPA guidance indicates that emissions reductions from local control measures are an important factor in establishing reasonable progress goals and may be all that is necessary to achieve reasonable progress in the first planning period for some states. Citing EPA's Reasonable Progress Guidance, the commenter stated that despite EPA's assertion to the contrary (citing 77 FR 31712), neither the BART Guidelines nor the statute requires that emissions reductions from state programs must be federally enforceable to be considered in a reasonable progress analysis.

Finally, the commenter stated the understanding that EPA believes anthropogenic controls are necessary because Kilauea could stop erupting at any time, leaving all resulting visibility impairment from anthropogenic emissions that must be addressed. As discussed earlier, the commenter believes that even if Kilauea stopped erupting tomorrow, $SO_2$ emissions from the volcano would continue. Rather than imposing controls and significant costs to address what the commenter believes is an unlikely hypothetical situation, the commenter suggested that EPA should conclude that controls are not necessary during this planning period to meet reasonable progress goals but must be re-evaluated during the next planning period. The commenter believes that such an approach ensures that any burdens imposed on the commenter's rate payers are justified by real-world environmental benefits.

*Response 2:* As an initial matter, we do not agree that we can rely solely on state and local measures to ensure reasonable progress under this Regional Haze FIP. Pursuant to CAA section 169A(b)(2), Regional Haze SIPs must include ''such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal * * *'' of achieving natural visibility conditions in all mandatory Class I areas. This statutory requirement is implemented through the RHR, which requires that the long-term strategy element of a Regional Haze SIP, ''* * * include *enforceable* emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals * * *''[40] Once approved by EPA into the applicable SIP, these emission limits, schedules of compliance and other measures become federally enforceable under the CAA.

In this regard, the commenter's selective quotation from EPA's Reasonable Progress Guidance is misleading. The Guidance notes that:

> One important factor to keep in mind when establishing a RPG is that you cannot adopt a RPG that represents less visibility improvement than is expected to result *from the implementation of other CAA requirements.* You must therefore determine the amount of emission reductions that can be expected from identified sources or source categories as a result of requirements at the local, State, and federal levels during the planning period of the SIP and the resulting improvements in visibility at Class I areas. Given the significant emissions reductions that we anticipate to result from BART, the CAIR, and the implementation of other CAA programs, including the ozone and $PM_{2.5}$ NAAQS, for many States this will be an important step in determining your RPG, and it may be all that is necessary to achieve reasonable progress in the first planning period for some States.[41]

Read in context, it is clear that the discussion in the Guidance of state and local measures refers only to measures resulting from implementation of other CAA requirements (i.e., federally enforceable requirements promulgated by EPA or submitted by the State and approved by EPA into the applicable SIP). Hawaii has not submitted the measures contained in the Clean Energy Bill for approval into the applicable SIP. Therefore, these are not federally enforceable and, in promulgating a Regional Haze FIP, we cannot rely on these measures to assure that reasonable progress is made during the first planning period. In addition, we note that the Clean Energy Bill is not intended to address regional haze and does not specifically target those sources found to cause or contribute to visibility impairment in Hawaii's Class I areas. While implementation of the Clean Energy Bill *may* lead to reductions in emissions of $SO_2$ emissions from such sources, it does not ensure that such reductions will occur. We expect that Hawaii will assess the actual effects of the Clean Energy Bill and consider incorporating some or all of these measures into the SIP as part of future Regional Haze plans. The RHR requires that regional haze plans ''ensure no degradation in visibility for the least impaired days over the [planning] period.''[42] As explained in our proposal, our reasonable progress analysis for Hawaii focuses on anthropogenic emissions of visibility-impairing pollutants, as measured through island-specific emissions inventories.[43] Without additional federally enforceable controls, anthropogenic emissions of $SO_2$ on the Big Island are projected to increase between 2005 and 2018.[44] $SO_2$ is the principal cause of visibility impairment on the best 20 percent days at the Hawaii Volcanoes NP.[45] If anthropogenic $SO_2$ emissions on the Big Island were to increase between 2005 and 2018, it is reasonable to assume that visibility on the best days would degrade. Therefore, additional control measures are needed to prevent such degradation.

With regard to the costs of compliance, EPA recognizes that there is a great deal of uncertainty in projecting the future costs of petroleum products. The EPA-estimated cost of $5,587/ton is conservative, and was presented as an upper bound on what the costs could be in order to inform as best as possible both EPA's decision making and public comment. Because it is a conservative estimate that likely does not represent the true cost of the cap, we believe it would not be appropriate to use this cost estimate as a benchmark for BART or reasonable progress decisions on other sources in Hawaii or other states. EPA is unable to describe our specific disagreements with the details of HELCO's cost analysis because the company claimed that analysis as confidential business information (CBI).[46] EPA agrees with HELCO that if the utility were to decide to meet the cap by purchasing more expensive fuel, the costs to the ratepayers may be greater than a 2 percent increase in rates. This is due to HELCO's contracts with independent power producers (IPPs) that specify that the IPPs would be paid based on avoided costs. Nonetheless, we expect that HELCO will be able to limit the impact on ratepayers by meeting the cap through increased use of clean power as

[40] 40 CFR 51.308(d)(3) (emphasis added).

[41] See Section 1–4 of ''Guidance for Tracking Progress Under the Regional Haze Rule'', Document No. EPA–R09–OAR–2012–0345–0003–B10 (emphasis added).

[42] 40 CFR 51.308(d)(1).

[43] See 77 FR 31707.

[44] TSD at 41–42.

[45] TSD at 24–25.

[46] EPA's regulations governing treatment of CBI are set out at 40 CFR Part 2, Subpart B.

mandated by the Hawaii Clean Energy Bill.

Finally, HELCO misstates EPA's position regarding the need to control anthropogenic $SO_2$ emissions in light of the fact that the emissions of the volcano are uncertain and variable. As noted above, the RHR requires that RPGs ''ensure no degradation in visibility for the least impaired days'' over the period of the implementation plan.[47] Given that $SO_2$ is the principal cause of visibility impairment on even the best days, limiting emissions of $SO_2$ from manmade sources is necessary to ensure no degradation. Whether the volcano continues to erupt or not is not directly relevant. EPA has identified Hill, Shipman and Puna as appropriate sources to control because modeling indicates that they contribute to visibility impairment at Hawaii Volcanoes National Park. We have selected the lowest cost emissions control method to set the emissions cap and have provided HELCO with substantial flexibility on how to meet that cap.

*Comment 3: HELCO willing to accept a 24-month cap.*

One commenter (HELCO) stated that in spite of disagreeing about the reductions necessary to meet reasonable progress goals, the commenter appreciates the flexibility that an emissions cap provides and is prepared to accept a cap on $SO_2$ emissions at its Puna, Hill, and Shipman facilities. However, the commenter asserted that it is critical to the commenter's ability to cost-effectively dispatch its system and maintain reliability that compliance with the cap be determined over a 24-month period (i.e., a rolling 24-month cap of 7,100 tons rather than a 12-month cap of 3,550 tons).

The commenter's primary concern is that the company be able to operate the five units subject to the proposed cap as much as necessary in the event of concurrent forced outages of a significant duration at multiple units within its system; this concern arises from historic events involving the IPPs that provide almost 90 megawatts of power to the commenter's system. In such a situation under the proposed 12-month cap, the commenter might find itself faced with two unacceptable options—violate the cap to maintain grid reliability or allow rolling blackouts. The commenter indicated that a 24-month cap would provide sufficient flexibility to ensure reliability without incurring CAA penalties.

The commenter added that a 24-month cap would diffuse the potential increase in electricity rates that may occur if multiple overlapping forced outages occurred under a 12-month cap, necessitating increased generation with higher-cost diesel-fired units. A 24-month cap would allow the commenter to operate its most cost-effective units as needed during an event and then offset the period of higher emissions during the remainder of the compliance period.

The commenter also stated that if EPA does not establish a 24-month cap, it is critical that EPA create an exemption to the 12-month cap in the event of concurrent forced outages of significant duration at multiple units in the system. Because its system is isolated, the commenter does not have the option of purchasing replacement power and must be able to operate its units as needed to maintain system reliability.

Finally, the commenter requested that if a 12-month cap is established, EPA confirm that compliance must first be demonstrated on December 31, 2018, rather than January 31, 2018. The commenter indicated that the difference is extremely important for planning and implementing compliance measures. The commenter is concerned that the proposed FIP is not clear on this matter [citing proposed 40 CFR 52.633(d)(4) and 77 FR 31718].

*Response 3:* EPA understands the commenter's concern for electric reliability, but moving to a 24-month rolling average would significantly weaken the control requirement by allowing for greater number of days in each year that have large 24-hour emission rates. We note that, under the BART Guidelines, emissions limits for EGUs are set as 30-day rolling averages in order to ensure that they are enforceable and consistent across sources. Because the $SO_2$ emission cap here is being set pursuant to reasonable progress requirements, rather than BART requirements, we have provided HELCO with the additional flexibility of a 12-month rolling cap, rather than a 30-day rolling average limit, in order to address concerns about costs and electric reliability. However, given that reasonable progress is measured by the best 20 percent days and worst 20 percent days on an *annual* basis, we do not agree that an averaging time greater than 12-months to be appropriate. Nonetheless, EPA may be willing to consider a modification of the control requirement that would allow for short-term exceedances of the cap in conditions where electric reliability is genuinely at risk. However, such an amendment to the rule would need to comply with all substantive and procedural CAA requirements for implementation plan revisions. Since this requirement is not scheduled to go into effect until 2018, there is adequate time for promulgation of such a revision via notice-and-comment rulemaking.

EPA confirms that HELCO would need to first demonstrate compliance with the cap on December 31, 2018. The rule language has been modified to clarify this issue.

*Comment 4: Alternative approach.*

One commenter stated that EPA's proposed $SO_2$ limits for the Big Island power plants appear to ignore the very large emissions from the volcano, which are much greater than those from the power plants. According to the commenter, adding cost to power generation that is already the highest in the nation with no benefit makes no sense and adds to the perception that EPA is not working in the best interest of the country. However, the commenter noted that because emissions from the volcano might decrease or stop in the future, some limit to power plant emissions would be appropriate.

To address this issue, the commenter suggested a ''second order'' limit that is tied to the amount of volcanic emissions. As explained by the commenter, the limit would consist of a constant limit that would not affect the visibility from the volcano should volcanic emissions stop (i.e., the current amount of emissions EPA considers appropriate should volcanic emissions stop), plus a variable amount that would be some fraction of emissions from the volcano (e.g., 2 percent of the volcanic emissions, an amount that would be undetectable given the volcanic emission variation and clearly would not impact visibility). The commenter believes such a limit would provide ''breathing room'' for HELCO and price relief for its customers, while at the same time meeting EPA's mandate to limit emissions to values that will not significantly affect visibility in national parks and not adding to the public perception that EPA is working against the citizens of this country.

*Response 4:* EPA appreciates the commenter's concerns, and the thought that went into this comment. However, we do not agree that our proposed emission cap ignores the very large emissions from the volcano. Rather, the cap is intended to limit the anthropogenic contributions to haze, consistent with the purpose and the requirements of the RHR. We agree with the commenter that accounting for the impact of the volcano presents a significant challenge for Regional Haze planning in Hawaii. Unfortunately, given the high variability and uncertainty of the volcanic emissions, the commenter's suggested approach

[47] 40 CFR § 51.308(d)(1).

would result in a situation where the electric utility would not know what their allowable $SO_2$ emissions would be until after the data on the volcanic emissions are available. This approach would not be workable.

*Comment 5: Other comment.*

One commenter stated that EPA is mistaken if it thinks that it is going to raise taxes or rates in Hawaii over what the commenter termed ''some ignorant climate change haze nonsense.''

*Response 5:* This rulemaking is required to meet requirements set under the CAA amendments of 1990 to move toward eliminating anthropogenic visibility impairment at Class I areas. It is not related to climate change. EPA is cognizant of the potential costs of the plan and so has designed it to minimize impact on the ratepayers as much as possible.

9. Point Source $SO_2$ Emissions on Maui

*Comment 1: Puunene Mill emissions will go down.*

One commenter (HC&S) disagreed with the EPA's projections that point source emissions of $SO_2$ on Maui will increase during the first planning period ending in 2018, and that much of this increase will come from the Puunene Mill (with projected emissions of 469 tons in 2018). The commenter noted that $SO_2$ emissions from the Puunene Mill are driven by coal consumption because bagasse, the primary fuel at the facility, contains negligible amounts of sulfur and fuel oil is a very small fraction of annual heat input. According to the commenter, $SO_2$ emissions from the facility averaged 409 tons per year from 2006 to 2011, and this average was inflated by historic lows in sugar production in 2008 and 2009. The commenter expects that sugar production will continue to rebound and coal consumption will continue to decline so that $SO_2$ emissions from the facility will be in the range of 280–300 tpy by 2018. Based on this, the commenter believes that $SO_2$ emissions from point sources in Maui are more likely to decrease by 2018 rather than to increase as projected in the proposal, resulting in a larger decrease in overall anthropogenic emissions than projected and in further improvements in visibility at Haleakala NP.

*Response 1:* The EPA appreciates this new information and believes that it supports our conclusion that it is not reasonable to require additional $SO_2$ reductions on Maui at this time. The EPA encourages the commenter to work closely with Hawaii DOH as they develop emission inventory projections for future updates of the Regional Haze plan to ensure that the best information is used in making emission inventory projections.

*Comment 2: Reasonable progress analysis not warranted for Kahului.*

Although supporting the EPA's conclusion that the Kahului facility should not be subject to controls, one commenter (MECO) disagreed that a reasonable progress analysis was warranted for the Kahului facility. According to the commenter, the EPA's finding that prevailing winds should transport Kahului's emissions away from Haleakala NP (citing 77 FR 31709) is a sufficient basis for the EPA to make a determination that controls are not required at Kahului; and no additional analysis should be necessary. The commenter stated that the visibility modeling upon which the EPA based its decision to conduct the reasonable progress analysis was based on conservative assumptions and unlikely to occur in normal operations (citing 77 FR 31709), and that Kahului's actual contribution to visibility impairment at Haleakala NP is likely considerably less and may not even be in the range of perceptibility. For this reason, the commenter believes that the EPA should have determined that Kahului should not be subject to reasonable progress requirements during this planning period.

*Response 2:* The EPA believes it was reasonable to consider additional $SO_2$ controls at the Kahului power plant, given four concerns: significant visibility impairment from sulfur compounds at Haleakala NP on both the worst and best visibility days, a projected increase in point source $SO_2$ emissions during the planning period, the very high $SO_2$ emissions from the facility, and significant modeled visibility impacts from the plant on Haleakala. However, based on our analysis, we determined that no additional controls for Kahului are reasonable at this time.

10. Reasonable Progress Analysis for $SO_2$ Emissions on Maui

*Comment 1: Concurrence with proposal.*

One commenter (HC&S) concurred with the EPA's analysis showing that existing requirements under the Act will result in net reductions of anthropogenic emissions of $SO_2$ on Maui during the first planning period (ending in 2018) and that it is therefore reasonable to assume that visibility at Haleakala NP on the worst visibility days will improve and on the best visibility days is not getting worse. In addition, the commenter concurred with the EPA's proposal to find that the projected level of emissions reduction is reasonable for this planning period. (See Section II.A.9. of this notice for the commenter's comments and our responses on projected point source $SO_2$ emissions on Maui.)

*Response 1:* The EPA appreciates the supportive comment. With anthropogenic emissions decreasing substantially in the first planning period, it is reasonable to assume that visibility impairment due to anthropogenic sources will improve during the planning period.

*Comment 2: Cap emissions from Kahului and Maalaea.*

One commenter (NPS) recommended that the EPA establish an $SO_2$ emissions cap for the Kahului Power Plant and the Maalaea Generating Station on Maui, which could be met by lower sulfur fuel, reduced plant utilization, or increased use of biofuels. The commenter noted that under Hawaii's Clean Energy Bill, $SO_2$ emissions from these two facilities are projected to be reduced by 83 percent by 2018. The commenter believes that a federally enforceable $SO_2$ emissions cap for the Kahului and Maalaea facilities is justified for reasonable progress and would provide incentive for early implementation of the Clean Energy Bill objectives. The commenter added that the visibility modeling demonstrated that the Kahului Power Plant contributes to visibility impairment at Haleakala NP, and that the EPA determined that costs for 1 percent sulfur fuel would be lower for Kahului Power Plant ($4,200 per ton) than for the electric generating facilities on the Big Island ($5,587 per ton) that are required to meet an $SO_2$ emissions limit. In addition, the commenter (NPS) disagreed with the EPA's reliance on the projected reductions in $SO_2$ emissions from marine shipping under the North American Emissions Control Area agreement (that requires lower sulfur fuels for marine shipping within 200 nautical miles of the U.S. coastline beginning in August 2012) to offset emissions from the electric generating facilities on Maui. The commenter contended that there is considerable uncertainty in the levels of baseline and future marine traffic and the extent that these emissions should be included in the island inventory.

*Response 2:* EPA disagrees with this comment. As explained in our proposal, due to the federally enforceable emissions reductions from mobile sources (including shipping), total anthropogenic $SO_2$ emissions on Maui are projected to decrease by nearly 8 percent between 2005 and 2018 without additional control measures. We also expect emissions reductions from the

Hawaii Clean Energy Bill, but we do not need to make those reductions federally enforceable in order to show reasonable progress. In addition, HC&S has indicated in their comments on the proposal that their 2018 emissions should be significantly lower than indicated on Table V–2 of the TSD.[48] Even without these additional reductions in point source emissions, anthropogenic $SO_2$ emissions on Maui are projected to decrease by nearly 8 percent between 2005 and 2018.

11. Agricultural Burning on Maui

*Comment 1: Cane burning impacts visibility and should be addressed.*

Eight commenters expressed concern over emissions from agricultural burning in the sugarcane fields of Maui. Four of these commenters (Earthjustice, FHNP, Maui Tomorrow, Parsons) specifically questioned EPA's conclusions that there is no evidence of agricultural burning contributing to haze at Class I areas and/or that no further controls on agricultural burning are reasonable at this time (77 FR 31715, May 29, 2012). In contrast, one commenter (HC&S) concurred with EPA's findings.

One commenter (Earthjustice) indicated that the community's direct experience and testimony have provided evidence that agricultural burning contributes to haze at Class I areas, specifically that smoke plumes from agricultural burning impair visibility within Haleakala NP when meteorological conditions are not optimal and that the smoke directly impairs the views of park visitors of the panoramic vistas of the island, coastlines, and ocean from the park, which is an integral part of the park experience. Given the serious community concerns, the commenter urged EPA to undertake a full reasonable progress analysis for this pollution source and adopt a plan incorporating best practices for controlling emissions.

Another commenter (Parsons) stated that on many days, his view of Haleakala NP from Wailuku is obscured by a cloud of cane smoke through the central valley of Maui, and that views from Haleakala NP would certainly be impacted likewise. The commenter expressed disappointment that EPA has done little to address environmental and health concerns over the ongoing practice of open burning of sugar cane despite considerable public outcry.

One commenter (FHNP) indicated that a significant portion of the visitor experience of Haleakala NP is the enjoyment of views from within the park to places outside of the park. The commenter stated that it is the nature of human perception to be acutely aware of changes in scenery that are not ''natural'' even when the events are short lived or spatially limited. The commenter believes that such events, particularly agricultural burning in the cane fields, may not be adequately captured by EPA's analysis and methodology. According to the commenter, these agricultural burning events have a significant negative impact on the view from Haleakala NP toward the West Maui Mountains and other surrounding areas. The commenter added that it is intuitively obvious that burning such large quantities of vegetation in close proximity to a Class I area will have some impact on the viewing quality in and from that Class I area, even though the analysis showed no direct correlation.

Another commenter (Maui Tomorrow) stated that cane field burning produces billowing clouds laden with toxins and fine particulates, which can blot out the sky and the natural vistas, and cause or contribute to a range of severe respiratory and cardiovascular illness. While recognizing that the major contributor to visibility impairment in Haleakala NP is volcanic emissions, the commenter quoted the NPS as saying ''sugar cane processing facilities and field burning * * * can affect air quality and visibility'' in Haleakala NP. The commenter noted that Hawaii has ''no smoke management plan as such'' (citing 77 FR 31715, May 29, 2012) and contended that cane field burning is among the largest anthropogenic sources of nitrogen dioxide, $SO_2$, VOC and PM pollution on Maui, concluding that it makes little sense to rule out practical and achievable limitations on emissions from stopping the burning of cane fields. The commenter added that the fact that $SO_2$ is the dominant visibility-impairing pollutant in Hawaii's two Class I areas does not mean that the agency should ignore the contribution of other pollutants at one of them.

This commenter also stated that work published by a National Oceanic and Atmospheric Administration (NOAA) researcher that EPA cites in its TSD indicates that ''Haleakala NP has greater impacts'' from smoke as compared to Hawaii Volcanoes NP (citing TSD quotations of M. Pitchford). According to the commenter, that study notes that, based on data from the Haleakala monitoring station, ''about half of worst-case days are associated'' with factors other than volcanic emissions, including smoke, and that recommendations for follow-on work include examination of the smoke factor with respect to burning (e.g., agricultural) events. The commenter concluded by stating that EPA's proposed determination to not restrict cane field burning on Maui under the Regional Haze FIP is not reasonable and urging EPA to reconsider its position in light of the available evidence.

Another commenter (HC&S) noted that agricultural burning in Hawaii is regulated under a permit program, and widespread and persistent haze conditions are used as a criterion for establishment of a ''no-burn'' period by the Hawaii DOH. According to the commenter, ''no-burn'' periods established by the DOH are most likely to occur on days when volcanic smog from the volcano is present on the island, and therefore the potential for visibility impacts at Haleakala NP from agricultural burning should be lowest on the worst visibility days. The commenter indicated that under its agricultural burning permit, HC&S operates an extensive network of weather stations in and around the plantation that provide real-time data both to burn managers and to a meteorological consultant who prepares daily micro-forecasts of anticipated weather conditions, expected smoke dispersion, and optimum times and locations for burning. On occasions when existing air quality or expected smoke dispersion have been judged to be unsuitable for burning, HC&S has elected not to burn even when a ''no-burn'' period has not been established by the Hawaii DOH.

This commenter added that agricultural burning at HC&S is conducted in a manner largely consistent with the Tier 2 Smoke Management Program (SMP) recommended by the U.S. Department of Agriculture's Agricultural Air Quality Task Force (AAQTF) in its Air Quality Policy on Agricultural Burning. According to the commenter, the AAQTF policy allows the use of fire as an accepted management practice, consistent with good science, to maintain agricultural production while protecting public health and welfare by mitigating the impacts of air pollution emissions on air quality and visibility, and the Tier 2 SMP is designed for areas where agricultural burning contributes to particulate matter NAAQS violations or visibility impairment in Class I Federal areas—neither of which is the case on Maui. On this basis, the commenter disagreed with the statement

[48] See written comments on proposal from Alexander and Baldwin Company, July 2, 2012, Document No. EPA–R09–OAR–2012–0345–0019.

in the proposal that ''there is no smoke management plan as such'' in Hawaii.

The commenter also pointed out that the proposal indicated that by far the biggest contributor to visibility impairment in Hawaiian Class I areas is $SO_2$ emissions from the Kilauea Volcano, with emissions of $NO_X$ and coarse mass as secondary concerns, each contributing less than 10 percent of visibility impairment at Haleakala NP. According to the commenter, agricultural burning accounts for only about 3 to 4 percent of anthropogenic $NO_X$ emissions on Maui, so the overall visibility impact of $NO_X$ emissions from sugarcane burning is clearly negligible. The commenter noted that coarse mass emissions may result in part from agricultural burning but also arise from construction sites, roads, and other fugitive dust sources. Due to what the commenter termed the uncertainty with regard to contributions from various sources of coarse mass and the secondary importance of this pollutant with respect to visibility impairment at Haleakala NP, the commenter concurred with EPA's conclusion that it is not reasonable to recommend emission control measures for coarse mass at this time.

Noting that it has been postulated that elemental and organic carbon levels measured at the HALE site may be indicative of visibility impacts from agricultural burning, the same commenter asserted that the DOH's Haleakala National Park Visibility Assessment did not identify a significant correlation between measurements at this site and sugarcane burns, and suggested that this site may be impacted by small nearby emission sources rather than, or in addition to, agricultural burning. The commenter also stated that while organic carbon may also originate in part from agricultural burning, recent monitoring at HACR site has shown low contributions to visibility impairment from both organic and elemental carbon, and even at the HALE site (outside of the park) the contribution of elemental and organic carbon sources to visibility impairment is relatively low (and only a portion of this contribution is attributable to agricultural burning). On this basis, the commenter concluded that efforts to reduce visibility impacts of organic carbon from agricultural burning would appear to be unwarranted.

Two of the commenters (Earthjustice, Parsons) suggested that EPA install additional air quality monitors to assess the impacts from sugar cane burning. See section II.A.11. of this document for more on this topic.

*Response 1:* While not directly relevant to this rulemaking, EPA agrees that exposure to emissions from agricultural burning can pose health concerns. We note, however, that the $PM_{2.5}$ monitor in Kihei, typically downwind from the burning, has never recorded an exceedance of the health-based NAAQS. In addition, Hawaii DOH has promulgated a series of rules regulating agricultural burning, several of which have been approved into the Hawaii SIP.[49] EPA recently determined that the Hawaii SIP ''include[s] enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of [the CAA]'' with respect to the 1997 and 2006 p.m.$_{2.5}$ NAAQS, as well as the 1997 ozone NAAQS.[50] EPA will continue to work with Hawaii DOH to ensure that the state's agricultural burning rules and permit program meet all applicable CAA requirements.

With respect to the visibility impacts of agricultural burning, we reaffirm that there is no evidence that smoke from the burns is causing visibility impairment in the park. If smoke from the burns were transporting up to the park, the HACR monitor (inside the park, close to the park entrance) would measure significant levels of black carbon along with significant levels of organic compounds when the sugar cane fields were burning. But there are no significant levels of organic compounds and black carbon at the HACR IMPROVE monitor in the park on those days when burning took place. There were significant levels of these pollutants measured at HALE (outside the park and down the mountain, closer to the isthmus where the cane is grown) on particular days, but those pollutants were not found in significant levels at HACR for those same days.[51] It is unclear what caused the high readings at HALE, but, given that the HACR monitor did not register similarly high readings, it is clear that the emissions causing the high readings did not reach the park from the direction of the HALE monitor, which is northwest of Haleakala. Without clear evidence that agricultural burning is impacting the Class I area, EPA does not consider it reasonable to impose additional controls as part of the Regional Haze plan.

Regarding Maui Now's reference to the comments by Marc Pitchford, we note that Dr. Pitchford found that Haleakala NP has comparatively more impact from all non-volcano factors, including smoke, than Hawaii Volcanoes NP.[52] Because Haleakala NP has a comparatively smaller impact from the volcano, the impact from the other factors (as a percentage) is larger. Dr. Pitchford recommends further examination of the smoke factor in addition to his recommendation of further examination of the attribution of dust, coarse mass, and the ''nitrate'' and ''sulfate/nitrate'' factors. EPA agrees that further examination of each of these factors will be useful for the development of the next plan. Dr. Pitchford's work was based on the Haleakala National Park (HALE) IMPROVE site. EPA believes that future work should be based on the more representative Haleakala Crater (HACR) IMPROVE site, and the focus of the work should be on the factors which contribute most to the impairment of visibility at that site.

The regional haze plan is designed to improve visibility within the park itself. Smoke outside of the park would certainly impact the views from the park, but, as explained below, views outside of the park are not covered under the regional haze program.

While not relevant to this rulemaking, EPA agrees with the commenters that additional monitoring of smoke impacts and evaluating its impact on the public would be helpful. We are working with Hawaii DOH to identify funding to install a new $PM_{2.5}$ monitor on Maui that will be located on the isthmus between the mountains on Maui where the cane is grown and where many people live.

*Comment 2: TSD Sections II.A and II.B and the contribution of agricultural burning to visibility impairment.*

One commenter (Maui Tomorrow) noted that the preamble to the proposed FIP cites sections II.A, II.B, and III.B of the TSD in support of EPA's assertion that there is ''no evidence of agricultural burning contributing to haze at Class I areas'' (citing 77 FR 31715, footnote 75, May 29, 2012). The commenter stated that section II.B is germane only to Hawaii Volcanoes NP, not to Haleakala NP. The commenter also contended that section II.A appears to establish the opposite result from that which EPA asserted in its proposed determination, namely that, at least in Maui, the contribution of organic carbon and elemental carbon pollution to visibility impairment is significant. According to the commenter, sugar cane burning in Maui is a principal contributor of these pollutants.

According to the commenter, readings from the HALE monitor, from which

[49] See 40 CFR 52.620(c).

[50] See 77 FR 47530, August 9, 2012.

[51] TSD pp 17–20.

[52] TSD at 34.

baseline year emissions for the 2001–2004 period were obtained, imply that 10 percent of visibility degradation derives from organic carbon pollution and 5 percent from elemental carbon (citing TSD pp. 12–13). While conceding that for recent years the HACR monitor has reported lower levels of organic and elemental Carbon readings than at the HALE monitor, the commenter asserted that even if the organic and elemental Carbon pollution contribution from agricultural burning and other sources to visibility degradation at Haleakala NP were half of that indicated from the HALE monitor readings (7.5 percent of visibility impairment rather than 15 percent) this would still be significant. The commenter added that EPA has provided no reason for deeming such an organic and elemental carbon contribution to regional haze over Haleakala NP to be of no concern whatever. According to the commenter, EPA indicated that recent monitoring at the HACR monitor shows a ''low contribution to visibility impairment from organic and elemental carbon'' (citing TSD p. 55), but fails to define what EPA means by ''low contribution.''

*Response 2:* EPA finds a lack of correlation between smoke measured at HALE and agricultural burning days. The measured levels of smoke-related compounds within the park (as monitored at HACR) indicate that there is no significant impact from smoke.[53] For example, the measured level of organic carbon is below 1 $\mu g/m^3$, and the measured elemental carbon is below 0.2 $\mu g/m^3$ for each day of 2009 and 2010.[54] The contribution to light extinction from organic carbon is below 2.7 Mm-1,[55] and the contribution to light extinction from elemental carbon is light extinction is below 1.4 Mm-1. For the same time period, the light extinction from all compounds ranges from 20 to 70 Mm-1 on the 20 percent worst days.

*Comment 3: Monitoring for agricultural burning.*

A number of commenters (Earthjustice, NPS, Parsons) provided comments related to air quality monitoring for pollutants released by agricultural burning on Maui.

One commenter (Parsons) noted that there is only one monitoring station on Maui, located in North Kihei, and that it tests for only $PM_{2.5}$ and not for $NO_X$ or $SO_2$. The commenter believes that the overall air quality of Maui may be better addressed by installation of additional air quality monitoring devices to more accurately assess the harmful materials being emitted from cane burning and other sources.

One commenter (NPS) noted that there was considerable comment at the July 31, 2012 public hearing on the impact of cane burning on public health on Maui and visibility at Haleakala NP. The commenter stated that while there are days in the IMPROVE record at HALE with elevated organic and elemental carbon suggestive of biomass burning, the monitor location is not well suited for evaluating smoke impacts from cane burning. Accordingly, the commenter recommended that if EPA's objective is to characterize smoke incidence and potential health impacts from smoke, then a PM monitor sited closer to populated areas would be more useful than the HALE monitor.

Another commenter (Earthjustice) stated that EPA must provide the necessary monitors, particularly for $PM_{2.5}$, so that it can conduct deeper analysis and better informed determinations related to emissions from agricultural burning going forward. According to the commenter, EPA recognizes that the HALE monitoring site located outside of the Haleakala NP has higher levels of organic and elemental carbon than the HACR monitoring site located at higher elevation, which generally confirms the effects of agricultural burning (citing 77 FR 31716, May 29, 2012). Yet, the commenter believes neither location is suited for monitoring the impacts on the vistas from the park and this lack of data impedes reasonable progress on the impacts of agricultural burning on visibility and public health. The commenter asserted that EPA must develop a monitoring strategy as required by 40 CFR 51.308(d)(4) to address this deficiency.

*Response 3:* EPA agrees that additional monitoring for particulate matter on Maui would be helpful and is working with DOH to identify the resources needed to place a new $PM_{2.5}$ monitor on the island to be in a populated area on the isthmus near sugar cane fields.

EPA disagrees with the commenter and finds that HACR is sufficient for monitoring visibility within the park. EPA has reviewed the monitoring data and the Hawaii DOH analysis of data collected at the HALE and HACR monitoring sites.[56] Based on this review, EPA has found the HACR IMPROVE monitoring site to be representative of visibility conditions within the Haleakala NP.

*Comment 4: Other issues related to agricultural burning on Maui.*

One commenter (Parsons) asserted that open field burning of sugar cane amounts to an issue of environmental justice. According to the commenter, the health and welfare of the community are deemed secondary, and are subjugated to claims of the plantation's economic viability if forced to harvest without burning.

One commenter stated that cane burning hurts Maui's economy and health. Another commenter asserted that emissions from cane burning (as well as HC&S smokestacks and fugitive dust from the sugarcane fields) threaten public health, visibility and enjoyment of Haleakala NP, and the health of the ocean environment and coral reefs.

*Response 4:* We appreciate the commenters' concerns regarding the negative health impacts of emissions from cane burning. We agree that the same pollutants that contribute to visibility impairment can also harm public health. However, for purposes of this action, we are not authorized to consider these health impacts, and we have not done so. However, as noted above, EPA is working with Hawaii DOH to identify the resources needed to place a new $PM_{2.5}$ monitor on the Island of Maui to be sited in a populated area of the isthmus near sugar cane fields.

Regarding environmental justice, as explained in our proposal, Executive Order 12898,[57] 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. Our responsibilities under the Executive Order must be exercised in the context of our statutory authority under the CAA, which, in this case, is limited to addressing visibility impairment in Class I areas. Without evidence that agricultural burning is impacting visibility in Haleakala, it is not reasonable for us impose restrictions on agricultural burning as part of this rulemaking.

[53] TSD pp. 73–74.

[54] TSD pp. 17–20.

[55] Inverse megameter (Mm-1) is a measurement of light extinction; the amount of light lost as it travels over one million meters. This unit is most useful for relating visibility directly to particle concentrations in the air.

[56] TSD p. 69–72.

[57] 59 FR 7629, February 16, 1994.

12. Integral Vista Issue and Reasonably Attributable Visibility Impairment (RAVI)

*Comment:* One commenter requested contact information and supporting documents for the FLM finding of no integral vista in Hawaii under RAVI. The commenter assumed that the lack of finding of integral vista is the result of a lack of appropriate or timely responsiveness by the FLM.

The commenter stated that most Maui residents and visitors to Haleakala NP consider the panorama from within Haleakala NP to areas outside of Haleakala NP (the view of the peaks of Mauna Kea and Mauna Loa on the Big Island, the views of Maui's central valley, the views of the West Maui Mountains, and the surrounding oceans) an integral vista within the intent of the federal definition.

*Response:* Pursuant to EPA's regulations governing RAVI, the FLMs had the opportunity to identify any integral vistas on or before December 31, 1985. No such vista was identified for Haleakala NP. In promulgating the RHR in 1999, EPA declined to extend the integral vista concept to the regional haze program because:

> * * * regional haze is caused by a multitude of sources across a broad geographic area, and it can create a uniform haze in all directions. The regional haze program is designed to bring about improvements in regional visibility for the range of possible views of sky and terrain found in any Class I area. Accordingly, the program does not protect only specific views from a Class I area. To address haze, regional strategies will be needed, and emissions resulting from these strategies are expected to improve visibility across a broad region, not just within a Class I area. Thus, although the regional haze program does not include a specific provision regarding integral vistas, the long-term strategies developed to meet reasonable progress goals would also serve to improve scenic vistas viewed from and within Class I areas.[58]

13. Comments on the Monitoring Strategy

*Comment 1: HALE and HACR.*

One commenter (NPS) agreed with EPA's proposal to use the IMPROVE monitor at the Haleakala Crater (HACR) for future regional haze planning efforts because it more representative of the park's air quality and visibility than the HALE monitor, which is located at much lower elevation than much of the park area. The commenter has evaluated the IMPROVE data for both monitors for the period 2007 through 2010 and found the following: (a) sulfate concentrations are elevated on the same days at the two monitors, indicating that volcanic emissions from the Kilauea Volcano are impacting both monitors concurrently, although the concentrations are lower at the higher elevation (HACR) site; (b) in general, concentrations of nitrate, organic carbon, elemental carbon, and seasalt are lower at the higher elevation site; and (c) concentrations of soil and coarse matter at times are higher at the higher elevation site, suggesting possible international transport. The commenter is consulting with the IMPROVE network representatives to assure a representative data record for the regional haze process.

Another commenter (HC&S) also concurred with the conclusion that the HACR site is more representative of visibility conditions within the park and supported the proposal to base future regional haze planning efforts on data collected at the HACR site. This commenter stated that it was recognized as far back as 2005 that the HALE site was not appropriate for monitoring visibility at Haleakala NP since it is located well outside the park, is at a much lower elevation than a majority of the area of the park, and is impacted by emissions sources which are less likely to cause visibility impacts within the park.

However, a third commenter (Maui Tomorrow) stated that EPA's conclusion that the HACR monitoring data are more representative of visibility conditions within the Haleakala NP (citing TSD p. 74) is based on a misreading of studies from the Hawaii DOH. According to the commenter, the relevant Hawaii DOH study concludes only that, ''The available data indicates that HACR IMPROVE monitoring data could be more representative of visibility conditions within the Haleakala National Park.'' [59] The commenter indicated that the DOH also noted that, for one cane field burn undertaken by HC&S in 2007, the HACR monitor registered higher organic and elemental carbon increases than were recorded at the HALE monitor, and that the Department postulated that this and one other set of readings—showing higher impacts from agricultural and other burning inside Haleakala than outside the park—were ''not representative'' of HACR readings. Despite this, the commenter concludes that EPA's assertion that the higher readings from HALE are less representative than those at HACR do not reflect the careful views of the Hawaii DOH.

*Response 1:* EPA appreciates NPS's evaluation of the IMPROVE data for both the HALE and HACR monitors for the period 2007 through 2010, and agrees with their recommendation to use Haleakala Crater (HACR) for future regional haze planning efforts. EPA agrees (with Maui Tomorrow) that EPA's summary of DOH's study findings does not fully capture the depth of this careful analysis. Nevertheless, EPA believes that the Hawaii DOH's study's conclusion that ''[t]he available data indicates that HACR IMPROVE monitoring data could be more representative of visibility conditions within the Haleakala National Park'' is consistent with EPA's support for the use of the IMPROVE monitor at the Haleakala Crater (HACR) for future regional haze planning efforts because it more representative of the park's air quality and visibility than the HALE monitor.

*Comment 2: Use image-based monitoring.*

One commenter (FHNP) recommended that EPA use image-based techniques for monitoring, such as described by Graves and Neuman, *Using Visibility Cameras to Estimate Atmospheric Light Extinction,* IEEE Workshop on Applications of Computer Vision, 2011. According to the commenter, the University of Hawaii Institute for Astronomy already has several cameras, including one that is located near the summit and directed into Haleakala NP, and the Institute and the Mees Observatory take regular measurements of the atmospheric conditions at the summit of Haleakala. The commenter believes that these resources should be used to monitor progress toward the goal of reducing haze in Haleakala NP.

*Response 2:* EPA appreciates the thought that went into this comment. This is an interesting approach and the webcam pictures may be useful as supplemental information to understanding the visibility at Haleakala; we would encourage its use in the development of the next plan. However, we caution that this is a poor metric to use for tracking trends towards natural conditions. Visibility derived from photographs is complicated by the varied shading of the scene from clouds, which can cause high uncertainties. In addition, the relative humidity is not corrected for nor measured. Changing relative humidity will cause large changes in light extinction/visibility, further adding to the uncertainty in the visibility measurement and interpretation.

[58] 64 FR 35734 (July 1, 1999).

[59] Citing *Comparison of Haleakala NP HALE1 and HACR1 IMPROVE Monitoring Site 2007–2008 Data Sets,* March 30, 2012, State of Hawaii, Department of Health, Clean Air Branch, p. 14. Document No. EPA–R09–OAR–2012–0345–0005–C2f.

14. Other Comments

*Comment 1: Broaden EPA's evaluation.*

One commenter (Parsons) expressed understanding that the Regional Haze FIP for Hawaii considers only some of the overall factors and parameters of emissions into Maui's atmosphere. Nevertheless, the commenter urged EPA to broaden its determination of relevant impacts to Maui's air quality and regional haze to include the other common-sense environmental factors mentioned in his comments: (a) emissions from MECO's Kahului and Maalaea generating facilities, (b) emissions from HC&S's Puunene Mill, (c) HC&S's open field burning, and (d) fugitive dust.

*Response 1:* We appreciate the commenter's concerns about air quality generally. However, our authority in promulgating this FIP is limited by the provisions of the CAA and the RHR. Specifically, with regard to reasonable progress, we considered the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A) and (B): (a) The costs of compliance; (b) the time necessary for compliance; (c) the energy and non-air quality environmental impacts of compliance; (d) the remaining useful life of any potentially affected sources, and (e) uniform rate of improvement in visibility and the emission reduction measures needed to achieve it. Based on our analysis of these factors, we determined that, for the sources named by the commenter, no additional controls were reasonable at this time.

*Comment 2: Government control.*

One commenter argued that volcanic emissions are the cause of visibility impairment in Hawaii, but EPA will use it as a vehicle to put sanctions on carbon dioxide, smoke from sugarcane harvesting, and methane emitted by cattle at Haleakala Ranch even though these substances are emitted naturally from breathing, burning, and bovine flatulence. The commenter objected to the imposition of additional government control. The commenter stated that Hawaiians should tell EPA to take its ''unattainable goals back to Washington and spare the Taxpayer expense.''

*Response 2:* This rulemaking is required to meet requirements established in the CAA amendments of 1990 to move toward eliminating anthropogenic visibility impairment at Class I areas. It is not related to climate change. EPA is not proposing any controls on breathing, burning, or bovine flatulence as part of this rulemaking.

*Comment 3: Public hearing process.*

One commenter asked that EPA provide details regarding the notice requirements for the public hearings. The commenter believes that the public hearing was held too soon to give the public a proper opportunity to review the plan and the technical support documents. The commenter requested that EPA confirm that it had complied with the notice requirements.

*Response 3:* In promulgating a FIP under CAA section 110(c), EPA is required to: ''give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; keep a transcript of any oral presentation; and keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.'' [60] In this case, EPA held two public hearings on its proposed FIP, one on Maui on May 31, 2012 and one on the Big Island on June 1, 2012. These hearings were announced in the **Federal Register** on May 11, 2012,[61] and a pre-publication version of the NPRM was posted on EPA's Web site on May 16, 2012. The proposal was published in the **Federal Register** on May 29, 2012,[62] and public comments were accepted through July 2, 2012.

*B. Comments From the Public Hearings*

EPA received written and oral comments on the proposal at the public hearings. Representatives of the following organizations provided oral or written comments: Maui Tomorrow Foundation (Maui Tomorrow), Alexander and Baldwin, parent company of Hawaii Commercial and Sugar (HC&S), the Ko Hawaii Pae Aina people, and Syntex Global (Syntex). Nineteen private citizens also provided oral or written comments at the public hearings. A summary of the major comments and EPA's responses are provided below.

*Comment 1: Visibility impacts of cane burning.*

The majority of the commenters at the hearing on Maui expressed concern that the proposed FIP does not require an end to the practice of agricultural burning in the sugar cane fields. These commenters generally indicated that they have witnessed thick smoke from cane burning that clearly impairs visibility, disrupting the scenic vistas on the island. For example, one commenter stated that during periods of cane burning, he cannot see Kihei from Haleakala NP or see the park from Kihei, and another similarly asserted that cane burning obscures the view from the top of Haleakala, especially over the valley. One commenter indicated that as many as three fires are lit in the morning, creating smoke plumes that fill the sky, and added that after the plumes of smoke dissipate, a brown film hangs in the air just under the inversion layer of the mountains. Seven of the commenters specifically objected to the proposed determination that no further controls on agricultural burning are reasonable at this time. One of these requested that EPA explore pollution controls to mitigate the impact of organic carbon from agricultural burning on visibility at Haleakala NP.

One of the commenters noted that EPA's analysis acknowledges that agricultural fire emissions occur over roughly 30,000 acres of cane fields, and added that this is among the largest anthropogenic sources of $SO_2$, VOCs and PM on Maui. (Another commenter indicated that the correct figure for cane fields in production is 35,000 acres.) This commenter alleged that the NPS has stated that sugar cane processing and field burning can affect air quality and visibility in Haleakala NP. The commenter also said that work published by NOAA researchers indicates that Haleakala NP has greater impacts from smoke as compared to Hawaii Volcanoes NP, and that about half of worst-case days are associated with factors other than volcanic emissions, including smoke.

Another commenter, citing a study by University of Hawaii meteorology Professor Andrews Daniels, stated that an average cane burning event releases approximately 200 to 600 tons of PM as compared to the estimated 700 tons of PM emitted each day in the Los Angeles basin. This commenter believes that PM should be considered in EPA's evaluation.

*Response 1:* EPA understands the concern of the commenters about the local visibility impacts of agricultural burning. However, as detailed in the responses above (II.A.11), the Regional Haze Rule is designed to protect visibility inside the National Park. EPA has no evidence that agricultural burning is impacting visibility inside the park; therefore, we do not consider it appropriate to restrict agricultural burning as part of this rulemaking.

*Comment 2: Health effects of cane burning.*

Many of the commenters at the Maui hearing expressed concern over the health effects that they believe result from PM and toxic pollutants released by cane burning on the island. Several

[60] See CAA section 307(d).

[61] 77 FR 27671.

[62] 77 FR 31692.

of these commenters noted that the plastic irrigation pipes are burned along with the cane waste, adding to the toxic content of the smoke. A number of commenters indicated that the same pollutants that cause haze also have health effects, and that health and visibility effects are not separable.

Some of these commenters recounted personal experiences with breathing problems or respiratory illness that they believe are attributable to smoke from cane burning. Other commenters expressed concern over the exposure that children are experiencing or the high incidence of asthma on the island. One commenter expressed dismay the sugar company is allowed to conduct cane burning simply to save money at, the commenter believes, the expense of public health.

Another commenter noted that cane burning was stopped in Florida because of its negative health effects. One commenter recommended that agricultural burning on Maui be suspended immediately so that its health and environmental impact can be studied. The commenter suggested that the burden should be placed on the growers to prove that the practice is not hurting the environment.

*Response 2:* As noted above, EPA agrees that exposure to emissions from agricultural burning can pose health concerns. We note however, that the $PM_{2.5}$ monitor in Kihei, typically downwind from the burning, has never recorded an exceedance of the health-based NAAQS. In addition, Hawaii DOH has promulgated a series of rules regulating agricultural burning, several of which have been approved into the Hawaii SIP.[63] EPA recently determined that the Hawaii SIP ''include[s] enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of [the CAA]'' with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS, as well as the 1997 ozone NAAQS.[64] EPA will continue to work with Hawaii DOH to ensure that the state's agricultural burning rules and permit program meet all applicable CAA requirements.

With respect to the visibility impacts of cane burning, there is no evidence that smoke from the burns is causing visibility impairment in the park. Without clear evidence that agricultural burning is impacting the Class I area, EPA does not consider it reasonable to impose additional controls as part of the Regional Haze plan.

*Comment 3: Chemtrails.*

Six commenters at the Maui hearing expressed the belief that a ''stratospheric aerosol geoengineering'' program that results in ''chemtrails'' that drift over Hawaii are responsible for some, or much, of the visibility impairment that is occurring. In the most extensive comments on this topic, one commenter stated that these effects are scientifically observable. The commenter indicated that he is able to observe the progress of these chemtrails through satellite images. He also stated that measurements from rainwater collected on the North Shore of Maui showed 30 to 200 parts per billion of aluminum and lesser amounts of barium and strontium, which according to the commenter are the chemical fingerprints of chemtrails. The commenter suggested a program of aerial sampling of the clouds drifting over Hawaii, and requested that EPA add aluminum, barium and strontium to the materials that it routinely monitors.

Another commenter similarly recommended that EPA broaden the scope of its analysis to include stratospheric aerosol spraying. The commenter believes that the waters of South Maui are impacted by such spraying, and that the spraying also causes health issues in people. The commenter also asserted that the spraying has introduced chemicals into the soils that are killing the plants in the area of Hana and Kipahulu.

*Response 3:* The commenters provided no evidence that the visibility impairment in the Class I areas are caused by sources that are not captured using the IMPROVE monitors on Maui. EPA reaffirms our analysis of the causes of haze addressed in the TSD.

EPA believes the current monitoring program is appropriate for Regional Haze. The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal and regional-state organizations. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas (156 national parks and wilderness areas) as stipulated in the 1977 amendments to the Clean Air Act.

The objectives of IMPROVE are:

(a) To establish current visibility and aerosol conditions in mandatory class I areas;

(b) To identify chemical species and emission sources responsible for existing man-made visibility impairment;

(c) To document long-term trends for assessing progress towards the national visibility goal;

(d) And with the enactment of the Regional Haze Rule, to provided regional haze monitoring representing all visibility-protected federal class I areas where practical.

Aluminum and strontium are measured as part of the IMPROVE program. The summary statistics for all data, including aluminum and strontium measurements, at individual monitoring sites are available at the VIEWS monitoring sites data statistics site *http://views.cira.colostate.edu/web/Statistics/SiteStatistics.aspx.*

*Comment 4: Concerns about the BART ''exemptions'' and the 0.5 dv screening level.*

Six commenters objected to the plan's proposal to exempt six of the eight BART-eligible sources from BART review,[65] stating that EPA should conduct full BART review of all BART-eligible sources until the amount of improvement needed to meet the uniform rate of progress (1.38 dv) can be achieved through federally enforceable control measures. Two of the commenters specifically asserted that the screening level of 0.5 dv used by EPA to determine which BART-eligible sources are subject to BART review is too high and should be reduced. One of the commenters stated that EPA has inappropriately used the highest allowable deciview threshold in the proposed FIP.

Without discussing the deciview screening level, another commenter similarly objected to the plan's proposal to exempt six of the eight identified BART eligible sources from further review under BART requirements. One commenter simply expressed opposition to exemptions and exceptions for some of Maui's major air polluters, and another objected to the exemptions made by EPA.

*Response 4:* As EPA addressed in Section II.A.1 above, the plan is not required to meet the URP. As we addressed in Section II.A.5, above, we find that the 0.5 dv threshold is appropriate for determining which sources should be subject to BART in Hawaii.

*Comment 5: Control measures are insufficient.*

Eight commenters stated that the proposed control measures are not sufficient to ensure that reasonable progress is made during the first

[63] See 40 CFR § 52.620(c).

[64] See 77 FR 47530.

[65] Six of the eight BART-eligible sources had a less than 0.5 deciview impact and so were exempted from BART. One of the remaining facilities, Hu Honua Bioenergy is no longer permitted to burn fossil fuels and is therefore also exempt from BART. This leaves one facility in Hawaii as subject to BART, the Kaneolehua Hill facility. See 77 FR 31704, 31705.

planning period. The commenters believe that additional control measures are necessary.

*Response 5:* EPA finds that the control measures are sufficient to ensure reasonable progress. Our reasoning is explained further in Sections II.A.7., II.A.8 and II.A.10. of this document.

*Comment 6: Uniform rate of progress.*

Six commenters objected to the proposal to determine that the uniform rate of progress for the implementation plan to attain natural conditions is not reasonable. The commenters asserted that this rate of progress is reasonable and that the FIP should require additional control measures as necessary to meet this rate of progress.

One commenter (HC&S) stated that the methodology used to determine the proposed uniform rate of progress unnecessarily skews this value high. The commenter noted that EPA chose to exclude emissions from Kilauea Volcano when estimating natural visibility conditions while including these emissions in the estimate of baseline visibility conditions. As a result, the commenter asserted, the uniform rate of progress includes reductions in visibility impairment from anthropogenic sources that are sufficient to offset baseline emissions caused by the volcano. The commenter recommended that EPA consider adopting the methodology proposed by the Hawaii DOH to adjust the baseline visibility impairment to account for the impacts of the volcano as well as Asian dust. The commenter stated that if EPA were to use this adjustment in the calculation of the uniform rate of progress, the uniform rate of progress target for 2018 could essentially be achieved through the emissions reductions projected to occur by 2018 under the proposed FIP.

*Response 6:* This comment was addressed in Section II.A.1, above.

*Comment 7: Monitoring concerns.*

Seven commenters stated that since the HALE monitor's data were used for the baseline visibility assessment, that monitor must be kept in place or replaced with new monitors at that location so that long-term visibility data comparable to baseline may be captured. Another commenter objected to plans to reduce the current ''measurements in place.''

Five commenters contended that the Hawaii DOH and EPA are choosing data from different monitors to conclude that organic carbon agricultural burning does not contribute to visibility degradation although, according to the commenters, Table 11 of the proposed FIP clearly indicates that it does. (Four of the commenters also cited Table III–1 of the TSD.) The commenters added that the Hawaii DOH and EPA should not be moving and placing monitors selectively. The commenters asserted that based upon the data, it is not acceptable to find that there is no evidence of agricultural burning contributing to haze.

One commenter stated that there is inadequate monitoring data backing up the proposal. The commenter indicated that emissions from cane burning, fugitive dust from agricultural operations, stack emissions from companies burning high-sulfur coal or emissions from bunker fuel are not monitored. The commenter believes that without such monitoring, there are no hard data to support the proposal, and no data on which to base public testimony.

One commenter stated that the surrogate approach of measuring different substances in the air does not directly address visibility. The commenter noted that a nephelometer can be used to measure visibility directly, and that nephelometers operated at two different frequencies can distinguish between smoke and water in the air.[66] The commenter concluded that the current monitoring instrumentation is inadequate and recommended that EPA set up two nephelometers in Kihei. The commenter believes that such a monitoring program would show that during cane burning days one cannot see Kihei from Haleakala or Haleakala from Kihei.

Another commenter similarly indicated that if the monitor in its current location is unable to measure what one can easily see, the monitor is insufficient. The commenter believes that the monitor should be moved, additional monitors should be added or the monitor should be replaced by one that can collect better information. The commenter stated that the monitor does not account for Kipahulu, the area of the park at sea level in East Maui. The commenter indicated that HC&S has increased production since 2004, concluding that the data presented is not accurate. The commenter also stated that the 24-hour period of measurement does not adequately represent the 1 to 3 hour burning time.

*Response 7:* Hawaii DOH, NPS and EPA are reviewing HALE and HACR data to develop methodologies to establish a 2000–2004 baseline estimate, which can be used to track continued progress at the site in a manner consistent with RHR requirements. Therefore, it is not necessary to continue operation of HALE to provide continuity with the baseline. In addition, since HACR is more representative of conditions in the park, and HALE is nearby, it is not a good use of resources to continue operation of HALE. EPA is working with Hawaii DOH to move the Federal funding currently used to support HALE to instead support the operation of a new $PM_{2.5}$ monitor to be sited in a populated area of the isthmus near sugar cane fields.

EPA is not selectively using data to justify a particular policy outcome. Data from both HALE and HACR were considered when determining if there was any evidence that smoke from agricultural operations was impacting visibility at Haleakala NP. This is explained in more detail in our discussion on agricultural burning in Section II.A.11 of this notice.

The tables in the proposal and the TSD referenced by the commenters indicate possible smoke impacts at the HALE monitor. As we discussed previously, there is no evidence that this smoke is from agricultural burning. Nor is there any evidence that the smoke measured at HALE (which is outside the park and at a significantly lower elevation) is impacting the park itself,

EPA believes the current filter-based monitoring instrumentation, based on the IMPROVE Program, is the appropriate approach to determine the visibility levels at Hawaii's National Parks. The IMPROVE Program is discussed in greater detail in the response to Comment 3: Chemtrails, above. Visibility levels can be estimated from aerosol monitoring filters. Understanding the characteristics of the aerosols in a haze can also help identify the type of sources that contributed to the haze. It is possible to statistically estimate what portion of haze is caused by each aerosol type. This approach, known as an extinction budget analysis, can narrow the list of possible sources responsible for visibility impacts.[67] Therefore, in addition to establishing visibility levels, the filter-based monitoring approach, which measures the characteristics of the aerosols in haze, can help identify the type of sources that contributed to the haze.

The commenter recommends that EPA set up two nephelometers in Kihei,

[66] Nephelometers directly measure light scattered by aerosols and gases in a sampled air volume, and, therefore would not be useful to estimate the visibility over a distance, such as Kihei from Haleakala. Transmissometers directly measure the light transmission properties of the atmosphere along a several kilometer sight path.

[67] See Section 2–15 of ''Visibility Monitoring Guidance'', June 1999 Document No. EPA–R09–OAR–2012–0345–0003–B5.

and such a monitoring program would show that on cane burning days one cannot see Kihei from Haleakala or Haleakala from Kihei. However, the regional haze plan is designed to improve visibility within the park itself. Smoke outside of the park could certainly impact the views from the park, but such views are not specifically protected under the regional haze program.

Regarding the concerns that a 24-hour average does not adequately capture the impacts from one to three-hour agricultural burns, the length of the burn is just one factor determining the percentage contribution to visibility impairment. A shorter burn, if it were impacting the monitor, could show up as a high percentage of visibility impairment if the source was heavily impacting the monitor for the duration of the burn.

*Comment 8: Emissions from sugar mill.*

Three commenters are concerned about the combustion of coal on Maui. One of the commenters asked EPA to consider that current permits allow over 100,000 tons of coal to be fired at the Puunene Mill each year. Another of the commenters submitted a photograph purportedly showing dark smoke being emitted from the mill's smokestacks. One commenter simply commented on the dense black smoke that comes from the mill's smokestack.

One commenter stated that the Puunene Mill's most recent permit application proposed increasing the amount of used motor oil combusted from 1.5 to 2 million gallons. The commenter asked that EPA consider the impacts that combustion of an additional 0.5 million gallons of used motor oil might have on haze-causing pollutant.

Four commenters objected to EPA's analysis discussed in the section titled ''Point Source $SO_2$ Emissions on Maui'' in the TSD for the proposal. These commenters asserted that the four-factor analysis must be applied to all point sources on Maui, especially the Puunene Mill.

*Response 8:* Section II.A.5 of this document includes a discussion of why the Puunene Mill is not subject to BART. This section also includes a discussion of the impacts of various fuels being burned at the Mill in that determination. The additional motor oil would not change the results of our analysis.

EPA selected sources for a full reasonable progress review based on their total emissions of visibility-impairing pollutants and computer modeling of the impact of the sources' emissions on visibility at the Class I areas. The Puunene Mill is a much smaller source of visibility impairing pollutants than the Kahului Power Plant (See TSD Table VII–2.1). And, the BART modeling for the mill showed an impact that was much lower than the 0.5 dv threshold. While we understand and share the commenters' concerns about visible emissions from the plant, there is no evidence that these emissions are contributing significantly to visibility impairment in the park, therefore it was reasonable to omit it from the reasonable progress analysis.

*Comment 9: ''Reasonable to assume''.*

Seven commenters disagreed with EPA statements in the TSD for the proposal that it is reasonable to assume that visibility at Haleakala on the best days is not getting worse and it is reasonable to assume that the visibility on the worst days will improve. Two of the commenters stated that in their experience in guiding tour groups through the Haleakala NP, visibility is not improving but is getting worse. Another commenter (Pearson) also asserted that the haze is not getting better on Maui.

*Response 9:* EPA acknowledges the imprecise language in our TSD cited by the commenters. The proposal should have said that with emissions of visibility impairing pollutants being significantly reduced during the first planning period, it is reasonable to assume that anthropogenic visibility impairment will be reduced during the first planning period.

*Comment 10: Fugitive dust.*

One commenter stated that fugitive dust contributes significantly to the haze and poor air quality on Maui, yet large agricultural operations are exempted from best management practices. The commenter recommended that EPA consider this in the FIP. Another commenter also stated that fugitive dust from agriculture contributes to poor visibility in the park, and to health concerns.

Four other commenters requested that EPA review the possible impacts of fugitive dust from agricultural operations, especially from equipment operating on unpaved roads, on visibility in Haleakala NP. The commenters noted that agricultural operations are not required to mitigate dust emissions as is required of similar construction operations.

Another commenter also expressed concern about how HC&S clears and plows its fields. The commenter stated that this commonly creates huge clouds of dust hundreds of feet in the air going across the Mokelele Highway and past the harbor. The commenter asserted that the reefs are devoid of fish and the coral is dying. The commenter questioned why HC&S does not use water trucks to mitigate dust emissions and asked who establishes rules for the amount of pollution that HC&S can emit.

*Response 10:* EPA shares the commenters concerns about impacts of fugitive dust on Maui. As explained earlier in Section II.A.4 of this document, coarse mass and soil do appear to be a relatively significant contributor to visibility impairment at Haleakala NP (and Hawaii Volcanoes NP to a lesser extent). However, the source of this pollutant is not clear.

*Comment 11: Modeling.*

One commenter stated that EPA's model is inadequate because it does not agree with his observation. The commenter noted that he has observed that the visibility between Kihei and the park is diminished when cane is being burned and concluded that if the model does not match that observation, the model is wrong and should be discarded. Another commenter indicated that she would challenge the models and assumptions being used for the analysis.

One commenter representing the HC&S and its parent company, Alexander & Baldwin, concurred that it is reasonable for EPA to use the highest emitting day between 2003 and 2007 for BART modeling of emissions from the Puunene Mill. However, the commenter pointed out that the typical visibility impacts from the facility are lower, no more than 20 percent of the selected threshold for BART review and reasonable progress prioritization. On this basis, the commenter supported the proposed determination that additional controls on the mill are not warranted.

*Response 11:* The model is not intended to measure visibility impairment at points outside the park; it is intended to estimate visibility impairment as measured inside the park. As explained above, the regional haze program does not specifically protect views outside of the park.

EPA understands that typical emissions can be lower than the maximum emissions used in the BART modeling. We affirm the determination that the mill should not be subject to BART.

*Comment 12: Federally enforceable measures.*

One commenter stated that the Hawaii Clean Energy Initiative [68] and

[68] The Hawaii Clean Energy Initiative is a broad strategy by the State of Hawaii and the U.S. Department of Energy to reduce Hawaii's dependence on fossil fuels. The Hawaii Clean Energy Bill, referenced elsewhere is a Hawaii

Continued

assumptions about reductions in emissions from automobiles are not federally enforceable for purposes of the proposed FIP.

*Response 12:* We agree that the Hawaii Clean Energy Initiative is not federally enforceable. Therefore, we did not rely upon emissions reduction expected to result from the Initiative for purposes of demonstrating reasonable progress.

With respect to reductions in emissions from automobiles, we note that the RHR provides that states ''may not adopt a reasonable progress goal that represents less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period.'' [69] Therefore, in setting RPGs for Hawaii, we took into consideration the anticipated net effect on visibility due to projected changes in point, area, and mobile source and shipping emissions expected to result from other CAA requirements, including Federal mobile source regulations, over the period addressed by the long-term strategy. Finally, we note that mobile source regulations are federally enforceable against vehicle and engine manufacturers, automobile dealers, fuel importers, and refineries.

*Comment 13: $NO_X$ emissions.*

Two commenters objected to EPA's conclusion that it is unreasonable to require additional controls on $NO_X$ emissions. The commenters indicated that the monitor data show that $NO_X$ is a substantial contributing factor toward visibility impairment, and one (Andrews) added that $NO_X$ is contributing 9 percent.

*Response 13:* EPA addressed this issue in some detail in Section II.A.7 above.

*Comment 14: $SO_2$ controls.*

One commenter objected to the proposal to determine that it is not reasonable to require additional $SO_2$ controls on Maui. The commenter asserted that such controls on point sources are necessary on Maui.

*Response 14:* EPA addressed this issue in some detail in Section II.A.10 above.

*Comment 15: Integral vista.*

One commenter objected to the finding of no integral vista at Haleakala NP. The commenter asserted that the panoramic view from within the park to areas outside the park, including Volcanoes NP on the Big Island and the view of central Maui and the surrounding oceans, is an integral vista within the meaning of the Federal regulations. The commenter added that his experience with guiding visitors at the Haleakala NP illustrates the importance of the panoramic view from within the park to areas outside to the overall visitors' experience at the park.

*Response 15:* The question of the designation of Integral Vistas was addressed in Section II.A.12, above.

*Comment 16: HC&S generally concurs.*

One commenter representing the HC&S and its parent company, Alexander & Baldwin, stated that the company generally concurs with the conclusions and recommendations of the proposal. The commenter commended EPA and the Hawaii DOH for the thorough review and analysis of available data.

*Response 16:* EPA appreciates the support.

*Comment 17: Kanaka Maoli.*

One commenter, stating that she represented the Kanaka Maoli people, objected to the FIP based on the supposition of jurisdiction. The commenter believes that it is unreasonable because it will afford a great opportunity to increase the reach into sacred burial sites and the sacred places of the Kanaka Maoli people. The commenter indicated that the plan does not address this issue and does not give any respect to the Kanaka Maoli people.

*Response 17:* As explained in our proposal, because we found in 2009 that Hawaii had failed to submit a Regional Haze SIP, as required under the CAA, we are required to promulgate a FIP to fill this gap. This FIP does not impose any new regulations directly on the Kanaka Maoli people. As to any ''supposition of jurisdiction'', we note that there is a ''presumption that Congress intends a general statute applying to all persons to include Indians and their property interests.'' [70] The CAA is a general statute applying to all persons and the commenter has not pointed to any specific right under a treaty or statute that is in conflict with the CAA. Finally, we note that this is not the first FIP to be promulgated for Hawaii.[71]

*Comment 18: Aerial applications of fertilizer and pesticide.*

One commenter indicated that, in addition to air contaminants from cane burning, coal combustion and geoengineering, aerial applications of fertilizer and pesticides contribute to the air quality problem. The commenter noted that he has seen white deposits from this practice many times and, within the last 8 months, aerial spraying by HC&S in Paia drifted over a public beach with children. The commenter believes that such things should be controlled and penalties should be imposed. The commenter noted that tourism suffers over these issues.

*Response 18:* EPA shares the commenter's concerns about the possible health impacts of agricultural operations. However, these issues are not within the scope of this rulemaking.

*Comment 19: Emission sources.*

One commenter suggested that EPA evaluate four emissions sources more fully: military actions, ship emissions, biofuel plants and geothermal plants. The commenter provided a written copy of her comments, which includes documentation for many of her points about military actions and ship emissions from sources such as environmental impact statements (EIS) and news reports.

The commenter stated that increased military actions are underway, and more are planned for Pohakuloa as the United States shifts forces to the Pacific. The commenter asserted that these activities will generate dust from construction, vehicles and troop movements, erosion, and possible fires that consume vegetation. The commenter believes that air quality problems may not be detected because Pohakuloa has no air-monitoring stations in the south and southwest, which is the most likely place to detect any problems since the prevailing winds come from the northeast. The commenter stated that when training was done at Makua, fires consumed thousands of acres, and inadequate fire prevention has been an ongoing problem with that training.

The commenter indicated that a second major action is the Stryker armored vehicle training, which is already taking place. According to the commenter, the EIS for this program indicates that there will be significant disturbance to soils and vegetation due to intensified on- and off-road maneuver training, leading to increased soil erosion that cannot be mitigated to less than significant, and $PM_{10}$ dust emissions generated from wind erosion at the 23,000-acre Keamuku Parcel were expected to be a significant impact. The commenter added that the Strykers may cause fire risk.

Regarding ship emissions, the commenter is concerned that the shipping industry is trying to delay the August 1 implementation date of the North American Emission Control Area

statute that puts many of the goals of the Initiative into law.

[69] 40 CFR 51.308(d)(1)(vi); see also, 40 CFR 51.308(d)(3)(v)(g).

[70] *Phillips Petroleum Co.* v. *U.S. E.P.A.* 803 F.2d 545, 556 (10th Cir. 1986) (citing *Federal Power Commission* v. *Tuscarora Indian Nation,* 362 U.S. 99, 116–18 (1960).

[71] See 40 CFR 52.632–633.

(ECA) regulations, which would reduce emissions by requiring fuel of less than 1 percent sulfur content when ships are 200 miles offshore. The commenter also is concerned about ships running their engines while in port instead of plugging into shore power, which is a less polluting source. While the commenter does not know of any port in Hawaii that offers such plug-in power, called Alternative Maritime Power, she indicated that naval vessels and Baltic ferries have used it for years, several North American ports are planning or already have it and some cruise ships can plug in. The commenter added that another alternative is an e-power barge that uses liquefied natural gas.

The commenter stated that some of the claims made by biofuels plants regarding their air and water emissions seem unfounded. The commenter added that emissions from all actions related to a biofuels plant need to be evaluated, not just emissions generated by burning biofuel: clearing land; transporting seed and fertilizer; planting, cultivating and harvesting trees or whatever is to be burned; transporting the biofuel to the plant; and preparing the fuel for burning. The commenter further noted that after burning the fuel, there is waste that must be disposed. The commenter stated that the Aina Koa Pono plant may get revived, so there may be more impacts than just from the Ho Honua plant.

The commenter indicated that geothermal technology is being pushed heavily, but there is extensive documentation of possible leaks that are not being detected. The commenter stated that nearby residents have reported unusual odors; corrosion of roofs, gutters and catchment tanks that has caused high levels of lead in drinking water; and health problems. The commenter contended that there have been unplanned releases, information pertaining to several of which are listed in her written comments.

The commenter requested that EPA look into the emissions from the Puna Geothermal Venture (PGV) plant. She noted that although the facility claims there are no leaks, the facility must replace the pentane used in the heat exchanger, and the commenter questioned why that is necessary if there are no leaks. The commenter also stated that PGV operates hydrogen sulfide monitors at the plant, but they are at a height of 6 feet while hydrogen sulfide is heavier than air and travels at ground level.

*Response 19:* EPA appreciates the comment about military activities. We commented on the recent EIS for Pohakuloa and expressed concerns about the need to mitigate the generation of fugitive dust. We will continue to work with the Army to mitigate pollution from their activities.

Regarding emissions reductions from the ECA, since these requirements are part of an international treaty, neither the State of Hawaii nor the EPA has the authority to delay implementation or grant waivers from the requirements. In the unlikely event that the treaty could be changed in the future to allow for higher emissions, the State of Hawaii would have to indentify equivalent emissions reductions from other sources in order to meet the requirements of this FIP.

EPA supports the implementation of shore power to reduce emissions from vessels while in port. However, EPA does not believe that it is necessary to require the use of shore power in order to show reasonable progress for the regional haze program.

EPA understands the commenter's concern about emissions from geothermal plants, but there is no evidence that these emissions are contributing to visibility impairment. As a result, we affirm that there will be no pollution control requirements on geothermal plants as part of this action.

Regarding biomass plants, this issue was addressed in Section II.A.5 regarding the Hu Honua and Tradewinds facilities. This discussion included a description of how future facilities will be addressed as part of the Regional Haze planning process. The concerns about land clearing operations are noted and EPA recommends that they be considered in the next plan as part of the analysis of the sources of coarse mass and soil impacting Volcanoes NP.

*Comment 20: Night emissions from Hilo power plants.*

One commenter who lives in Wainaku stated that early nearly every morning he has witnessed a blanket covering Hilo that dissipates when the sun rises and warms the mountain. The commenter believes that this blanket is composed of night emissions from the Hilo area power plants or other industrial activities. The commenter has documented on film these three power plants emitting black soot and smoke into the air. The commenter wonders whether these emissions are the cause of the morning blanket that he has witnessed, and whether these stack emissions are being registered by the State or EPA.

The commenter suggested that these three power plants should be retrofitted with monitors to track whether they are in compliance with their permits. The commenter noted that the plants only have to perform an emissions stack test once in a while. The commenter noted that most of the pollution that is visible is happening at night when it does not affect visibility in the parks. The commenter pointed out that the three power plants are within 5 miles of a population of 40,000 which is growing rapidly. The commenter indicated that for health-related concerns, it would be helpful to know the 24-hour cycle of emissions from the plants.

The commenter noted that the Ho Honua plant was excluded from EPA's review because of its conversion to biofuels, but indicated that there is a legal issue surrounding the claims made by the plant regarding its emissions and how they are dispersed by the wind. The commenter stated that the biofuel to be combusted at the Ho Honua plant is not necessarily a clean biofuel. The commenter recommended that EPA monitor emissions from the facility.

The commenter also noted that Wheelabrator has proposed a waste-to-energy plant in Hilo. The commenter asked whether that would be a factor in air quality in the park. Finally, the commenter suggested an anti-idling rule such as the commenter believes has been passed in California for county vehicles. The commenter noted that he frequently sees trucks, bulldozers and pickup trucks idling by the side of the road. The commenter believes that such a program would be easy to implement, would save the taxpayers' money and would reduce emissions.

*Response 20:* The emission rate used in the analyses of the larger power plants on the Big Island was calculated from fuel usage records and chemical analyses of the fuels burned. This is a very reliable way to calculate the emissions and does not require the use of smokestack monitors. So, the lack of monitoring does not put the validity of the analysis in question. The annual emissions cap set in this FIP will similarly be demonstrated through fuel usage and chemical analysis records. Addressing compliance with the limits of the permits for the power plants on Hilo is not within the scope of this rulemaking. In addition, the IMPROVE monitor in the park measures pollutants 24 hours per day. So, any nighttime emissions would be captured and were included in our analysis of the causes of haze at Hawaii's National Parks. There is an air quality monitor in Hilo which operates on a continuous basis and is intended to characterize air quality in Hilo.

EPA appreciates the comment regarding the biofuel and waste-to-

energy plants. The questions raised here were addressed in Section II.A.5. above.

EPA is very supportive of strategies to reduce idling vehicles. However, given the significant reductions from mobile sources in the first planning period due to existing regulations, EPA affirms that we are not requiring additional emissions reductions from this source category as part of this rulemaking.

*Comment 21: Lack of concern for public.*

One commenter stated that he has experienced worsening pollution on the Big Island over his lifetime, and no Federal, state or county government agency has done anything to prevent it. The commenter expressed concern that pollution is only an issue at this time as it relates to visibility in the Hawaii Volcanoes NP, and asked whether EPA is aware that people live on the island.

The commenter stated that EPA has indicated the HELCO would not have problems complying with EPA requirements and questioned whether this meeting is a show for the public. The commenter asked how the emissions from HELCO facilities are calculated, whether on a yearly basis without considering how many days or hours the plants were in operation, or how much pollution enters the atmosphere in 1 hour of operation.

The commenter stated that the electricity rate charged to consumers by HELCO is based on the cost of foreign import oil, but any oil price reductions are not passed on to consumers. The commenter asserted that all HELCO costs are passed on to the consumers with the approval of the Hawaii PUC with no input from the public. The commenter contended that one primary objective of the PUC is to ensure that HELCO gains a profit, and characterized this situation as a dictatorial condition approved by the state legislature and PUC, and now endorsed by EPA. The commenter does not support what he alleged are dictatorial procedures presented by the state—Federal, state, PUC and HELCO.

The commenter added that the smoke that an earlier commenter has seen at night is the result of a blow-back cleaning system that is used to clean the filters for the turbine engines at the HELCO plant on Railroad Avenue.

*Response 21:* EPA is very concerned about public health. EPA and the State of Hawaii protect public health through implementation of the NAAQS. In fact, EPA recently revised the NAAQS for $SO_2$ to be more stringent and more protective of public health. We are currently evaluating whether Hawaii and other areas of the country are in compliance with this new standard. In addition, EPA has been working with Hawaii DOH on using real-time data from the extensive $SO_2$ monitoring network on the Big Island to monitor the impacts of the volcano and to protect public health.

The methodology for calculating emissions was addressed in the previous comment.

*Comment 22: Xtreme Fuel Treatment.*

One commenter representing Xtreme Fuel Treatment manufacturer, Syntek Global, stated that the company's product reduces the burn rate of fuel, so that fuel burns more efficiently and less fuel is burned. The commenter contended that while the analysis looked just at power plants, a lot of the problems come from emissions from cars. The commenter suggested that EPA and the State of Hawaii conduct a test of the company's product with a generator or state or county transport system to see how emissions could be reduced.

*Response 22:* Given the extensive reductions in emissions from mobile sources due to existing regulations, EPA affirms that we are not requiring additional emissions reductions from this source category as part of this rulemaking.

## III. Summary of EPA Actions

EPA is finalizing a Regional Haze FIP for the State of Hawaii. The FIP establishes an emissions cap of 3,550 tons of $SO_2$ per year from the fuel oil-fired boilers at the Hill, Shipman and Puna power plants, beginning in 2018 (with a demonstration of compliance required by the end of 2018). If HELCO chooses to meet the cap by switching to cleaner fuel, then the EPA estimates that the costs will be no more than approximately $7.9 million/year. This cap represents a reduction of 1,400 tons per year of $SO_2$ from the total projected 2018 annual emissions from these facilities. We find that this control measure, in conjunction with $SO_2$ and $NO_X$ emissions control requirements that are already in place, will ensure that reasonable progress is made during this first planning period toward the national goal of no anthropogenic visibility impairment by 2064 at Hawaii's two Class I areas. We will work with the Hawaii DOH in developing future regional haze plans to ensure continued progress toward this goal.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563*

This action finalizes a FIP that will limit emissions of $SO_2$ from specific units at three sources in Hawaii. Since this action only applies to three named sources, it is not a rule of general applicability. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons. * * *'' 44 U.S.C. 3502(3)(A). Because the FIP applies to just three facilities, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR Part 9.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The three sources in question are electric generating plants that are owned by the Hawaii Electric Light Company, Inc. (HELCO), which is an electric utility subsidiary of HECO. Pursuant to 13 CFR 121.201, footnote 1, an electric utility 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 (MWH). In the fiscal year ended December 31, 2011, HELCO generated or purchased a total of 1,186.6 MWH.[72] Therefore, it is not a small business.

*D. Unfunded Mandates Reform Act (UMRA)*

The Hawaii Regional Haze FIP will limit emissions of $SO_2$ from specific units at three sources in Hawaii. This rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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.

[72] Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc., Form 10–K for the fiscal year ended December 31, 2011 ''Generation Statistics'' available in the docket for this rulemaking.

*E. Executive Order 13132: Federalism*

The Hawaii Regional Haze FIP does not have federalism implications. 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. In this action, EPA is fulfilling its statutory duty under CAA Section 110(c) to promulgate a Regional Haze FIP following its finding that Hawaii had failed to submit a regional haze SIP. Thus, Executive Order 13132 does not apply to this action.

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

The Hawaii Regional Haze FIP will limit emissions of $SO_2$ from specific units at three sources in Hawaii. This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this rule will limit emissions of $SO_2$, the rule will have a beneficial effect on children's health by reducing air pollution.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

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

We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The Hawaii Regional Haze FIP will limit emissions of $SO_2$ from specific units at three sources in Hawaii.

*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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this action is a rule of particular applicability. This rule finalizes a FIP that applies to three specific sources.

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

**Approval and Promulgation of Implementation Plans; State of Hawaii; Regional Haze Federal Implementation Plan**

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and record keeping requirements, Sulfur oxides.

Dated: September 14, 2012.

**Lisa P. Jackson,**

*Administrator.*

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.*

■ 2. Amend § 52.633 by adding paragraph (d) to read as follows:

### § 52.633 Visibility protection.

* * * * *

(d) *Regional Haze Plan Provisions—*

*(1) Applicability—* This paragraph (d) applies to following electric generating units (EGUs) and boilers: Kanoelehua Hill Generating Station, Hill 5 and Hill 6; Puna Power Plant, Boiler 1; Shipman Power Plant, Boiler S–3 and Boiler S–4.

(2) *Definitions.* Terms not defined below shall have the meaning given to them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (d):

*Owner/operator* means any person who owns, leases, operates, controls, or supervises an EGU or boiler identified in paragraph (d)(1) of this section.

*$SO_2$* means sulfur dioxide.

*Unit* means any of the EGUs or boilers identified in paragraph (d)(1) of this section.

(3) *Emissions cap.* The EGUs identified in paragraph (d)(1) of this section shall not emit or cause to be emitted $SO_2$ in excess of a total of 3,550 tons per year, calculated as the sum of total $SO_2$ emissions for all five units over a rolling 12-month period.

(4) *Compliance date.* Compliance with the emissions cap and other requirements of this section is required at all times on and after December 31, 2018.

(5) *Monitoring, recordkeeping and reporting requirements.*

(i) All records, including support information, required by paragraph (d)(5) of this section shall be maintained for at least five (5) years from the date of the measurement, test or report. These records shall be in a permanent form suitable for inspection and made available to EPA, the Hawaii Department of Health or their representatives upon request.

(ii) The owners and operators of the EGUs identified in paragraph (d)(1) of this section shall maintain records of fuel deliveries identifying the delivery dates and the type and amount of fuel received. The fuel to be fired in the boilers shall be sampled and tested in accordance with the most current American Society for Testing and Materials (ASTM) methods.

(iii) The owners and operators of the EGUs identified in paragraph (d)(1) of this section shall analyze a representative sample of each batch of fuel received for its sulfur content and heat value following ASTM D4057. The samples shall be analyzed for the total sulfur content of the fuel using ASTM D129, or alternatively D1266, D1552, D2622, D4294, or D5453.

(iv) The owners and operators of the EGUs identified in paragraph (d)(1) of this section shall calculate on a monthly basis the $SO_2$ emissions for each unit for the preceding month based on the sulfur content, heat value and total gallons of fuel burned.

(v) The owners and operators of the EGUs identified in paragraph (d)(1) of this section shall calculate on a monthly basis the total emissions for all units for the preceding twelve (12) months.

(vi) The owners and operators of the EGUs identified in paragraph (d)(1) of this section shall notify the Hawaii Department of Health and EPA Region 9 of any exceedance of the emission cap in paragraph (d)(3) of this section within thirty (30) days of such exceedance.

(vii) By March 1, 2019 and within sixty (60) days following the end of each calendar year thereafter, the owners and operators of the EGUs identified in paragraph (d)(1) of this section shall report to the Hawaii Department of Health and EPA Region 9 the total tons of $SO_2$ emitted from all units for the preceding calendar year by month and the corresponding rolling 12-month total emissions for all units.

(viii) Any document (including reports) required to be submitted by this rule shall be certified as being true, accurate, and complete by a responsible official and shall be mailed to the following addresses: Clean Air Branch, Environmental Management Division, State of Hawaii Department of Health, P.O. Box 3378, Honolulu, HI 96801–3378 and Director of Enforcement Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

[FR Doc. 2012–23238 Filed 10–5–12; 8:45 am]

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Making continuing appropriations for fiscal year 2013, and for other puroses. (Sept. 28, 2012; 126 Stat. 1313)

**S. 3245/P.L. 112–176**
To extend by 3 years the authorization of the EB-5 Regional Center Program, the E-Verify Program, the Special Immigrant Nonminister Religious Worker Program, and the Conrad State 30 J-1 Visa Waiver Program. (Sept. 28, 2012; 126 Stat. 1325)

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